PERSPECTIVES ON

Transatlantic Insurance M&A

November 16, 2011

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PERSPECTIVES ON

Transatlantic Insurance M&A

Table of Contents

November 16, 2011

	Tab
Presenter Biographies	1
Perspectives on Transatlantic M&A Presentation	2
Global Insurance & Reinsurance M&A Experience	3
Firm Overview	4
Global Corporate Insurance & Regulatory Bulletins: October 2011 and September 2011	5

Attorney Profiles

David W. Alberts – Mayer Brown, New York Partner
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David is a partner in the New York office of Mayer Brown, where he focuses his practice on insurance and reinsurance matters. In addition, his corporate and regulatory practice includes a wide range of transactional, counseling and advisory services to numerous financial institutions.

David's work for the life and non-life insurance industry includes corporate, regulatory, contract wording, insurance finance, credit enhancements, new product development, evaluation and management of run-off liabilities, and development and implementation of exit strategies such as liability-based restructuring, financial reinsurance and portfolio transfers. He regularly advises on multi-jurisdictional and cross-border regulatory issues, including credit for reinsurance laws, risk transfer regulations, permissible investment under insurance investment laws and related collateralization requirements.

David Alberts was designated as a leading lawyer for Insurance: Transactional and Regulatory in the 2006 - present editions of Chambers USA and is also included in the "International Who's Who of Insurance and Reinsurance Lawyers" (2005 - present).

Edward S. Best – Mayer Brown, Chicago Partner
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Edward Best joined Mayer Brown in 1986 and steadily built a successful corporate practice. Today, he is co-leader of the firm's Capital Markets and Financial Institutions groups. He is widely recognized as one of the nation's leading insurance M&A lawyers. Eddie's experience includes:

Mergers and Acquisitions. Counseling buyers, sellers, and financial intermediaries in connection with public and private acquisitions, joint ventures, divestitures, mergers, tender offers, and proxy contests, with special emphasis on the insurance industry.
Capital Markets. Representing issuers and underwriters in connection with domestic, international and cross-border public and private offerings of debt, equity, convertible and hybrid securities, with particular emphasis on offerings by financial institutions.
General Corporate Practice. Advising companies regarding Securities Act and Exchange Act compliance, NYSE and NASDAQ compliance, corporate governance, and Sarbanes-

Oxley Act matters.

Chambers USA noted that "Edward Best's 'extremely quick mind' makes him a popular figure among lawyers and clients alike. 'He is never stumped by a question . . ..'" Eddie has been described as "Aptly named, as he's one of the best in town."

Lawrence R. Hamilton – Mayer Brown, Chicago Partner

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Larry Hamilton is a Corporate & Securities partner in the Chicago office. His practice is focused on mergers, acquisitions, and regulatory compliance of insurance companies and investment companies, both in the United States and in offshore markets. In addition, he regularly represents insurance company issuers in connection with public and private offerings of equity, fixed income and hybrid securities.

Larry has extensive experience negotiating directly with insurance regulators, helping clients overcome regulatory obstacles and gain approval for their proposed forms of business arrangements. Larry is also part of a dedicated internal Insurance Securitization group, which uses the combined talents of the firm's insurance and structured finance practitioners to ensure that transactions take into account the customs and expectations of both markets. He regularly advises US and European financial institutions on the insurance regulatory issues associated with complex capital market and derivative structures, including techniques such as credit derivatives, "transformer" vehicles, synthetic CDO bonds, collateral trusts and special purpose reinsurance companies.

Larry is named a leading lawyer in *Chambers USA* 2011 and the 2010 edition praised him for his "*knowledgeable, thorough and prompt*" approach; according to *Chambers USA* 2009, he is "the standout name in the firm's insurance [transactional and regulatory] practice." Larry is listed as a leading lawyer in the 2009 *IFLR1000,* and named to the 2010 lists of *Illinois Super Lawyers* and "Best Lawyers in America."

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Martin Mankabady – Mayer Brown, London Partner

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Martin Mankabady is a partner in Mayer Brown's corporate practice. He focuses on mergers and acquisitions (both private and public), joint ventures, and corporate finance, principally in the insurance and financial services sectors. Martin also advises on general company law, commercial, and regulatory matters. Over the years, Martin has advised on a number of complex, high profile transactions, often with a cross-border element.

Ranked as a key individual by *Chambers UK 2012,* Martin is "very good and knows his stuff" notes *Legal 500 2011* and is praised by the *2010* edition for his "quiet, effective, good-humoured mastery of deals and detail". He is "exceptionally respected" according to *Chambers UK 2010* and in 2009 they praised him for his "user-friendly, get-things-done" approach. *Chambers UK* 2008 noted that he "is developing a strong practice in commercial matters," and previously observed that "peers expressed the 'utmost respect' for Mankabady and his wealth of experience" (2006). He has also been highly regarded and recommended in *Legal 500 2009* and in 2007 they observed Martin is "a highly accomplished lawyer with strong expertise in the financial services sector."

Colin Scagell – Mayer Brown, London Partner

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Colin Scagell is a partner in the Corporate & Securities practice and Insurance Industry Group of the London office.

Colin focuses on the Insurance sector and has advised on many of the market leading Insurance transactions of the past decade. He has a strong focus on cross border public transactions including takeovers, listings and secondary securities offerings.

Colin joined Mayer Brown in September 2011 from the London office of a leading New York law firm, prior to which he qualified at a top city firm.

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Perspectives on Transatlantic Insurance M&A

November 16, 2012

Presented by:

David Alberts, Edward Best, Lawrence Hamilton, Martin Mankabady and Colin Scagell

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State of the Market

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State of the Market

- Global insurance M&A declined in 2009 but has shown signs of recovery in 2010 through 2011.
- While financial crisis inhibited M&A activity, it has also resulted in some large dispositions.
- Activity represents attempts to build scale, strengthen balance sheets and sustain margins.
- New capital requirements have also lead to increased M&A activity.

State of the Market

- P&C M&A
  - Increased activity
  - Drivers
    - Lack of premium growth
    - Excess capital
    - Low valuations (Pre-crisis: 1.7x/Post-crisis: 1.2x)
  - Common themes
    - Buyers seeking specialty businesses
    - Renewal rights deals
    - Strategic and bolt-on acquisitions rather than mega deals

State of the Market

- Life Insurance
  - Increased activity recently
  - Drivers
    - Regulatory developments affect uses of capital
    - Divest non-core or underperforming assets
    - Strategic redeployment of capital
    - Raise capital to strengthen balance sheets

State of the Market

- And since I couldn't resist given the title of the seminar
- Transatlantic/Validus/Allied World
  - June 12 - Allied World/Transatlantic sign definitive $3.2B MOE
  - July 13 – Validus makes hostile cash/stock offer
  - July 25 – Validus launches hostile exchange offer
  - Sep 15 – Allied World/Transatlantic terminate MOE
  - Sep 26 – Validus files for consent solicitation to replace Transatlantic board of directors
  - Nov 4 – Transatlantic board reject sweetened Validus offer
- Stay tuned!

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Overview of Relevant Insurance Regulatory Change

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Insurance Regulatory Change

- Solvency II
  - Three pillars
    - Capital requirements
    - Risk management
    - Reporting standards
  - Timeline
    - January 1, 2013 - transposition of the directive into national law by member states
    - January 1, 2014 – implementation of rules for firms

Insurance Regulatory Change

- Dodd-Frank Wall Street Reform and Consumer Protection Act
  - Establishment of Federal Insurance Office
  - Enactment of Nonadmitted and Reinsurance Reform Act of 2010
  - Financial Stability Oversight Council has ability to assess the systemic risk of non-bank financial institutions
    - Proposed criteria released on October 11, 2011
  - Regulation of over-the-counter derivatives
    - Extension of effective date of swap regulation pending

Insurance Regulatory Change

- Neal Bill
  - Legislation reintroduced to Congress in October 2011
  - Would limit the ability of US subsidiaries of foreign insurance groups to claim deductions for reinsurance ceded to offshore affiliates

Insurance Regulatory Change

- National Association of Insurance Commissioners ("NAIC")
  - Reinsurance Reform
    - NAIC Credit for Reinsurance Model Law (#785) and Credit for Reinsurance Model Regulation (#786) amendments approved by NAIC Executive Committee and Plenary
    - Amendments incorporate new ratings-based reinsurance collateral reductions and establish a floor for collateral requirements
    - Key provision of amended Model Regulation is the creation of a category of "certified reinsurers" that are subject to reduced collateral requirements

Insurance Regulatory Change

- Solvency Modernization Initiative ("SMI")
  - Key Areas
    - Capital requirements
    - Governance and risk management
    - Group supervision
    - Statutory accounting and financial reporting
    - Reinsurance
  - Own Risk and Solvency Assessment ("ORSA")
    - Key aspect of SMI with respect to group solvency
    - NAIC SMI (EX) Task Force adopted the NAIC ORSA Guidance Manual at 2011 Fall Meeting

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Case Study 1: Private M&A

Private M&A Case Study

- Empire Insurance Corp. ("Empire") has a UK subsidiary, Chrysler Insurance Limited ("Chrysler"). Chrysler carries on a business which is no longer regarded by Empire as part of its core business.
- Empire is also interested in finding out more about rep and warranty insurance cover and whether, if it obtained this, it could lower or mitigate some of its indemnification obligations or otherwise facilitate the transaction.
- Empire wishes to sell Chrysler by way of an auction process and has drawn up a list of potential bidders (being a mixture of trade and strategic bidders).
- Empire has requested that Madison Bank prepare an information memorandum with the usual disclaimers, an overview of Chrysler's business, and its financial projections.

Private M&A Case Study

- Empire has also requested that Midtown, a law firm, prepare a sale and purchase agreement containing the following:
  - the usual reps and warranties and limitations on the seller's liability;
  - no conditionality unless strictly necessary so as to minimise any execution risk; and
  - an upfront cash payment which is to be subject to no adjustment.
- Empire's preference is for an all cash offer, a clean exit, and a closing of the transaction to take place in as expeditious a manner as possible.

Private M&A Case Study

- Empire has floated the idea of a "go-shop" provision which it wishes to discuss further with its advisers.
- Empire is also interested in finding out more about warranty and indemnity insurance cover and whether, if it obtained this, it could offer fewer reps and warranties.
- Further, Empire is keen to explore if it could seek a break-fee which would be payable in the event that a preferred bidder pulls out of negotiations or otherwise fails to close the transaction.
- Finally, Empire is keen to understand if there are any other issues it should be aware of which could impact on timing or which could be a potential "show-stopper".

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Case Study 2: Public M&A

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Public M&A Case Study

- Manhattan Insurance Group, Inc. ("Manhattan"), a Connecticut based general insurer listed on NYSE, is considering an indicative offer for Lime Street Insurance Holdings plc ("Lime Street").
- Lime Street operates predominantly in the Lloyd's market but also has some continental European subsidiaries.
- Manhattan has experience of transactions in the United States but is aware that there are significant differences in the UK.

Public M&A Case Study

- Manhattan has instructed Midtown, a law firm with insurance industry expertise on both sides of the Atlantic, to consider the following in the context of its proposed bid:
  - structure of the proposed offer;
  - recent changes to the UK Takeover Code; and
  - pre-bid planning.
- The consideration is all cash, funded from internal resources and new bank facilities.
- Manhattan is keen to understand the regulatory approval process and how this may impact the deal timetable.

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Case Study 3:
Pitfalls for Shareholder Activism Under US Insurance Holding Company Laws

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Regulatory Background

Holding Company Statutes

- Every US state has insurance holding company statutes that regulate relationships between insurance companies and their control persons and affiliates.
- Most are based on the NAIC Model Insurance Holding Company System Regulatory Act.

"Form A" Approval Required for Acquisitions of Control

- Among other things, insurance holding company statutes regulate acquisitions of control of insurance companies.
- Generally, no person may acquire control of an insurance company without first filing an application (called a "Form A") with the insurance regulatory authority in the insurance company's state of domicile and obtaining its approval.

What Constitutes Control?

- The term "control" (including the terms "controlling," "controlled by" and "under common control with") means the possession, direct or indirect, **the power to direct or cause the direction of the management and policies of a person**, whether through the ownership of voting securities, by contract other than a commercial contract for goods or non-management services, or otherwise, unless the power is the result of an official position with or corporate office held by the person.

Presumption of Control Based on 10% Voting Power

- Control is presumed to exist if any person, directly or indirectly, owns, controls, holds with the power to vote, or holds proxies representing, **10% or more of the voting securities** of any other person.
- This presumption may be rebutted, but only by following a statutory disclaimer of control process.
- The commissioner may also determine, based on factual findings at a hearing, that a person with less than 10% voting power is a control person of an insurer.

The Disclaimer of Control Process

- A person may file with the commissioner a disclaimer of affiliation with an insurer, or a disclaimer may be filed by the insurer itself or one of its affiliates.
- The disclaimer must fully disclose all material relationships and bases for affiliation between the person and the insurer, as well as the basis for disclaiming the affiliation.
- A disclaimer of affiliation is deemed to have been accepted unless the commissioner disallows it within 30 days of filing.
- If the disclaimer is disallowed, the disclaiming party may request an administrative hearing, at which it bears the burden of proof.

