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Insurance Day

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Africa Re eyes Gulf for takaful start-up

Company says upgrade by S&P to A- has 'opened doors' and plans launch 'very soon'

Ruth Lythe

NIGERIA-BASED Africa Re is poised to enter the Gulf market with a takaful company that may operate out of Qatar or Dubai, *Insurance Day* has learned.

The reinsurer, which saw its rating upgraded to A- from BBB+ on Tuesday by Standard & Poor's, said the new company, Africa Re Takaful, would be set up "very soon".

Africa Re was formed in 1976 by the African Development Bank. It has an 8% share of the reinsurance market on the continent.

Africa Re chief executive, Bakary Kamara, said that the new company could be based in Qatar or the United Arab Emirates (UAE), although it may also be based in Africa.

The company's primary focus would be African countries such as Sudan, Libya and Tunisia where there is a burgeoning takaful market, Kamara said. But the company would also seek to write business in the Gulf, particularly targeting Saudi Arabia and the UAE markets, he added.

Kamara said south-east Asian markets, such as Malaysia, were also of interest for the takaful company and admitted the S&P rating upgrade had "opened doors" for the reinsurer, which also holds an A- rating from AM Best. "It will allow us to write some business that previously was not coming our way," he said.

Kamara said he believed the company had been tarnished in the eyes of ratings agencies by the low sovereign ratings of some African states. "We cover the whole continent and if certain markets are not doing well then we will focus where the good markets are," he said.

Africa Re is now seeking to expand its energy portfolio, focusing on crude oil- and gas-producing countries such as Angola, Nigeria and Mauritania, Kamara said.

Doha: Qatar is one of the possible locations Africa Re is considering for its takaful launch

On Wednesday, Russia's Gazprom and Nigeria's state-run oil company NNPC agreed to form a new company, to be called Nigaz, in a $2.5bn joint venture. Nigaz will build refineries, pipelines and gas power stations throughout Nigeria.

Boris Ivanov, the head of Gazprom International AO, said Nigaz would take part in building the first stage of the $13bn trans-Saharan pipeline that will cross Nigeria to Europe. Kamara said Africa Re was poised become one of the pipline's reinsurers if the project went ahead. According to Nigerian law a large proportion of any project has to be insured with local operators.

Kamara said: "We will have market share, particularly in Nigeria, as we do business with every single insurer in Africa."

Manouchehr Takin, an analyst at the Centre for Global Energy Studies in London, said the idea of constructing the pipeline had been under discussion for 30 years, as a way for Europe to diversify its energy supplies away from Russia, which it relies on for 40% of its gas.

He said: "If the project went ahead it would be likely to be exposed to political risks. For groups in conflict with each other or with the government, the easy option is to blow up a gas pipeline."

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Biba's LMRC will focus on London players' UK arms

THE NEWLY unveiled London Market Region Committee (LMRC) of the British Insurance Brokers' Association (Biba) will focus on the UK-targeted operations of London market players.

At the beginning of this year, Biba's former London Market Brokers' Committee spun off and rebranded to become the London & International Insurance Brokers Association (Liiba) with a focus very much on wholesale and international broking operations. According to Biba chief executive, Eric Galbraith, LMRC and Liiba will co-operate "on areas of mutual interest and to avoid duplication of work".

Chairing the new committee will be Ken Davidson, chairman of Crispin Speers & Partners and former president of the Chartered Insurance Institute. He will be joined on the LMRC by Amanda Blanc, chief executive of the UK broking division of Towergate; Tim Coles, chief executive of Howden Insurance Brokers; Adrian Colosso, chief executive of Heath Lambert; David Meur, managing director of Genavco Insurance; Lawrence Shortland, managing director of RL Davison & Co, and Ian Sparling, compliance officer at COBRA London Markets.

Biba's compliance co-ordinator, Vannessa Young, will be the association's staff member dedicated to the new committee, which will also make use of Biba's existing compliance, regulatory and technology services.

Galbraith said there were around 100 companies represented by the new committee, including some of the major international players. He noted that Robert Brown, chief executive of Aon Corporate and Affinity, is to join the Biba board next month. Galbraith also insisted the committee would allow London market brokers to influence what he called "Biba's key industry and lobbying initiatives, such as its manifesto".

Richard Banks

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Windfarm: entrants to the offshore sector could keep prices down

Further wind energy entrants risk stalling market hardening

Christopher Munro

NEW entrants into the wind energy insurance market may diminish the otherwise likely prospect of imminent hardening of rates in the sector.

Speaking to *Insurance Day* at the British Wind Energy Association conference in London, Matthew Melville, chief underwriting officer for specialist renewable energy insurer GCube, said: "There has not been much change for offshore wind rates but they might start to go up because of the losses the market has seen."

According to Melville, rates for onshore wind projects "have reduced dramatically over the past six or seven years".

Rates are now starting to harden but Melville suggested these increases could be offset by existing insurers expanding capacity, as well as new players entering the market. "We are now at a position where the insurance market has had a number of big losses in the power sector and in the energy sector, especially in the Gulf of Mexico," he said, adding that this may contribute to hardening across the sector.

Offshore rates have been stable in recent years but this market is also expected to see hardening as a result of increased competition and losses in other sectors of the energy insurance industry.

Discussing the minister of state for the Department of Energy and Climate Change Lord Hunt's announcement earlier in the day of UK offshore winds' ability to provide an extra 25 gigawatts of offshore energy, Melville said capacity would be found to cover the projects but suggested insurers across the board need to create a more level playing field. This, he said, would be beneficial for project constructors, windfarm owners and underwriters.

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Kochkina's peace plea

James Brewer

A CALL for an end to the tensions between underwriters and specialist ship salvage companies has been made at a conference in Moscow.

Underwriters and salvors must learn to communicate openly and transparently with each other for the benefit of all, said Janna Kochkina, a director of salvage specialist Tsavliris Russ and consultant to the transport insurance department of major Russian insurer Rosgosstrakh.

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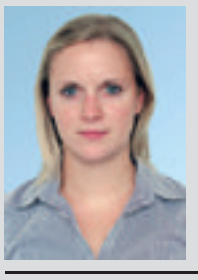

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