The Disclaimer of Control Process (cont'd)

- The 2010 amendments to the NAIC Model Act shifted the burden of proof for disclaimers of control from the commissioner to the disclaiming party.
- Prior to the amendments, the commissioner had to call a hearing to disallow a disclaimer of control, but now the commissioner can disallow a disclaimer on his or her own authority and the disclaiming party has the burden of overturning the disallowance at a hearing.
- Most states have not yet adopted the 2010 amendments to the NAIC Model Act, and in those states the burden of disallowing a disclaimer of control remains with the commissioner.

The Case Study

The Players*

- **Gamma** was a Bermuda-domiciled holding company (listed on the LSE) with operations in the UK (at Lloyd's), in Bermuda and in the US.
- **Gamma US** was organized in Delaware in 2006 as a subsidiary of Gamma and received its certificate of authority from the Delaware Insurance Department in 2007.
- **Delta Fund** was a UK investment fund that owned about 22.5% of the voting shares of Gamma in 2007.

*Names have been changed in this case study.

The Presumption of Control

- Because it owned more than 10% of the voting shares of Gamma, Delta Fund was identified by the Delaware Insurance Department as an ***"ultimate controlling entity"*** of Gamma US in the March 2007 organizational examination.

The Disclaimer of Control

- Delta Fund did not want to be subject to the Delaware insurance holding company laws, so in June 2008 counsel to Gamma filed a disclaimer of control, stating that:
  - Delta Fund had not in the past submitted, nor did it currently plan in the future to submit, any separate shareholder proposal with respect to Gamma, and
  - Delta Fund had not in the past proposed a slate of directors for Gamma or Gamma US, and it had not demanded a seat on the board of directors of those entities.
- The Delaware Insurance Department approved the disclaimer.

The Crisis

- The year 2009 started out well for Gamma:
  - In January, there was a successful capital raise from institutional and other investors in which Delta Fund increased its ownership stake in Gamma to 29.6%.
  - In July, Gamma moved from the AIM to the LSE main market.
- As the year went on, major differences developed between Gamma's top management and one of Gamma's co-founders, Mr. Sparrow, who was the company's senior underwriting officer:
  - In September, Mr. Sparrow stepped down as Active Underwriter.
  - In late October, Mr. Sparrow was terminated from all his positions with Gamma.

The Reaction

- The sacking of Mr. Sparrow caused consternation on the part of Gamma’s major shareholders who had relied on Mr. Sparrow’s leadership role and track record when they made their investments.
- According to later testimony, Mr. Sparrow’s departure also caused concern at the Delaware Insurance Department because of its potential impact on Gamma US.

“Soft Intervention” by Major Shareholders

- In November 2009, Delta Fund sent a letter to the Gamma Board, calling for Mr. Sparrow to be reinstated.
- Efforts to bring about the reinstatement of Mr. Sparrow proved unsuccessful, as Gamma’s senior management had the solid backing of the Board.
- As a result, Delta Fund and other major shareholders became increasingly concerned about the quality of Gamma’s leadership and the company’s future direction.
- In an effort to regain the confidence of the major shareholders, certain corporate advisers in the UK developed **proposals for a change in Board leadership.**

“Hard Intervention” by Major Shareholders

- In early December 2009, Delta Fund submitted a formal requisition to the Board to call **a special general meeting (SGM) of shareholders** to vote on a resolution to remove two of the incumbent directors and elect a slate of new directors.
- The slate of proposed new directors had been prepared by the corporate advisers.
  - The slate included insurance industry veterans plus two lawyers from a Bermuda law firm who were intended to serve as placeholders.
  - The proposed new chairman was an individual with a distinguished career in the industry. Although he and his slate attracted the support of the major shareholders, he maintained an independent stance at all times and did not take directions from them.

The Irrevocable Undertakings

- At around the same time that Delta Fund submitted the requisition for the SGM, it obtained “Irrevocable Undertakings” from other major shareholders – the equivalent of irrevocable proxies – that that empowered Delta Fund to vote on their behalf in favor of the proposed resolutions at the SGM.
- Combined with its own voting power, the Irrevocable Undertakings gave Delta Fund the ability to cast 57% of Gamma’s total voting power at the SGM.

The Board's Reaction

- On January 5, 2010, the Gamma Board offered a compromise, whereby the current chairman would resign and the proposed new chairman would be appointed along with the two new industry directors. This would still have left the incumbent directors with 4-to-3 voting control of the Board.
- On January 26, 2010, the major shareholders responded by requesting the resignation of the incumbent chairman and one other director; the appointment of the proposed new chairman, the two industry directors and three directors from the Bermuda law firm; and a commitment from the three other incumbents to resign if requested by the new chairman.
- January 29, 2010, the Board issued a notice to convene an SGM for March 12 to vote on a resolution to remove the chairman and one other incumbent director and to appoint the six new proposed directors. The other three incumbent directors announced their intention to resign if the resolutions passed.

The Battle Shifts to Delaware

- Counsel for Gamma communicated with the Delaware Insurance Department, **alleging that Delta Fund, in seeking to replace the Gamma Board, was acting contrary to its disclaimer of control.**
- This caused great concern at the Department because, in the absence of the disclaimer of control, Delta Fund would be prohibited from exercising control over Gamma US until it had filed a Form A and obtained the Department's approval.

The Commissioner Calls a Hearing

- On February 17, 2010, **the Delaware Insurance Commissioner called a hearing** to be held on March 10, 2010 to determine whether Delta Fund's previously filed disclaimer should be disallowed.
- The notice of hearing stated that the Commissioner had reason to believe that the disclaimer "may no longer contain valid information regarding the rebuttal of any presumption of control of Gamma and any affiliation between members of the Delta Fund group and Gamma and Gamma US".

Gamma's Hopes for the Hearing

- Based on later testimony, Gamma's aim may have been to use the Delaware insurance holding company laws and the Delaware Insurance Department hearing to gain leverage on Delta Fund – hoping that the prospect of Delta Fund being found in violation of Delaware's insurance holding company statutes (and the threat of potential sanctions from the Delaware Insurance Department) would cause Delta Fund to ***think twice*** about exercising its voting power to replace the Gamma Board until after it had filed a Form A and received the Delaware Insurance Department's approval.

Delta Fund's Position at the March 10 Hearing

- Recall that the statute defines "control" as the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person.
- Delta Fund argued that exercising its voting power as a shareholder to bring about a change in the Board did not constitute – even assuming the resolutions were passed at the SGM – the power to control the management or policies of Gamma US because:
  - The management and policies of Gamma US would be controlled by the Board.
  - The proposed new Board members had not been selected by Delta Fund.
  - None of the proposed Board candidates were agents, designees or representatives of Delta Fund, nor did they have any connection to or affiliation with Delta Fund.

What the Hearing Officer Concluded

- Controlling the Board is equivalent to controlling the management and policies of a company.
- Merely being an activist shareholder and trying to replace the Board would not constitute control.
- But having the power to control the selection of the entire Board and taking steps to use that power does constitute control.
- Delta Fund satisfied that control test when it participated in the process of obtaining the Irrevocable Undertakings that gave it the power to change the entire Board and when it requisitioned the SGM for the purpose of doing so…
- Delta Fund's control position continued even though the Irrevocable Undertakings expired or were terminated by March 3, 2010.

A Pyrrhic Victory

- The hearing officer's conclusions vindicated the Delaware Insurance Department's and Gamma's contention that Delta Fund's disclaimer of control should be disallowed.
- The result was that Delta Fund became obligated to file a Form A with the Delaware Insurance Department.
- However, there was no suggestion that Delta Fund's undertakings described in the disclaimer of control had not been made in good faith at the time the disclaimer was filed in 2008, and there was no suggestion by the hearing officer or the Department's representatives at the hearing that Delta Fund should be sanctioned, or that the Department should make any attempt to interfere with the exercise of the shareholder franchise at the SGM on March 12, 2010.

The Outcome

- On March 12, 2010, the SGM was held and the proposed resolutions passed with 97.5% of the vote.
- The incumbent chairman and one other director were removed; the six new directors, including the new chairman, took their seats on the Board; and the remaining incumbent directors resigned.
- On March 19, 2010, a new CEO was appointed.

Lessons Learned

- Being an activist shareholder and trying to effect a change in leadership of an insurance holding company may be deemed to be exercising control under state insurance holding company statutes.
- The perception or allegation that a shareholder is exercising control may arouse the attention of state insurance regulators and may potentially lead to regulatory proceedings and possible sanctions.
- Merely having to respond to such proceedings can be time-consuming and expensive.
- Even where no sanctions are imposed, as was the case here, a finding of control can result in becoming subject to the insurance holding company statutes that a major shareholder had been endeavoring to avoid – and which are becoming more onerous as a result of the NAIC's model act amendments.

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Discussion of Prospects for M&A in 2012

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Global Insurance and Reinsurance M&A Experience

Table of Contents

Insurance Industry Group 1
Insurance and Reinsurance M&A Experience 2
    The Americas 2
    Europe 4
    Asia 5
Insurance Regulatory & Compliance Experience 6
Insurance Tax 9
Global Insurance and Reinsurance M&A Team 10

Insurance Industry Group

"Industry experience which means the group understands insurance transactions from a business perspective, making for a proactive, entrepreneurial culture rather than the traditional counsel position of being adversarial and reactive."

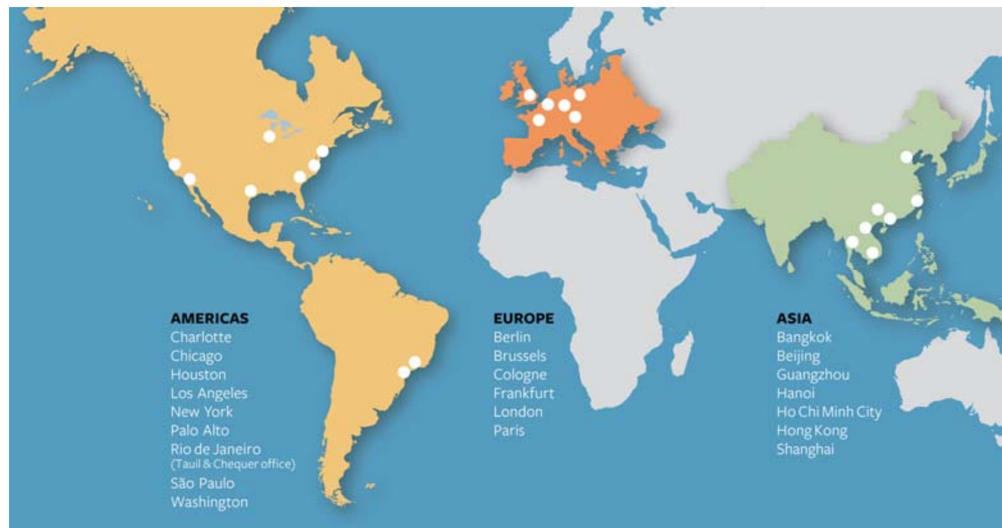
Chambers 2011: Insurance

Mayer Brown is a leading global law firm with 21 offices in key business centers worldwide. We have an established Global Insurance Industry Group, with over 100 lawyers who have specific insurance and reinsurance transactional, regulatory and dispute resolution experience.

In order to better serve clients in all global markets, Mayer Brown has focused its practice on the representation of insurers, reinsurers, intermediaries, banks and investors. The Group's mission is to deliver comprehensive inter-disciplinary insurance and reinsurance experience through a seamless team-oriented approach that draws upon Mayer Brown's enormous depth in all related areas of the law.

Mayer Brown has organized a team of attorneys who focus on a range of insurance and reinsurance transactions encompassing the life and property & casualty insurance fields. From strategic mergers and acquisitions to capital raising to insurance regulation to sophisticated insurance structured finance work (such as sidecars and cat bonds), Mayer Brown has unparalleled depth and experience.

We are pleased to introduce to you our global insurance and reinsurance M&A team.



Insurance and Reinsurance M&A Experience

"Superb lawyers in every way: outstanding analytical skills; thorough knowledge of procedures; mature, reliable and strategic advice."

Chambers USA 2011 Corporate: M&A/Private Equity

We regularly represent acquirers and target companies, as well as vendors, in connection with domestic and cross-border acquisitions and dispositions of insurance companies, divisions and lines of business. In these engagements we combine our substantial general M&A experience with our more focused understanding of insurance transactions to provide our clients with the highest level of representation. We also represent financial advisors in structuring M&A and demutualization transactions and providing fairness opinions.

Attorneys in Mayer Brown's insurance and reinsurance team have represented:

The Americas

— Guggenheim Partners, a diversified financial and insurance services firm, in its $440 million acquisition of EquiTrust Life Insurance Company from FBL Financial Group, Inc. (Transaction is pending regulatory approval)

— ACE Limited in its $107 million acquisition of Penn Millers Holding Corporation, a NASDAQ-listed agribusiness insurer. (Transaction is pending regulatory approval)

— OneBeacon Insurance in the sale of its AutoOne automobile insurance business, comprising AutoOne Select Insurance Company and AutoOne Insurance Company, to Interboro Holdings, Inc. (Transaction is pending regulatory approval)

— Deutsche Bank, the financial advisor to Allied World Assurance Company Holdings AG, in Allied's $3.2 billion merger bid with Transatlantic Holdings, Inc.

— Beazley, a specialty insurance company, in the sale by its subsidiary, Beazley Holdings Inc., of the renewal rights and certain assets connected to its US long term care insurance portfolio to Ryan Specialty Group LLC.

— Everest Reinsurance Holdings in the $55 million acquisition of Heartland Crop Insurance, Inc., a specialty underwriter of crop insurance.

— Guggenheim Life & Annuity Company in its acquisition of $1.7 billion of policies and related assets from Standard Life Insurance Company of Indiana, as a part of Standard Life's ongoing, court supervised reorganization.

"There are never any delays or hold-ups - only great results."

Chambers USA 2010: Corporate: M&A/ Private Equity

— ACE American Insurance Company, a subsidiary of ACE Limited, in its $1.1 billion acquisition of the remaining 80 percent of Rain and Hail Insurance Service, Inc., the second largest crop insurance underwriter in the United States.

— Randall & Quilter (R&Q) in the acquisition the insurance services businesses Reinsurance Solutions Limited (UK) and Reinsurance Solutions LLC (US) from Guy Carpenter & Company, LLC and Marsh Limited, as well as the acquisition of Excess & Treaty Management Corporation, a management company for the run-off of the Excess Casualty Reinsurance Association from Guy Carpenter & Company, LLC.

— IFC in its investment in QBE Del Istmo Reinsurance Company, Inc., a reinsurance company based in the Republic of Panama.

— OneBeacon Insurance Group Ltd., a Boston-based, Bermuda-domiciled insurance holding company, on its agreement to sell its personal lines insurance business to Tower Group, Inc.

— Banc of America Securities, the financial advisor to American International Group, Inc., in AIG's $1.9 billion sale of its US personal auto insurance business, 21st Century Insurance Group, to Farmers Group, Inc., a subsidiary of Zurich Financial Services Group.

— Assured Guaranty, Ltd., a Bermuda holding company, in the $722 million acquisition of the financial guaranty insurance business of Financial Security Assurance Holdings Ltd. in the United States, the United Kingdom and Bermuda. This deal was named as one of the most innovative M&A deals in 2010 by the Financial Times.

— Assured Guaranty Corp., a financial guaranty insurer, in the acquisition of the U.S. public finance business of CIFG Assurance North America, Inc.

— ACE Limited in the $2.4 billion purchase of Combined Insurance Company of America.

— Argo Group International Holdings, Ltd., a Bermuda holding company, in the sale of its US-based subsidiary, PXRE Reinsurance Company, to Tawa Group plc, the UK-quoted runoff consolidator.

— Nestlé S.A. in the $770 million acquisition of Gerber Life Insurance Company from Novartis AG (as part of Nestlé's $5.5 billion acquisition of the Gerber nutrition business).

— General Motors Acceptance Corporation ("GMAC") in obtaining multiple state insurance regulatory approvals for the $14 billion acquisition of a 51% interest in GMAC by a consortium of investors led by Cerberus Capital Management, L.P.

Europe

“The London practice of this global heavyweight is considered to be an ‘excellent package with impressive strength and depth’ and clients state, ‘I would flag them as the most commercially aware outfit we work with.’”

Chambers UK 2011

- GMAC Inc. in the sale of its personal lines insurance business to an investment group headed by AmTrust Financial Services Inc.
- Wells Fargo in the sale by its subsidiary, Union Hamilton Reinsurance Limited, of a 37 percent interest in Besso Holdings Limited, a specialist international and retail Lloyd's insurance broker, to Brian Marsh Enterprises Limited, B.P. Marsh & Partners and an individual investor.
- Ally Financial Inc. in the sale by its subsidiary, Car Care Plan (Holdings) Limited, of Provident Insurance plc, insurance Services Limited and Hebble Insurance Management Services Ltd., to Covéa Mutal Insurance Group Company.
- Randall & Quilter, as majority shareholder, in the launch of a captive management joint venture in Denmark and Sweden, which would provide risk management and insurance services.
- Audley Gilroy Insurance Capital Management Limited in its sale of Scottish Lion Insurance Co. Limited to Berkshire Hathaway's National Indemnity Company.
- QBE European Operations in its acquisition of the brand and renewal rights of Evergreen Underwriting Services Ltd., a UK-based insurance agency, from MSP Underwriting Ltd., which is owned by Munich Re.
- Pamplona Capital Management, a private equity business focused on the insurance industry, on its acquisition of a significant minority interest in a publicly listed Lloyd’s insurer, Chaucer Holdings Plc.
- Ascent Insurance Brokers Limited in the sale of its insurance broking business to Jardine Lloyd Thompson PLC.
- SIACI Saint Honoré, one of the largest insurance brokerage and consultancy groups in France, in its acquisition of insurance broking firm Assurance & Capital Partners, which specializes in servicing and placement of liability risks.
- Milestone, a special purpose company of La Compagnie Financiere Edmond de Rothschild (LCFR), in the acquisition of a stake in Newstone Courtage, the holding company for Siaci Saint-Honore, a France-based insurance brokerage, from LCFR, Paris Orleans, Jardine Lloyd Thomson and management, as a part of a refinancing and restructuring of the capital structure of Siaci Saint-Honore.
- Willis Group Holdings Limited on the restructuring of the shareholding of Gras Savoye & Cie, a leading France-based insurance broker. Under the terms of the transaction, Astorg Partners SAS acquired a 33 percent stake in Gras Savoye.

Mayer Brown Germany was nominated as "Law firm of the Year" in the M&A and Banking & Finance categories in the 2010 *Juve* Awards

— Argo Group International Holdings Ltd, the listed Bermuda based provider of (re)insurance products, on the acquisition of Heritage Underwriting Agency Plc., the listed UK based company engaged in non-life insurance business.

— Audley Capital Advisors on the acquisition of SLI Holdings Limited and its subsidiary, The Scottish Lion Insurance Company Limited.

— Langholm Capital Partners in its £225.5 million sale of UK-based insurance company, Just Retirement (Holdings) plc, to Avalon Acquisitions Limited, a company wholly owned by funds advised by Permira Advisers LLP.

— A leading global insurer on its acquisition of the renewal rights to a commercial property book of insurance from a Bermudian insurer.

— The shareholders of Edward Lumley Holdings, a life and non-life underwriting business, on the sale of ELH to Wesfarmers.

— M&G, a member of the Prudential Plc insurance group, on the disposal of its direct private equity business, PPM Capital, via a MBO, to PPM Capital's existing management.

— Bear Stearns on the acquisition of Minster Insurance Services from Groupama UK.

— Catalina Holdings Limited on its acquisition of the run-off business of Bermudian Class IV reinsurer Overseas Partners Re Ltd.

Asia

"Insurance Law Firm of the Year"

Asian Legal Business Awards 2010 and 2011

— ACE Limited in its $425 million acquisition of New York Life Insurance Co.'s Hong Kong and Korea life insurance operations.

— Pacific Century Insurance Holdings Limited (PCI) on a transaction by which PCI became a wholly owned subsidiary of Fortis Insurance International N.V.

— One of the largest life insurance companies in Hong Kong on the acquisition of 50.48% of its shares by an international insurance company.

— Fairfax Financial Holdings Limited in relation to the acquisition of the entire issued share capital of Winterthur Swiss Insurance (Asia) Limited (now known as Falcon Insurance Company (Hong Kong) Limited) from Winterthur Swiss Insurance Company.

— MLC (then a subsidiary of Lendlease and now a subsidiary of AXA) on the acquisition of a controlling stake of 55% in CEF Insurance Holdings (Bermuda) Limited.

— A major French group of insurance companies on its acquisition of insurance business in Hong Kong.

— Danske Bank A/S on the sale of the business (including debt portfolio) of Danske Finance (Asia) Limited to Orix (Asia) Limited.

- Prudential Asia Group on the sale to management of Prudential Asset Management Asia Limited.
- HSBC in establishing a life insurance joint venture with National Trust Limited in the PRC.
- HSBC Insurance Brokers Limited in establishing HSBC ZhongHua Insurance Brokers Co., Limited, which is a joint venture between HSBC and two Chinese shareholders.
- Guardian Insurance Company Limited in Thailand on the potential acquisition by an offshore insurance company of a local non-life insurance brokerage.
- Prudential US on its possible entry into the insurance sector in Thailand.

Insurance Regulatory & Compliance Experience

"[Mayer Brown's] lawyers are industry experts, which translates into extremely helpful practical advice."

Chambers 2010: Financial Services Regulation

Our global Financial Services Regulatory & Enforcement group comprises over 50 lawyers, a number of whom are former regulators. This group of lawyers work almost exclusively on regulatory and strategic matters for insurance companies and financial institutions ranging from community banks and thrifts to the largest global financial organizations. Our experience with the major financial regulatory schemes worldwide, coupled with the professional relationships that we have developed with key regulators, are among the most important assets we offer to our clients.

In the insurance arena, we advise our insurance industry clients in a variety of regulatory matters in The Americas, Asia and Europe. We understand these changing regulatory schemes significantly impact our insurance clients and pride ourselves in keeping our clients up-to-date on the numerous current regulatory changes around the world including holding company and capital issues in the European Union and in the US on the Federal and State levels, Solvency II, the Dodd-Frank Act's effects on the industry in the US and globally, and the NAIC Solvency Modernization Initiative and Proposed Revisions to Insurance Holding Company Regulation. We excel in negotiating with insurance regulators to overcome regulatory obstacles and develop creative solutions that enable our clients to gain regulatory approval for their proposed forms of business arrangements.

In addition, the team is comprised of specialists in funds and portfolio management, financial services law, global custody and securities lending and anti-money laundering procedures who regularly provide advice to leading global financial clients on operational arrangements and ongoing compliance activities, as well as contentious regulatory issues and FSA, SEC and other US regulatory cross border investigations.

Attorneys in Mayer Brown's insurance and reinsurance team have advised:

- Financial institution clients regarding the specific types of insurance regulatory risks associated with lending to, and entering into derivatives contracts with, U.S. insurance companies.
- Various clients regarding state requirements for licensing of insurance agents and brokers, insurance adjusters and third-party administrators.
- Numerous non-U.S. insurance companies regarding the extent of business activities they are permitted to carry on in the United States, through the excess and surplus lines market and other non-admitted distribution channels.
- Various insurance and reinsurance companies and insurance agents and brokers regarding compliance with state insurance laws and have assisted clients in planning and carrying out internal compliance investigations.
- Clients in obtaining state insurance regulatory approvals for insurance company acquisitions, related-party transactions and in obtaining regulatory approval for a variety of highly bespoke transactions.
- Clients that were the subject of various types of contemplated or actual enforcement actions by state insurance regulators.
- A major insurer to intervene in the Form A approval process when one of its reinsurers was being sold, the result of which was that the state insurance department required the reinsurer's parent to reinfuse significant additional capital into the reinsurer as a condition of securing regulatory approval for the sale.
- Multiple start-up reinsurance businesses in connection with the legal, regulatory, licensing, tax and accounting work connected with their formation.
- On the acquisition of a shell life insurance company, managing the various business plan, Form A, financial and other submissions to a state insurance department. The partner's work also included life and annuity product development and service as an executive officer and member of the board of directors.
- A major US life insurance company in creating a combination of corporate structures and service contracts for the performance of a variety of support services from India. This outsourcing project was one of the first of its kind and scale in the insurance industry.
- Several life insurers and reinsurers in a range of transactional and regulatory matters.
- The American Council of Life Insurers, the life insurance industry trade association with over 400 member companies in North America.
- Several major insurance broker clients on regulatory requirements and disclosure best practices related to broker compensation.

- Insurers and reinsurers in SEC and NYAG investigations into finite reinsurance, achieving a highly successful result for a major global reinsurer.
- Numerous insurers and their affiliated banks and bank holding companies in connection with regulation by the Federal Reserve Board, the sale of insurance products through banks and compliance with anti-money laundering requirements and US sanctions laws.
- A financial holding company that owned both banks and insurance companies in seeking guidance from the Fed on the scope of permissible activities for insurance groups under the Bank Holding Company Act.
- Insurance companies in complying with Office of Foreign Asset Control regulations with respect to doing business with sanctioned countries and with AML compliance under Treasury regulations.
- Insurance groups on compliance with the US Foreign Corrupt Practices Act on a global basis.
- Insurance companies on transactions with affiliated banks under US banking affiliate transaction laws (Section 23A of the Federal Reserve Act).
- A major European insurer’s US subsidiary on product sales regulatory issues including coordination of and analysis for global regulatory project.
- A Bermuda reinsurer on US sanctions issues in connection with reinsurance transactions and payments.
- A Bermuda-based reinsurer on options to form or acquire a new US insurance and reinsurance platform, including corporate, tax and regulatory advice.
- Various insurers on conducting business in multiple global jurisdictions as admitted versus non-admitted insurers.
- Investors in insurance and reinsurance companies on change of control issues.

Insurance Tax

"[Mayer Brown] lives up to its excellent reputation – its lawyers provide a full service and always take a thoughtful approach."

Chambers 2010: Tax

With more than 100 tax lawyers worldwide, our tax practice covers every aspect of corporate, partnership, and individual taxation, including taxation of cross-border transactions and state and local issues. It comprises sub-practices in transactions, consulting and planning, audits, administrative appeals and litigation, and government relations.

Our leading insurance tax practice represents both insurers and reinsurers. Our work includes organization and operation of offshore companies as non-CFCs and non-PFICs, drafting operating guidelines for non-US companies to follow so as not to be subject to US net income taxation, as well as addressing insurance industry-specific questions. We also advise clients in the life settlement area and with respect to various insurance and annuity products. In addition, we regularly represent many of the world's largest banks in connection with complex financing transactions and planning, and have one of the leading securitization, financial products and investment fund practices in the world.

Representative examples of our attorneys' insurance-related tax experience include:

- Advising major banks on tax issues connected with variable annuity transformer transactions.
- Serving as the principal outside US tax advisor to ACE Limited since 1987. Recently we represented ACE Limited in its re-domestication from the Cayman Islands to Switzerland.
- Serving as the US tax architect of the expatriation of Everest Re to Bermuda, and of the formation of several Bermuda startups, including LaSalle Re and Endurance Specialty.
- Advising Citadel and other fund managers on the formation of offshore insurance companies owned by hedge funds.
- Advising on several transactions involving the securitization of insurance risk, including securitizations for Radian Guaranty and MGIC, and tax issues relating to other sidecar transactions.
- Advising on the tax aspects of American Express's sale of its UK insurance group.
- Providing transfer pricing advice for insurance and reinsurance companies including Assured Guaranty and Everest Re.
- Advising on the tax-related issues in connection with life settlement and premium finance transactions.

Global Insurance and Reinsurance M&A Team

"The group is adroit at the nuances of sophisticated deal making."

Chambers 2011: Insurance

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MAYER • BROWN

Fact Sheet

Firm Overview

Mayer Brown is noted for its commitment to client service and its ability to solve the most complex and demanding legal and business challenges worldwide. The firm serves many of the world's largest companies and financial services organizations, including a significant proportion of the Fortune 100, FTSE 100, DAX and Hang Seng Index companies and more than half of the world's largest banks.

Areas of Practice

Banking & Finance

Corporate & Securities

Environmental

Employment & Benefits

Financial Services Regulatory & Enforcement

Government/Global Trade

Intellectual Property

Litigation/Dispute Resolution

Supreme Court & Appellate

Real Estate

Restructuring, Bankruptcy & Insolvency

Structured Finance

Tax

Wealth Management

Fast Facts

Mayer Brown provides a global service to clients through five offices in Europe, seven offices in the United States and eight Mayer Brown JSM offices in Asia.

OFFICE LOCATIONS

Americas Charlotte, Chicago, Houston, Los Angeles, New York, Palo Alto, Washington DC

Asia Bangkok, Beijing, Guangzhou, Hanoi, Ho Chi Minh City, Hong Kong, Shanghai, Singapore

Europe Berlin, Brussels, Cologne, Frankfurt, London, Paris

LEADERSHIP

Herbert W. (Bert) Krueger, *Chicago*
Chairman

Kenneth S. Geller, *Washington*
Managing Partner

Overview

Mayer Brown is a leading global law firm advising clients across the Americas, Europe and Asia. The firm is known for its client-focused approach to providing creative solutions to complex problems on behalf of businesses, governments and individuals. Mayer Brown is particularly renowned for its Supreme Court & Appellate, Litigation, Corporate & Securities, Finance, Real Estate and Tax practices.

The firm operates in association with Tauil & Chequer Advogados in Brazil and has an alliance with Ramón & Cajal in Spain. Mayer Brown serves many of the world's largest companies, including a significant proportion of the Fortune 100, FTSE 100, DAX and Hang Seng Index companies together with global leaders in major industries.

Mayer Brown advises on both regional and international transactions and litigation and its lawyers have extensive experience managing pan-European, transatlantic and global projects.

Reputation

Mayer Brown ranks 12th among 505 law firms listed in BTI Consulting Group's "BTI Client Service All Stars" for 2011. The firm has ranked in the top 30 for ten consecutive years. Rankings are based on unprompted feedback from Fortune 1000 counsel on 17 activities that drive client relationships, including: quality, understanding the client's business, anticipating client needs, breadth of services, providing value, bringing together national resources and international capability.

The 2010 edition of *IFLR1000* (*International Financial Law Review*) ranked Mayer Brown in 15 practice categories. Four practices were given top-tier rankings: Hong Kong Restructuring & Insolvency; Thailand Restructuring & Insolvency; United States Capital Markets–Structured Finance & Securitization; and Vietnam Banking & Finance. In addition, 26 partners were ranked as leading lawyers.

Mayer Brown JSM was named as the IFLR "National Law Firm of the Year" for Hong Kong in 2011. This is the fourth consecutive year since the combination with Mayer Brown in 2008 that the firm has won this prestigious award. Additional recent awards include *IFLR* Regional Law Firm of the Year Award (2008), Chambers Asia Awards for Hong Kong National Law Firm of the Year (2010), the *ALB* (*Asian Legal Business*) Hong Kong Law Awards for: Hong Kong Law Firm of the Year (2002-2005, 2007, 2008), Employment Law Firm of the Year (2008, 2011), Insolvency & Restructuring Law Firm of the Year (2002, 2003, 2005, 2006, 2009, 2011), Insurance Law Firm of the Year (2010, 2011) and Real Estate Law Firm of the Year (2002-2006, 2009-2011).

Seventy-nine Mayer Brown lawyers are ranked in the 2011 edition of *Chambers Global*, including 19 who achieved top-band ranking or higher in 22 regional and/or global categories.

The 2011 edition of *Chambers USA* includes 148 rankings of the firm's lawyers in 49 nationwide and/or state practice categories, 43 of which are top-band or higher rankings in 34 nationwide and/or state categories. *Chambers UK* 2011 lists a total of 69 London office partners as leaders in their fields; seven received top-band ranking.

Mayer Brown has been ranked among the four most innovative US law firms by the *Financial Times* in a special report on "US Innovative Lawyers 2010."

Mayer Brown advised on three deals that received awards in the *IFLR* 2009 Americas Awards competition. The awards recognized Mayer Brown's work on the winning Securitization Deal of the Year, Private Equity Deal of the Year and Project Finance Deal of the Year.

Mayer Brown's Banking & Finance practice was ranked 7th (by volume) for lender representations in the league tables for Syndicated Lending in the US.

Three Mayer Brown projects were selected as the best in their respective categories in *Project Finance International's* 2009 International Awards.

Benchmark Litigation 2010 named Mayer Brown in three national practice categories: Antitrust, Appellate, and General Commercial Litigation. In addition, eight attorneys are nationally ranked as "Stars" in their practice area.

Twenty-seven Tax Controversy partners are recognized in the 2011 International Tax Review–Tax Controversy Leaders Guide ranking publication. The Tax Controversy practice also has been ranked as a top tier practice by both *Chambers USA* and *Legal 500* for five consecutive years.

Chambers Latin America 2010 ranks the firm in four Latin America-wide practice categories: Banking & Finance, Capital Markets, Corporate/M&A and Projects. Mayer Brown also is ranked in Brazil in the Banking & Finance: Locally Based International Counsel category.

Mayer Brown practices are ranked in 31 categories in the 2011 edition of *Legal 500 United States;* and in 25 categories in *Legal 500* 2011 EMEA.

www.mayerbrown.com

Mayer Brown is a global legal services provider comprising legal practices that are separate entities (the "Mayer Brown Practices"). The Mayer Brown Practices are: Mayer Brown LLP and Mayer Brown Europe – Brussels LLP, both limited liability partnerships established in Illinois USA; Mayer Brown International LLP, a limited liability partnership incorporated in England and Wales (authorized and regulated by the Solicitors Regulation Authority and registered in England and Wales number OC 303359); Mayer Brown, a SELAS established in France; Mayer Brown JSM, a Hong Kong partnership and its associated entities in Asia; and Tauil & Chequer Advogados, a Brazilian law partnership with which Mayer Brown is associated. "Mayer Brown" and the Mayer Brown logo are the trademarks of the Mayer Brown Practices in their respective jurisdictions.

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Attorney advertising

October 2011

Insurance & Reinsurance Industry Group: Global Corporate Insurance & Regulatory Bulletin

UK – FSA revises implementation assumptions for Solvency II

In light of discussions in Europe about splitting the implementation dates for Solvency II, the FSA has revised its planning assumptions. It is now proceeding on the basis that:

- 1 January 2013 remains the date at which the responsibilities of supervisors and the European Insurance and Occupations Pensions Authority (**"EIOPA"**) will be switched on; and
- 1 January 2014 is when the Solvency II requirements will be switched on for firms.

These assumptions will only be revisited if there is a significant change in the dates to beyond 2014. The proposed Omnibus II directive, which will establish the timescale for implementation of Solvency II, is now not due to be considered by the European Parliament until its February 2012 plenary session.

Despite the uncertainty about the implementation dates, and the fact that there are still issues to be resolved at the European level (including the approach to groups, equivalence, reporting and transitionals), the FSA intends to press ahead with implementation in a way which will balance its regulatory obligations with the needs of the industry.

The FSA's approach to implementation depends on whether a firm intends to use the standard formula or an internal model.

For firms using an internal model, there will be a full briefing in early November 2011 in which the FSA will deal with its approach to application and the transition from the current individual capital adequacy standards regime to Solvency II. The FSA currently plans to receive applications from 30 March 2012, with formal approvals being provided once Solvency II comes into effect on 1 January 2013. Firms will be allocated a submission slot between 30 March 2013 and mid-2013, depending on factors including an assessment of firm readiness, group issues and policy developments.

For firms using the standard formula, the FSA expects to be open to receive applications from 1 January 2013 for approvals required by firms from 1 January 2014.

The FSA is yet to consider its approach to regulating firms that fall outside Solvency II.

UK – Financial Stability Board to concentrate on monitoring the 'consistent and comprehensive implementation' of the G20 financial reforms

On 18 October 2011 the Financial Stability Board (**"FSB"**) published *'A Coordination Framework for Monitoring the Implementation of Agreed G20/FSB Financial Reforms'* (the **"Framework"**).

The FSB is the body responsible for coordinating and promoting the monitoring of the implementation of G20 and FSB financial reforms, and for reporting back to the G20. In order to strengthen this monitoring, the FSB has established the Framework, which addresses **what** to monitor, **how** to monitor, **who** should monitor and **to whom** the information should be reported and disseminated.

In the accompanying press release the FSB explain that following the financial crisis they have "*coordinated effectively with standard-setting bodies in developing the international regulatory policies that are critical for strengthening global financial stability*". However, the success of the reforms in the future will depend on full and globally consistent implementation, and it is important to monitor, assess and report back on this.

The Framework lists those priority areas in which consistent and comprehensive implementation is most critical for global financial stability. These areas are as follows:

- ***The Basel II/II.5/III framework*** – in particular, putting in place the necessary regulations or legislation to implement the Basel III framework starting on 1 January 2013 so that it can be fully phased in by 1 January 2019;
- ***Over-the-counter derivatives market reforms*** – in particular, implementing the recommendations concerning standardization, central clearing, exchange or electronic platform trading, and reporting of transactions to trade repositories by the end of 2012;
- ***Compensation practices*** – in particular, the implementation of *Principles for Sound Compensation Practices* and *Implementation Standards* by the end of 2010;
- ***Policy measures for global systematically important financial institutions ("G-SIFIs")*** – in particular, an FSB Peer Review Council will review the full and consistent implementation of the G-SIFI measures;
- ***Resolution frameworks*** – in particular, forming an international standard that will be subject to assessment processes; and
- ***Shadow banking*** – in particular, carrying out more detailed work in 2012 to specify recommendations for strengthening the regulation and oversight of the shadow banking system.

These areas will be subject to more intensive monitoring and reports on implementation in each area will be published at least once a year. The priority areas will be reviewed annually in light of developments.

The Chairman of the FSB, Mario Draghi, commented that *"[the] Framework is a key element of the FSB's future work programme and comes at a crucial juncture as the reform process increasingly moves from global policy development to national implementation"*.

The Framework can be viewed here.

Europe – Japanese Minister of State for Financial Services and Postal Reform visits EIOPA

On 5 October 2011 the Japanese Minister of State for Financial Services and Postal Reform, Mr. Shozaburo Jimi, and a delegation of Japanese government officials, concluded their visit to EIOPA.

The visit had a number of purposes, including:

- acquainting themselves with EIOPA and its new responsibilities and tasks;
- receiving an overview and outlook from EIOPA on the European insurance sector;
- discussing Solvency II;
- discussing the next steps on the equivalence assessment exercise; and
- providing EIOPA with the opportunity to study Japan's experience in managing challenging economic situations in order to draw conclusions on the regulatory and supervisory measures taken.

The chairman of EIOPA, Gabriel Bernardino, saw the visit as confirmation and enhancement of the dialogue between the Japan Financial Services Agency and EIOPA, and commented *"not only is Japan among the biggest economies worldwide, its insurance and reinsurance companies also play an increasingly important role in the global insurance market... In this interconnected world it is key to focus on reaching a global convergence of regulatory standards which will impact consumers positively and reinforce financial stability"*.

EIOPA published its final reports on third country equivalence assessments under Solvency II for Japan, Bermuda and Switzerland on 26 October 2011 (the reports are available here). However, the European Commission's decisions on third country equivalence might not be published before July 2012.

US – CFTC proposes extension of effective date of swap regulation

On 18 October 2011, the Commodity Futures Trading Commission (the **"CFTC"**) voted to propose an amendment (the **"Proposed Amendment"**) to its final order of 14 July 2011 (the **"July Order"**). The July Order grants temporary exemptive relief from certain provisions of the Commodity Exchange Act (the **"CEA"**) that otherwise would have become effective on 16 July 2011, the general effective date of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the **"Dodd-Frank Act"**). The July Order grants temporary relief in two ways. First, an exemption from the 16 July 2011 effective date was granted with respect to self-effectuating CEA provisions added or amended by Title VII of the Dodd-Frank Act that reference terms regarding

entities or instruments needing to be "further defined", to the extent that the requirements of such provisions specifically related to a term not yet further defined, until the earlier of: (i) the effective date of the final rule further defining the relevant term, or (ii) 31 December 2011. Second, the July Order provides an exemption from the provisions of the CEA that may apply to certain agreements, contracts and transactions in exempt or excluded commodities as a result of the repeal of certain CEA exemptions and exclusions pursuant to the Dodd-Frank Act until the earlier of: (i) the repeal, withdrawal or replacement of the CFTC's "part 35" exemptive rules, or (ii) 31 December 2011.

The Proposed Amendment would alter the potential latest expiry dates in two ways. With respect to CEA provisions added or amended by Title VII of the Dodd-Frank Act referencing terms needing to be "further defined", the Proposed Amendment would allow for temporary exemptive relief until the earlier of: (i) the effective date of the final rule further defining the relevant term, or (ii) 16 July 2012. With respect to provisions of the CEA that may apply to certain agreements, contracts and transactions in exempt or excluded commodities as a result of the repeal of certain CEA exemptions and exclusions pursuant to the Dodd-Frank Act, the Proposed Amendment would allow for temporary exemptive relief until the earlier of: (i) 16 July 2012, or (ii) such other compliance date as may be determined by the CFTC. The CFTC has requested comments on the Proposed Amendment. Comments should be submitted on or before 25 November 2011.

US – New York launches Department of Financial Services

On 3 October 2011, the State of New York officially launched the New York Department of Financial Services (the **"NYDFS"**), merging the New York State Banking and Insurance Departments. The NYDFS will consist of five main divisions: the Insurance Division, the Banking Division, the Financial Frauds and Consumer Protection Division, the Real Estate Finance Division, and the Capital Markets Division. The Insurance Division will carry on the core functions of regulating all insurance activities in New York, including life, property and health insurance. The NYDFS is headed by a Superintendent of Financial Services. Benjamin M. Lawsky, the former Chief of Staff for New York Governor Andrew Cuomo, is serving as the first such superintendent. James Wrynn, the former Superintendent of Insurance, is now serving as the Deputy Superintendent of the NYDFS.

Governor Cuomo had stated his intention to form a combined NYDFS in his State of the State address delivered on 5 January 2011. Governor Cuomo stated then that artificial boundaries between the former departments allowed certain activities to fall through the cracks in regulation. Housing the separate regulatory departments under the NYDFS will allow for better communication and cooperation between the regulatory arms resulting in stronger regulation of Wall Street and better protections for consumers. In addition, the combined NYDFS will save taxpayer dollars through increased efficiency. Superintendent Lawsky has stated that the NYDFS is poised to achieve more than $25 million in budget savings in its first year alone.

US – Department of Treasury announces appointments to the Federal Advisory Committee on Insurance

On 2 November 2011 the U.S. Department of Treasury announced the appointment of 15 persons to positions on the Federal Advisory Committee on Insurance (the **"FACI"**). The FACI will provide advice, recommendations, analysis and information directly to the Federal Insurance Office (the **"FIO"**). The FACI is comprised largely of state insurance regulators, but also includes members from varying backgrounds including members currently working in the business of insurance as well as academia and consumer advocacy.

The 15 individuals appointed to the FACI include the following:

- David Birnbaum, Economist and Executive Director, Center for Economic Justice;
- Michael Consedine, Commissioner, Commonwealth of Pennsylvania Department of Insurance;
- Jacqueline Cunningham, Commissioner, State of Virginia Bureau of Insurance;
- John Degnan, Senior Advisor to the CEO of the Chubb Corporation;
- Brian Duperreault, President and Chief Executive Officer, Marsh & McLennan Companies;
- Loretta Fuller, Chief Executive Officer, Insurance Solutions Associates;
- Scott E. Harrington, Alan B. Miller Professor in the Health Care Management and Insurance and Risk Management departments at the Wharton School, University of Pennsylvania;
- Benjamin Lawsky, Superintendent of Financial Services, State of New York;
- Thomas Leonardi, Commissioner of the Connecticut Department of Insurance;
- Monica Lindeen, State of Montana Commissioner of Securities and Insurance and State Auditor;
- Christopher Mansfield, Senior Vice President and General Counsel, Liberty Mutual Group;
- Sean McGovern, Director and General Counsel, Lloyd's North America;
- Theresa Miller, Administrator, State of Oregon Insurance Division;
- Michael E. Sproule, Executive Vice President and Chief Financial Officer, New York Life Insurance Co.; and
- Bill White, Commissioner, District of Columbia Department of Insurance.

The FIO was created under Title V of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the **"Dodd-Frank Act"**). The primary responsibility of the FIO is to monitor the insurance industry and identify issues or gaps in current insurance regulation that could contribute to a systemic crisis in the insurance industry or the U.S. financial system. Among its other functions, the FIO is tasked with making recommendations to the Financial Stability Oversight Council regarding insurance companies that should be designated as systemically important financial institutions and thus could be subject to supervision by the Board of Governors of the Federal Reserve System and could have prudential standards

imposed in accordance with Title I of the Dodd-Frank Act. The FIO also coordinates U.S. federal efforts on, and develops policy regarding, international insurance matters.

US – NAIC Fall 2011 Meeting Notes

The National Association of Insurance Commissioners (the "NAIC") held its 2011 Fall National Meeting (the "Fall Meeting") from 3-6 November in Washington, D.C. The Fall Meeting was especially eventful this year due to the cancelling of the Summer meeting in the wake of Hurricane Irene. While there were many happenings, debates and events occurring during the packed agenda, highlights were seen in the areas of reinsurance reform, consideration of Actuarial Guideline 38, the monitoring of captive insurance companies and the ongoing progress of the Solvency Modernization Initiative (the "SMI").

REINSURANCE REFORM

After many years of deliberation, the NAIC Executive Committee and Plenary approved amendments to the NAIC Credit for Reinsurance Model Law (#785) and Credit for Reinsurance Model Regulation (#786). The amendments incorporate new ratings-based reinsurance collateral reductions and set a floor for collateral requirements that many states may follow. One of the key provisions of the amended Model Regulation is the creation of a category of "certified reinsurers" that are subject to reduced collateral requirements.

Despite years of consideration of the amendments, last minute language changes were put in place during the Fall Meeting. A sub-group of regulators was formed to craft the final language for the amendments to the NAIC models in a closed-door session. The new language added by the sub-group included a concentration risk limit based upon a similar limit that was added in recent amendments to New York's Regulation 20, Credit for Reinsurance from Unauthorized Insurers. After the addition of the new language, the amendments to the NAIC models now provide that a ceding insurer must take steps to manage its reinsurance recoverable proportionate to its own book of business and notify a commissioner after reinsurance recoverable from any single assuming insurer or group of affiliated assuming insurers exceeds 50% of the domestic insurer's last reported surplus to policyholders. The amendments now also provide that a ceding insurer must take steps to diversify its reinsurance program and notify a commissioner after ceding to any single insurer or group of affiliated assuming insurers more than 20% of the ceding insurer's gross written premium in the prior calendar year. In both situations the notification to the commissioner should demonstrate that the exposure is safely managed by the domestic ceding insurer. The sub-group of regulators also added language that will direct the NAIC to publish a list of qualified jurisdictions that commissioners will consider in determining qualified jurisdictions in their states. If a commissioner approves a jurisdiction as qualified that does not appear on the NAIC list of qualified jurisdictions, the commissioner must provide documented justification for approving the jurisdiction in question.

The scope of the collateral reform will be limited by the retention of the new 'effective date' language that was added at the September joint meeting of the Reinsurance (E) Task Force and its parent Financial Condition (E) Committee to Section 8.A.(5) of the Model Regulation. It provides that credit for reinsurance from certified reinsurers "shall apply only to reinsurance contracts entered into or renewed on or after the effective date of the certification of the assuming insurer. Any reinsurance contract entered into prior to the effective date of the certification of the assuming insurer that is subsequently amended after the effective date of the certification of the assuming insurer, or a new reinsurance contract, covering any risk for which collateral was provided previously, shall only be subject to this section with respect to losses incurred and reserves reported from and after the effective date of the amendment or new contract." This will limit the ability of reinsurers to reduce their collateral obligations on in-force business that is already reinsured and has existing collateral.

The NAIC has specifically stated that the amendments to the models will be evaluated and potentially revisited in two years. While many states base their credit for reinsurance statutes and regulations directly on the NAIC models, the NAIC models are not recognized as law in any of the states. The NAIC models remain influential as accreditation standards, and states may choose to amend their laws and regulations to conform to the models. Since the amendments establish a floor for collateral requirements, states that choose to maintain their current stricter requirements will still meet the accreditation standard. The next step in the reinsurance reform process will be to see which, if any, additional states adopt the amended models. A small number of states have already either enacted provisions similar to the amended models or are considering such reforms, with Florida having led the way in 2008.

AG 38

The NAIC Life Actuarial (A) Task Force (the "LATF") has been in discussions regarding Actuarial Guideline 38 ("AG 38"), which provides guidance for life insurance companies to calculate reserves on universal life policies with premium guarantees. In recent years, some regulators and industry participants have contended that some insurance companies may be improperly applying the provisions of AG 38 in determining the reserves for universal life policies with multiple secondary guarantees. Scrutiny began at the end of 2010 with the New York Insurance Department and expanded to LATF in the spring of 2011. This September LATF released a draft statement on the issue for comment. The draft statement was met with letters of objection from various trade groups and interested parties.

The statement was discussed at length by LATF at the Fall Meeting and narrowed in scope. However, during the Fall Meeting a joint group between the Life Insurance and Annuities (A) Committee and the Financial Condition (E) Committee was formed to further study AG 38 reserving issues. The special working group formed by the NAIC Executive (EX) Committee will be comprised of representatives from Alaska, California, Florida, Iowa, New Jersey, New York, Tennessee, Texas and Virginia.

CAPTIVE INSURANCE COMPANIES

The establishment of captive insurance companies is becoming more prevalent as the number of captive-friendly jurisdictions continues to proliferate. States have seen an opportunity to increase revenues in their states by creating an environment and regulatory regime that is designed to entice captive insurance companies to establish themselves in such a captive-friendly state. Some states have enacted additional provisions for special purpose financial captives that may be used in the securitization of insurance risk. Concerns have been raised that laws and regulations tailored specifically for captive insurance companies may be too lax with respect to monitoring the operations and solvency of captive insurance companies. Previous to the Fall Meeting, the NAIC did not have a group dedicated to researching and evaluating captive and special purpose vehicles and their effects on the marketplace. The Financial (E) Committee has now been given a 2012 charge to "…study insurers' use of captives and special purpose vehicles to transfer third-party insurance risk in relation to existing state laws and regulations and establish appropriate regulatory requirements to address concerns identified in this study. The appropriate regulatory requirements may involve modifications to existing NAIC model laws and/or generation of a new NAIC model law." A new Captives & SPV Use Subgroup of the "E" Committee is being launched to carry out that mandate.

SOLVENCY MODERNIZATION INITIATIVE

The SMI is the NAIC's on-going effort to assess and revise the U.S. insurance solvency regulatory framework focusing on five key areas: capital requirements, governance and risk management, group supervision, statutory accounting and financial reporting, and reinsurance.

A key aspect of the SMI with regard to group solvency is a proposal to require insurance companies to prepare an Own Risk and Solvency Assessment ("ORSA"). The purpose of an ORSA is to ensure that a company develops a risk management policy that identifies the type and amount of its material risk, and also monitors and manages such risk. At the Fall Meeting, the NAIC SMI (EX) Task Force adopted the NAIC ORSA Guidance Manual. The purpose of the Guidance Manual is to provide guidance to an insurer or insurance group with regard to reporting on its ORSA as outlined within the Form B – Insurance Holding Company System Annual Registration Statement required by the NAIC's Insurance Holding Company System Model Regulation (#450). The matter has now been referred to the Financial Condition (E) Committee, which has been tasked with determining the measures that will be taken to implement the ORSA requirements. Industry groups are working to piece together standards for the industry for what an ORSA is supposed to look like in practice in the field. Some states have indicated that they believe that the ORSA should be presented through the Form B but will work with interested parties to investigate other options as well.

With respect to the timing of the completion and implementation of the SMI, SMI Task Force Chair Christine Urias (who is Director of Insurance for the State of Arizona) stated that the task force is still planning to complete the work of the SMI Task Force by December of 2012. She said that when the SMI Task Force completes its work, it will issue a comprehensive report to the Financial Condition (E) Committee and the Executive (EX) Committee, detailing all of the SMI-related material that has been developed, with the expectation that implementation will take place in 2013 or 2014.

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September 2011

Insurance & Reinsurance Industry Group: Global Corporate Insurance & Regulatory Bulletin

International – IAIS Convenes Annual Conference In Seoul to Discuss Global Insurance Supervision

The International Association of Insurance Supervisors' (the **"IAIS"**) 2011 Annual Conference was held from 28 September 2011 to 1 October 2011 in Seoul, Republic of Korea. The theme for the conference was "Toward a New Horizon for Insurance Supervision: Cross-Sector and Cross-Border Harmonization and Cooperation". Cross-sector and cross-border supervision has been an important topic in the insurance field since the financial crisis of 2008. The IAIS, along with a number of individual and regional jurisdictions, has been considering various regulatory reform regimes to address the potential risks to the global financial system presented by the insolvency of a large insurer or insurance group. Among the topics to be addressed at the conference is the methodology to be used in determining which insurers should be deemed global systemically important financial institutions (**"G-SIFIs"**). Designation as a G-SIFI could lead to increased regulatory requirements, including the possibility of a requirement to maintain higher levels of capital. The IAIS has been working on a methodology to identify which insurers should be deemed G-SIFIs. Early reports from the conference have stated that the IAIS expects to have a draft of its G-SIFI methodology and criteria by the first half of next year. The IAIS is working with the Financial Stability Board to draft rules and regulations governing insurers, including the treatment of G-SIFIs, in advance of the 2012 G20 Summit. Additional discussion of systemically important financial institutions and the various approaches to identifying systemically important financial institutions in regions such as the European Union and the United States will take place at a group panel at the conference entitled "Cross-Sectoral Debate on Financial Stability and Systemic Risk".

EU – Solvency II – proposed amendments – runoff sector exemption

The Polish Presidency of the Council of the European Union published its latest compromise proposal relating to the proposed Omnibus II Directive, which, if passed, will amend Solvency II, on 21 September 2011.

Amongst a number of proposed amendments, there is a change to the eligibility criteria for the transitional measures which are due to apply to insurance and reinsurance undertakings in run-off. The transitional measures provide that, where an insurance or reinsurance undertaking is in run-off by the date Solvency II enters into force, that undertaking shall not be subject to the requirements of Solvency II for three years where it has satisfied the supervisory authority that it will terminate its activity by the end of that three year period. This exemption will only apply where the undertaking has no group companies conducting new insurance or reinsurance contracts and where the undertaking provides its supervisory authority with an

annual report setting out its progress with regard to terminating its activity. The additional criterion under the latest proposal is that the undertaking must have notified its supervisory authority that it is applying the transitional measures.

It is also worth noting a further amendment to these provisions, which provides that an insurance or reinsurance undertaking in run-off may choose to operate in accordance with the provisions of Solvency II even where the conditions for the exemption are met.

Now that this latest proposal has been published, the next step for Omnibus II is to go before the European Parliament and the indicative date for the plenary sitting has recently been revised to 13 December 2011.

UK – Competition Authority: OFT issues call for evidence on motor insurance

Reports that UK annual comprehensive car insurance premiums have risen by as much as 40 per cent in 2010-11 and that premiums are higher in Northern Ireland than in mainland Britain prompted the Office of Fair Trading (**"OFT"**) to issue a call for evidence on the UK private motor insurance sector. The OFT wants to Understand whether the reports of premium increases are accurate, the reasons for the increases and whether there is anything the OFT or other parties could be doing to improve the functioning of the market.

The OFT has identified a number of aspects of the market that may raise competition or consumer issues, including:

- The role of price comparison websites;
- The provision of credit hire replacement vehicles to drivers who are involved in accidents that are not their fault;
- Insurance companies' use of panels of approved repairers; and
- Ancillary products (such as motor legal protection) that are sold by insurance companies in addition to standard private motor insurance cover.

The OFT has sent questionnaires to insurers, credit hire providers, vehicle repairers and price comparison sites. Consumers and other interested parties are also invited to submit comments to the OFT – see the OFT's website which can be accessed here. All responses are invited by 12 October 2011.

If any concerns are identified following the call for evidence, the OFT will work with the Government and the FSA to decide which organisation is best placed to address them. Options available to the OFT include the launch of a market study into specific aspects of the market, seeking voluntary action from the industry or undertaking further work to consider whether it would be appropriate to refer the market to the Competition Commission for in-depth analysis.

The call for evidence is not an investigation into individual insurers' practices, although the OFT can take action against individual insurers if it uncovers any individual activities that breach the rules prohibiting anti-competitive agreements or abuse of market dominance or the consumer protection rules.

The OFT plans to publish its findings in December 2011 at which point it should be clear whether any further action will be undertaken.

UK – ABI update on developments following Test-Achats ruling

The Association of British Insurers (**"ABI"**) published an update on 12 August 2011 on developments following the judgement of the Court of Justice of the European Union (**"ECJ"**) in *Association Belge des Consommateurs Test-Achats and others (Case C-236/09) [2009] ECJ* (**"Test-Achats"**) and related issues. The ABI's update can be viewed here.

TEST-ACHATS

In summary, this case found that Article 5(2) Insurance exemption of the Gender Directive (2004/113/EC) worked against the objective of the Gender Directive. Article 5(2) would be made invalid from 21 December 2012, and all new contracts of insurance concluded after 21 December 2012 must be gender neutral in respect of both pricing and the benefits paid out. For further comment on Test-Achats please see our March 2011 bulletin, which can be accessed here.

In its update, the ABI comment that the European Commission does not propose to amend the Gender Directive to reflect Test-Achats at this stage. This is due to the fact that the ruling is directly applicable and does not require a technical amendment to the Directive.

The European Commission invited stakeholders to submit answers to a written questionnaire on the main issues arising out of Test-Achats, and the responses it received are being fed into high-level guidelines intended to address uncertainties arising out of the judgement. The European Commission expects to publish these guidelines in the fourth quarter of 2011. The guidelines will address, amongst others, the following areas:

- the application of Test-Achats to new contracts of insurance issued after 21 December 2012;
- the definition of a new and renewed contract, in order to obtain a uniform approach at Member State level;
- examples of gender-related practices that will be allowed, such as the use of gender in reinsurance and capital reserve calculations; and
- examples of medical underwriting where it will be permissible to differentiate by gender due to biological differences, e.g. prostate cancer.

The ABI notes that some insurers have argued forcefully that the European Commission should be pushed to propose a substantive amendment to the Gender Directive in order to reverse the effect of Test-Achats. The ABI has not approved this as it believes it is unachievable and legally risky.

ARTICLE 2(7) OF THE DRAFT EQUAL TREATMENT DIRECTIVE ON AGE AND DISABILITY

The ABI's update also notes the fact that whilst several possible wordings of Article 2(7) of the draft Equal Treatment Directive on Age and Disability have been proposed by different EU Presidencies, the European Insurance and Reinsurance Federation (**"CEA"**) is concerned that the wording of Article 2(7) may also be vulnerable to legal challenge on the same basis as Test-Achats.

The Directive is currently blocked in the European Council and it is not likely that significant progress in relation to it will be made during the Polish Presidency.

The CEA recently engaged a law firm to analyse the structure of Article 2(7), and the law firm were of the belief that the reasoning in Test-Achats could not be used to determine whether Article 2(7) could be invalidated by the Court. Instead, previous case law must be considered.

The ABI is providing feedback to the CEA on this point and will update members on the outcomes of both its analysis and the ensuing debate in due course. The ABI is also working closely with the Treasury, which has the ability to provide alternative wording to Article 2(7) in the European Council.

UK – EIOPA consultation on draft reports on Solvency II equivalence assessments of Bermuda, Japan and Switzerland

The European Insurance and Occupational Pensions Authority (**"EIOPA"**) published draft equivalence assessments relating to Bermuda, Japan and Switzerland on 17 August 2011.

The equivalence assessments seek to ensure that the supervisory regimes in Bermuda, Japan and Switzerland provide a similar level of protection to policyholders as the regime under Solvency II. Bermuda, Japan and Switzerland are the first wave of countries who are being considered for equivalence. Bermuda and Switzerland are being assessed for equivalence under articles 172, 227 and 260 of the Solvency II directive, whereas Japan is only being considered under article 172.

Market participants and interested parties are invited to provide responses, on the template provided by EIOPA, by 23 September 2011. EIOPA will then provide advice to the European Commission as to the extent to which Bermuda, Japan and Switzerland satisfy the criteria for assessing third country equivalence by the end of September 2011. The European Commission has committed to publishing its decisions on the equivalence of third countries by July 2012.

The draft equivalence assessments, and response templates, can be accessed here.

UK – Trade associations publish joint letter on European Commission's Insurance Mediation Directive review

On 16 September 2011, the European Banking Federation (**"EBF"**), the European Mortgage Federation (**"EMF"**) and the European Federation of Finance House Associations (**"Eurofinas"**) published a joint letter (the **"Letter"**) sent to the European Commission (the **"Commission"**) that sets out their common views on the Commission's review of the Insurance Mediation Directive (**"IMD"**). The Letter can be viewed here. A draft text of the Commission's review is expected to be published in February 2012.

The first concern expressed in the Letter is that the review should seek to remove inconsistencies that have emerged across the national markets as a result of the IMD requiring only minimum harmonisation. EBF, EMF and Eurofinas believe that full, targeted harmonisation is required to ensure a level-playing field for intermediaries and a consistent level of protection for customers across the EU.

EBF, EMF and Eurofinas also expressed the opinion that, if the new directive is to cover packaged retail investment products, these should be dealt with under a separate regime to other insurance products as they are so different in nature. Furthermore, they felt that existing product exemptions should be retained and that business-to-business contracts should be removed from the scope of the IMD.

In addition, while stating that they see no need for extra formal professional requirements for insurance intermediaries as the existing legislation already sets high professional competence standards, EBF, EMF and Eurofinas emphasised that professional requirements should be proportionate to intermediaries' level of responsibility and to the risk level of the products in question so as not to discourage them from doing business.

It was also felt that, if the Commission decides to introduce a European standard for information on the roles and activities of intermediaries (referred to as the *"European Business Card"*), it should be properly tested to assess its practicality before being pursued further.

Finally, EBF, EMF and Eurofinas expressed clear reservations about any measure that would discourage or restrict the provision of loan insurances, as they have concerns about the effect this might have on the loan market and about the impact on the credit rating of lending institutions.

US – New York Increases Efforts to Monitor Holding Company Systems

On 12 August 2011, the New York State Insurance Department (the **"NYSID"**) released Supplement No. 1 (the **"Supplement"**) to its 2010 Circular Letter No. 10, addressing insurer reporting obligations under Article 15 of the New York Insurance Law (**"Article 15"**). Among other things, Article 15 generally requires insurers that are controlled by a holding company to file reports with the NYSID, disclosing information about the holding company and its other subsidiaries that may materially affect the operations, management or financial condition of the insurer. New York Insurance Law § 1502(a) exempts insurers that are authorized to do business in New York, including non-US insurers transacting business in New York through US branches, or their subsidiaries, from being treated as "holding companies" for purposes of Article 15. What this means is that if an insurer's top-tier control person is itself an insurer that is authorized to do business in New York, then Article 15's requirements, including the reporting requirements, do not apply. Although such insurers are exempt from the provisions of Article 15, they may still be subject to the holding company reporting or registration requirements of other states. In addition, the NYSID possesses the general authority, under New York Insurance Law § 308, to require insurers to submit additional reports. Accordingly, the Supplement directs all insurers domiciled in New York that are exempt from Article 15 to submit the following reports to the NYSID:

1. Copies of the insurance holding company system annual registration statement (called "Form B" by the National Association of Insurance Commissioners (the **"NAIC"**)) and any amendments thereto filed in another state (to be filed with the NYSID contemporaneously with filing in the other state). If an insurer is not required to file the NAIC Form B in another state, the insurer must file the information that is contained in the NAIC Form B with the NYSID within 120 days following the close of the holding company's fiscal year. Any insurer that had not filed its most recent report with the NYSID was directed to file that report with the NYSID by 22 August 2011.

2. A report notifying the NYSID at least 30 days in advance of any activity that would result in the insurer acquiring control of any other New York-domiciled insurer. Control is presumed to arise based on the direct or indirect acquisition of 10% or more of the other insurer's voting securities.

3. A report notifying the NYSID at least 30 days in advance of entering into certain transactions with affiliates. Such transactions include:

   A. sales, purchases, leases, exchanges, loans, extensions of credit, or investments with an affiliate in an amount that equals or exceeds certain thresholds;

   B. loans or extensions of credit to non-affiliates that are made with the understanding that the proceeds will be used to make loans or extensions of credit to, purchase assets of, or make investments in, any affiliate of the insurer, if the amount of the transactions equals or exceeds certain thresholds;

   C. reinsurance agreements (or modifications thereto) with an affiliate that have an economic impact in excess of certain thresholds, if the insurer has not otherwise submitted the agreements to the NYSID;

   D. all management agreements, service contracts, guarantees or contracts of surety, and any cost-sharing arrangements;

   E. all guarantees or contracts of surety involving an affiliate, if quantifiable as to amount, if the contract is for an amount in excess of certain thresholds (insurers should submit all guarantees or contracts of surety if such contracts are not quantifiable as to amount);

   F. with respect to life insurers, direct or indirect acquisitions or investments in a person that controls the insurer or in an affiliate of the insurer (other than a subsidiary) in an amount that together with its present holdings in such investments exceeds 2.5% of the insurer's policyholder surplus at the prior year-end.

The NYSID's stated purpose for requiring such reports is to enhance its understanding of the holding company structure of authorized insurers operating in New York and to better assess the current or potential risks to those insurers arising from transactions and relationships with their affiliates.

US – New York Announces Enterprise Risk Management Expectations

On 29 July 2011, the NYSID released a proposed circular letter (the **"Letter"**) announcing its expectations with respect to the establishment and maintenance of an Enterprise Risk Management (**"ERM"**) function by insurers and health maintenance organizations domiciled in New York. The Letter provides that an effective ERM function should be able to "identify, measure, aggregate, and manage risk exposures within predetermined tolerance levels, across all activities of the insurer or group of insurers". The evaluation of an insurer's ERM practices is expected to be performed in connection with the statutory examination of the insurer, but may be conducted as a separate exercise.

The Letter lists the following criteria that the NYSID will look for when evaluating an insurer's ERM function:

- The ERM function should be objective, headed by a properly credentialed individual and adequately resourced with competent personnel who are able to provide management and the board of directors with ongoing assessments of the insurer's risk profile.
- An insurer should have a written risk policy that delineates its risk/reward framework, risk tolerance levels and risk limits.
- An insurer's ERM process of risk identification and quantification should be supported by documentation providing appropriately detailed descriptions and explanations of risks identified, the measurement approaches used, key assumptions made and outcomes of any plausible adverse scenarios that were run. Scenario and stress testing should also be a key component of the ERM function.
- An insurer's ERM function should have risk and capital management processes in place to monitor the level of its financial resources relative to its economic capital and the regulatory capital requirements.
- An insurer's board of directors and senior management should begin to contemplate performing its own risk and solvency assessment (**"ORSA"**) as part of the ERM function to assess the adequacy of its risk management and current and future solvency position.
- An insurer should address as part of its ERM/ORSA all reasonably foreseeable and relevant material risks including, at a minimum: insurance, underwriting, asset-liability matching, credit, market, operational, reputational, liquidity, and any other significant risks associated with group membership.
- If an insurer is part of an affiliated group of companies under common control or management, the insurer's ERM function should identify, quantify and manage any risks to which the insurer may be exposed by transactions, or affiliation, with the other affiliates within the group.

The Letter states that the NYSID views the ERM function as a "key component of the risk-focused surveillance process" and will incorporate the results of the ERM evaluation into the standard examination process. The inclusion of an insurer's affiliates within the scope of the ERM exercise reflects a concern on the part of state insurance regulators about potential "contagion" to insurers resulting from the activities of their non-insurance affiliates.

US – Update – NAIC Continues Progress In Amending Credit For Reinsurance Models

On 18 September 2011 the long process toward the NAIC amendment of their credit for reinsurance models, *Credit for Reinsurance Model Law (#785)* and *Credit for Reinsurance Model Regulation (#786)*, reached its next-to-last step, with the NAIC Reinsurance Task Force making its final last minute amendments and approving them after several years of deliberation. The amendments provide for reduced collateral requirements for credit for reinsurance. That same day, the parent committee of the NAIC Reinsurance Task Force, the E Committee, adopted the amended models by a vote of 9 to 2. The final step is for the NAIC Plenary to adopt the amendments at the Fall NAIC meeting to be held during the first week of November. Then the activity is likely to turn to state legislatures in 2012 to see which additional states adopt legislation to implement the amended model law.

One of the last minute amendments proposed by New York and adopted by the Task Force and E Committee was somewhat of a surprise and controversial. The amendment to Section 8(A)(5) was as follows:

Credit for reinsurance under this section shall apply only to reinsurance contracts entered into or renewed on or after the effective date of the certification of the assuming insurer. Any reinsurance contract entered into prior to the effective date of the certification of the assuming insurer that is subsequently amended after the effective date of the certification of the assuming insurer, or a new reinsurance contract, covering any risk for which collateral was provided previously, shall only be subject to this section with respect to losses incurred and reserves reported from and after the effective date of the amendment or new contract.

This language could severely limit the ability of parties to make use of the new collateral scheme for in-force business that is already reinsured and has existing collateral. In proposing the amendment, New York said it was intended to tighten up the wording to make clear that the new scheme would apply only prospectively and specifically noted the regulators' desire to limit affiliate retrocessions currently in place with substantial collateral that could "fall off a cliff" overnight if permitted on in-force risks. However, many participants in the life reinsurance industry in particular felt surprised by this last minute addition (after years of deliberation and debate) and that the Task Force was not considering the unique nature of the life reinsurance sector and its long-term risks.

Many states base their credit for reinsurance statutes and regulations directly on the NAIC models or have a framework in place that is substantially similar to that of the NAIC models. NAIC models are not recognized as law in any of the states, but the models are influential as accreditation standards. If the proposed amendments are adopted by the NAIC, states may choose to amend their laws and regulations to conform to the models. However, since the proposed amendments to the NAIC models establish a floor for collateral requirements, states that choose to maintain their current stricter requirements will still meet the accreditation standard. We will have to wait until the November NAIC meeting and the legislative efforts in individual states in 2012 to see how this long and winding road to US reinsurance collateral reform ends.

US – Update – Senate confirms S. Roy Woodall as voting member of Financial Stability Oversight Council

On 26 September 2011, the US Senate confirmed S. Roy Woodall as a voting member of the Financial Stability Oversight Council (the **"FSOC"**). Mr. Woodall was nominated for the position by President Obama in June 2011. Mr. Woodall is the third insurance representative on the FSOC. Missouri Insurance Director John Huff and Federal Insurance Office Director Michael McRaith will also serve on the FSOC. Mr. Woodall is the only voting insurance representative. His confirmation is significant, as the FSOC has the authority to designate nonbank financial institutions, including insurance companies, as "systemically significant" under the Dodd-Frank Wall Street Reform and Consumer Protection Act (the **"Act"**). Such a designation would lead to heightened prudential standards being imposed on a company under the Act. Prior to Mr. Woodall's confirmation, the FSOC had been conducting meetings and considering rules for regulating nonbank financial institutions without the presence of a voting insurance member to represent the interests of the insurance industry.

For more information on Mr. Woodall and the Financial Stability Oversight Council, please see our article from the July 2011 Mayer Brown Global Corporate Insurance & Regulatory Bulletin, *President Obama Nominates Roy Woodall to Serve as a Voting Member of the Financial Stability Oversight Council*.

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US – Foreign Account Tax Compliance Act

The Foreign Account Tax Compliance Act (**"FATCA"**) legislation signed into law in March 2010 is designed to curb offshore tax evasion by U.S. taxpayers and will have a profound impact on the insurance industry when it becomes effective on 1 January 2013. FATCA applies to "foreign financial institutions" (**"FFIs"**), generally banks and other custodians of property, as well as entities that primarily engage in investing, trading or reinvesting in securities. Guidance issued by the Internal Revenue Service (**"IRS"**) clarifies that insurance companies, other than a company that issues only property and casualty policies, would be considered an FFI and subject to FATCA.

As a general matter, FATCA imposes a 30 percent withholding tax on certain "withholdable payments" to FFIs, including payments of U.S. source income and on gross proceeds from the sale of property that produces U.S. source dividends and interest (e.g., U.S. securities). In some cases, FATCA's withholding tax would be imposed on certain "passthru payments," which are payments that are not themselves withholdable payments but are attributable to a withholdable payment (e.g., non-U.S. source interest where the borrower has derived income from U.S. sources).

In order to avoid the imposition of FATCA's withholding tax, an FFI must enter into an agreement with the IRS that would require that the FFI conduct certain due diligence with respect to its clients and be obligated to report information pertaining to US clients to the IRS. To the extent that a client fails to provide the FFI with sufficient information needed by the FFI to conduct its due diligence obligations, the client would be considered "recalcitrant" and withholdable or passthru payments made to the client's account would be subject to a 30 percent withholding tax. In particular, the IRS considers a life insurance policy that has a cash value to be the equivalent of a bank or securities account. Accordingly, an insurance company that issues such policies would, pursuant to FATCA, be obligated to conduct due diligence and information reporting with respect to such policies. In certain instances, an FFI may be required to terminate its relationship with a recalcitrant client.

To the extent that an insurance company enters into an agreement with the IRS such that withholding tax is not imposed on payments to the insurance company, an insurance company may be obligated to withhold tax on payments made to its clients. As discussed further below, if an insurance company is required to treat a client as a recalcitrant client, the insurance company may be obligated to treat the payment of death benefits as a passthru payment subject to FATCA's withholding tax. The possibility of withholding tax being imposed on the payment of death benefits is likely to be a significant concern to the industry. Additionally, to the extent that a recalcitrant client receives a payment with respect to the surrender of a policy, such payment is likely to also be treated as a passthru payment subject to FATCA's withholding tax.

In the context of the insurance industry, FATCA's due diligence and information reporting requirements pose several concerns that differ from other financial institutions. One area of concern relates to the different types of insurance products that may be subject to the client identification and reporting requirements. Generally, FATCA looks to whether the FFI has "U.S. accounts," which do not, in practice, relate to products offered by insurance companies. For example, private placement insurance products, insurance wrappers, and separate account policies may be treated as accounts for purposes of FATCA. Accordingly, insurance companies will need to identify which of their products may be equivalent to an account for purposes of FATCA.

Insurance companies may not have sufficient information on hand needed to comply with the proposed account due diligence rules. In some instances, insurance companies do not collect or review documentary evidence or IRS forms that are necessary to identify the beneficial owner of the policy for U.S. federal income tax purposes. Accordingly, an insurance company may not be in a position to identify a policy holder as a U.S. or non-U.S. person. Insurance companies, unlike banks and other financial institutions, are likely to have limited contact with existing clients and could have difficulty in obtaining information needed to conclude that a client is not a U.S. person. It is possible that the insurance industry may have a greater amount of clients treated as recalcitrant clients subject to FATCA's withholding tax, as discussed above. Moreover, to the extent that an insurance company is obligated to treat a client as a recalcitrant client, because the company has not received such information from a client, the company is often barred by local law from cancelling the client's policy.

For more information about FATCA and its impact on the insurance industry, please review our full client alert on this topic which can be viewed here, or speak to your regular Mayer Brown contact.

US -States That Have Enacted Or Are Considering Reduced Collateral Requirements For Credit For Reinsurance

Reform of reinsurance collateral requirements in the US continues to progress. Florida, Indiana, New Jersey and New York already allow unauthorized reinsurers to qualify for posting less than 100% collateral depending on their financial strength ratings as well as other factors. Other states, including Illinois, Louisiana and Texas, are considering bills that will provide for similar reductions in reinsurance collateral requirements based on ratings. The states with pending legislation will likely see primary activity on such bills in 2012. Other states are expected to consider similar legislation in the near future. States have been prompted to enact reinsurance collateral reduction measures due to, in part, the proposed amendments to the National Association of Insurance Commissioners (**"NAIC"**) *Credit for Reinsurance Model Law (#785)* and *Credit for Reinsurance Model Regulation (#786)*. The proposed amendments to the NAIC models allow for ratings-based reinsurance collateral reductions and will set a floor for collateral requirements that many states may follow. For more information on proposed amendments to the NAIC models, please see the below article, *NAIC Reinsurance (E) Task Force Continues to Take Steps to Amend Credit for Reinsurance Model Law and Regulation*.

We have prepared the following "tracking chart" regarding reinsurance collateral developments in the states to-date, including links to the relevant approved or pending statutes and/or regulations, summary of requirements for reinsurers to qualify for posting less than 100% collateral, effective dates for the changes and other relevant information. The chart can be accessed here. As other states adopt changes, we will update our chart in future monthly bulletins.

US – Update – Dodd-Frank Nonadmitted Insurance and Reinsurance Reform Act Becomes Effective

On 21 July 2011, the Nonadmitted and Reinsurance Reform Act of 2010 (the **"NRRA"**), which is Subtitle B of Title V of the Dodd-Frank Wall Street Reform and Consumer Protection Act, became effective. The NRRA addresses, among other things, (i) the ability of states to impose premium tax on nonadmitted insurance, and (ii) the preemption of state credit for reinsurance credit rules with respect to nondomestic ceding insurers.

Premium Tax on Nonadmitted Insurance

Section 521(a) of the NRRA provides that no state other than the "home state" of an insured may impose a premium tax on nonadmitted insurance. "Home state" is generally defined in Section 527(6) of the NRRA as (i) the state in which an insured maintains its principal place of business or, in the case of an individual, the individual's principal residence, or (ii) if 100% of the insured risk is located outside of that state, the state to which the greatest percentage of the taxable premium for that insurance contract is allocated. The NRRA streamlines the obligations of insureds to pay, and surplus lines brokers to collect, premium taxes on transactions where the insured risk is located in a different state than the insured's home state. Section 522(a) of the NRRA further provides that except as otherwise provided in the statute, the placement of nonadmitted insurance is only subject to the statutory and regulatory requirements of the insured's home state. Section 521(b) of the NRRA expresses an intent of Congress that each state adopt nationwide uniform procedures, such as an interstate compact, for reporting and paying premium taxes on nonadmitted insurance for allocating among the states the premium taxes paid to an insured's home state. States have been revising their statutes and regulations to conform their laws to the NRRA and have provided guidance to excess and surplus line brokers and insurers with respect to the implementation of the NRRA in their states. For example, New York released Circular Letter No. 9 (2011) on 22 July 2011 (available at http://www.ins.state.ny.us/circltr/2011/cl2011_09.pdf) for this purpose. By contrast, the process for establishing a uniform interstate compact for the allocation of premium taxes among the states is still far from complete. For more information on state responses to the NRRA regarding premium taxes, please see our article from the March 2011 Mayer Brown Global Corporate Insurance & Regulatory Bulletin, *States Address Nonadmitted Insurance Premium Taxes in Light of Dodd-Frank Act*.

Credit for Reinsurance

Section 531(a) of the NRRA provides that if a state of domicile of a ceding insurer is a NAIC-accredited state, or has solvency requirements substantially similar to the requirements necessary for NAIC accreditation, and permits the ceding insurer to take credit for reinsurance on a ceded risk, then no other state in which the ceding insurer is licensed may refuse to recognize that credit for reinsurance. As all fifty states are currently NAIC-accredited, Section 531(a) of the NRRA effectively preempts all nondomestic state credit for reinsurance rules for all reinsurance agreements involving a ceding insurer based in the U.S.

The NAIC is in the process of evaluating proposed amendments to its *Credit for Reinsurance Model Law (#785)* and *Credit for Reinsurance Model Regulation (#786)*, which if adopted will provide for reduced collateral requirements for credit for reinsurance. Many states base their credit for reinsurance statutes and regulations directly on the NAIC models or have a framework in place that is substantially similar to that of the NAIC models. NAIC models are not recognized as law in any of the states, but the models are influential as accreditation standards. If the proposed amendments are adopted by the NAIC, states may choose to amend their laws and regulations to conform to the models. However, since the proposed amendments to the NAIC models establish a floor for collateral requirements, states that choose to maintain their current stricter requirements will meet the accreditation standard. For more information on the proposed amendments, please see the below article, *NAIC Reinsurance (E) Task Force Continues to Take Steps to Amend Credit for Reinsurance Model Law and Regulation*.

State Actions

Both California and New York have taken measures that recognize the consequences of the preemption by the NRRA of state credit for reinsurance statutes and regulations. On 11 April 2011, the California Department of Insurance released Bulletin No. 2011-2, *Implementation of Reinsurance Provision of the Federal Nonadmitted and Reinsurance Reform Act*, in part, to explain how the California Department of Insurance will exercise its regulatory powers in light of the credit for reinsurance provisions of the NRRA. Bulletin No. 2011-2 states that the California Department of Insurance will not deny financial statement credit for reinsurance that has been recognized by the domiciliary state of a ceding insurer. For more information on the response of California to the NRRA and its effect on California statutes and regulations, please see our article from the April 2011 Mayer Brown Global Corporate Insurance & Regulatory Bulletin, *California issues bulletin for guidance on implementation of reinsurance provisions of Dodd-Frank Act*.

The New York State Insurance Department made a series of changes to its credit for reinsurance regulation, Regulation 20, that became effective on 1 January 2011. One such change was a provision stating that New York's credit for reinsurance regulation would no longer apply to a non-New York ceding company if its state of domicile is an NAIC-accredited state, or has financial solvency requirements that are substantially similar to the requirements for NAIC accreditation, and recognizes credit for reinsurance for the insurer's ceded risk. In addition to such language acknowledging the preemptive effects of the NRRA, the changes to Regulation 20 allow for reduced

collateral requirements for credit for reinsurance obtained from unauthorized reinsurers. For more information on New York's credit for reinsurance regulation, please see our article from the December 2010 Mayer Brown Global Corporate Insurance & Regulatory Bulletin, *New York's Changes to Credit for Reinsurance Regulations*.

US – NAIC Reinsurance (E) Task Force Continues to Take Steps to Amend Credit for Reinsurance Model Law and Regulation

Reinsurance reform in the United States has been a long-developing process and the subject of great debate. An important element of reinsurance reform has been the deliberations of NAIC aimed at amending its credit for reinsurance model law and regulation. On 11 July 2011, the NAIC Reinsurance (E) Task Force conducted an interim meeting to discuss proposed amendments to the *Credit for Reinsurance Model Law (#785)* and the *Credit for Reinsurance Model Regulation (#786)*. Coming out of the interim meeting, the Reinsurance (E) Task Force released for comment exposure drafts of proposed amendments to Model 785 and 786 dated 26 July 2011. The deadline to submit comments on the exposure drafts is 24 August 2011. After the conclusion of the 30-day comment period, the draft models will be voted on by the Reinsurance (E) Task Force and the Financial Condition (E) Committee at the NAIC national meeting on 31 August 2011. The NAIC Executive (EX) Committee and Plenary will consider the drafts at a future date, with a goal of adopting the amended models before the end of 2011. Under the amended NAIC models as currently drafted, a reinsurer may qualify for reduced collateral requirements on a sliding scale based upon the rating assigned to the reinsurer by a state insurance commissioner. Factors that may be considered by the commissioner in determining the ratings for a reinsurer include, among other things, the reinsurer's financial strength ratings from acceptable rating agencies, compliance with reinsurance contractual terms and obligations, business practices in dealing with ceding companies, reputation for prompt payment of reinsurance claims and the existence of any regulatory actions against the reinsurer.

The NAIC models are not binding law in any state. However, the models are important as accreditation standards. States have to be in compliance with and conform to the NAIC models in order to maintain NAIC accreditation. Individuals states are likely to enact laws and regulations that closely track amended Models 785 and 786 upon their adoption by the NAIC. Several states, including Florida, Indiana, New Jersey and New York, have already revised their credit for reinsurance statutes and regulations along the lines of the draft amendments to the NAIC models. Additional states have such reforms currently pending. Please see the article and chart below: *States That Have Enacted Or Are Considering Reduced Collateral Requirements For Credit For Reinsurance*. In addition, as a result of the Nonadmitted and Reinsurance Reform Act of 2010 (see separate article), states that have not adopted such reforms are nonetheless required to recognize the credit for reinsurance allowed by states that have enacted such reforms with respect to ceding insurers domiciled in those latter states.

US – President Obama Nominates Roy Woodall to Serve as a Voting Member of the Financial Stability Oversight Council

On 24 June 2011, President Obama announced his intention to nominate Roy Woodall as the independent member of the Financial Stability Oversight Council (the **"FSOC"**) with insurance expertise. The FSOC was created pursuant to Title I of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the **"Act"**). The FSOC's mandate includes identifying risks to the financial stability of the United States, promoting market discipline, and responding to emerging threats to the stability of the United States financial system. The FSOC consists of fifteen members (ten voting and five non-voting). Three insurance representatives sit on the FSOC. Two of them, Missouri Insurance Director John Huff and Federal Insurance Office Director Michael McRaith, serve as non-voting members. Mr. Woodall, if confirmed, will serve as a voting member of the FSOC.

The FSOC has the authority to designate nonbank financial institutions, including insurance companies, as "systemically significant" under the Act. Such a designation would result in federal, in addition to state, regulators having the ability to examine an insurance company's affairs and possibly the imposition of enhanced capital standards on such company. The nomination of Mr. Woodall is an important step towards having a voting member of the FSOC who understands and represents the interests and concerns of the insurance industry. As the FSOC has already been conducting meetings with the voting insurance member position vacant, there had been concerns in the insurance industry that the lack of adequate representation of interests of insurers could lead to certain insurance companies being inappropriately designated as systemically important nonbank financial institutions.

Prior to his nomination to the FSOC, Mr. Woodall worked in the insurance industry in various capacities, including serving as the Kentucky Commissioner of Insurance and most recently as the Senior Insurance Policy Analyst at the U.S. Treasury Department. Mr. Woodall's confirmation hearing before the Senate Banking Committee took place on 27 July 2011, and he has yet to be officially confirmed as a member of the FSOC.

UK – Solvency II – proposed delay to 2014

The Committee of Economic and Monetary Affairs of the European Parliament has published a draft report on Omnibus II which includes the proposal that the full requirements of Solvency II should not be implemented until 1 January 2014.

Solvency II is due to be implemented at the start of 2013 but it is proposed that its implementation is delayed due to the lack of preparedness of many smaller insurers and member states' regulators.

Paul Clarke, global Solvency II leader at Pricewaterhouse Coopers has commented that: "*This is a positive development as it brings us closer to ending the distracting debate over whether there will be a delay. Despite the delay in start date, the reality is insurers cannot afford to be complacent with their plans as they will still be required to file Solvency II information over the course of 2013 to prove their readiness. This means insurers will need to have the appropriate systems and processes in place by the end of next year.*

The industry is likely to welcome the Parliament and Council's consensus on pushing back the implementation date to 2014, especially as a lot of the technical detail is still to be finalised. The more crucial piece for the industry now is how the areas of disagreement on some of the Level 2 implementing measures are resolved. We are unlikely to get any clarity on this until autumn and the rules won't be finalised until well into 2012."

Peter Vipond, director of financial regulation and tax at the Association of British Insurers (**"ABI"**), however, has warned that the proposal to delay implementation could lead to added cost for insurers. They commented that "*the UK industry has already spent hundreds of millions preparing for Solvency II, and stands ready to meet the January 2013 launch date. This may help some firms, and would certainly help some continental regulators but it is a double edged sword. For example, firms would have to run Solvency I in 2013, and in the UK they may have to renew their individual capital adequacy standard for one year."*

UK – UK PLC: open for business?

Since 2007, the UK government has been consulting on reforming the UK's controlled foreign companies (**"CFC"**) rules, with the aim of making the UK a more attractive and competitive place for business.

The UK CFC rules are anti-avoidance provisions which are intended to prevent the artificial diversion of profits from the UK to jurisdictions with lower corporate tax rates. In broad terms, the rules operate by imposing a tax charge on UK companies in respect of the profits of their CFCs.

In June 2011, the government published a new consultation document on the reform of the CFC rules and stated that *"a key ambition to help achieve this [encouraging private sector investment and growth] is to create the most competitive tax system in the G20. As well as lowering corporation tax rates, the Government wants to make the UK the best location for corporate headquarters in Europe."* The amendments to the rules have in part been prompted by the high-profile relocations of the headquarters of a number of insurance groups away from the UK.

Interim improvements to the CFC rules are contained in the recently published Finance Act 2011. The full regime is intended to come into force next year when the Finance Bill 2012 receives royal assent.

Following the publication of the interim improvements in the Finance Act 2011, Lancashire, the London-listed Bermudan reinsurer, announced on 27 July 2011 that it intended to move the tax residence of its holding company from Bermuda to the UK. The announcement was prompted by the introduction of a statutory exemption for foreign subsidiaries which, as a consequence of a reorganisation or change to UK ownership, come within the scope of the CFC regime for the first time. Lancashire's Bermudian (and other non-UK) subsidiaries will, for a period of three years, remain outside the scope of the CFC rules, meaning that there will be no effect on Lancashire's UK tax liability. However, the change of tax residency gives the Lancashire board of directors greater operational flexibility, since they are no longer required to fly to Bermuda for board meetings.

It remains to be seen whether Lancashire's announcement will prompt other previously UK-headquartered groups to move back to the UK. This is certainly what the UK government is seeking to achieve.

UK – ABI Director General outlines ten-point plan for improving reputation and customer service in the insurance sector

Otto Thorensen, Chief Executive of the ABI has, four months into his role, set out his initial thoughts on the challenge posed by the pressing issue of reputation and service to customers of the insurance industry. He calls on the industry to 'act now' if it is to fulfil its potential and play a central role in the future of the UK economy.

Mr. Thorensen set out a ten point plan for talking the issue of reputation and customer experience. In brief, his ten points were as follows:

1. Communication should be made simpler and more understandable.
2. Products should be made simpler and more understandable too.
3. Staff should be trained to improve their understanding of the business and how the products and systems work.
4. Insurers should work with the Financial Ombudsman Service to understand better the ombudsman's perspective on how to deal with customers.
5. There should be emphasis on designing more equivalence and standardisation in product features.
6. Insurers should accept that treating customers fairly makes sense, and it should be used as a framework to deliver better customer outcomes.
7. Insurers should work with government and regulators to better manage the flow of change.
8. Insurers should be quicker to acknowledge when they have got something wrong and respond to put it right.
9. Service should be relevant and accessible to the type of customer being serviced.
10. Insurers should start early by continuing to support developing financial capability for consumers; education in schools, awareness and education in the workplace and education approaching retirement.

Mr. Thorensen's think piece can be viewed here.

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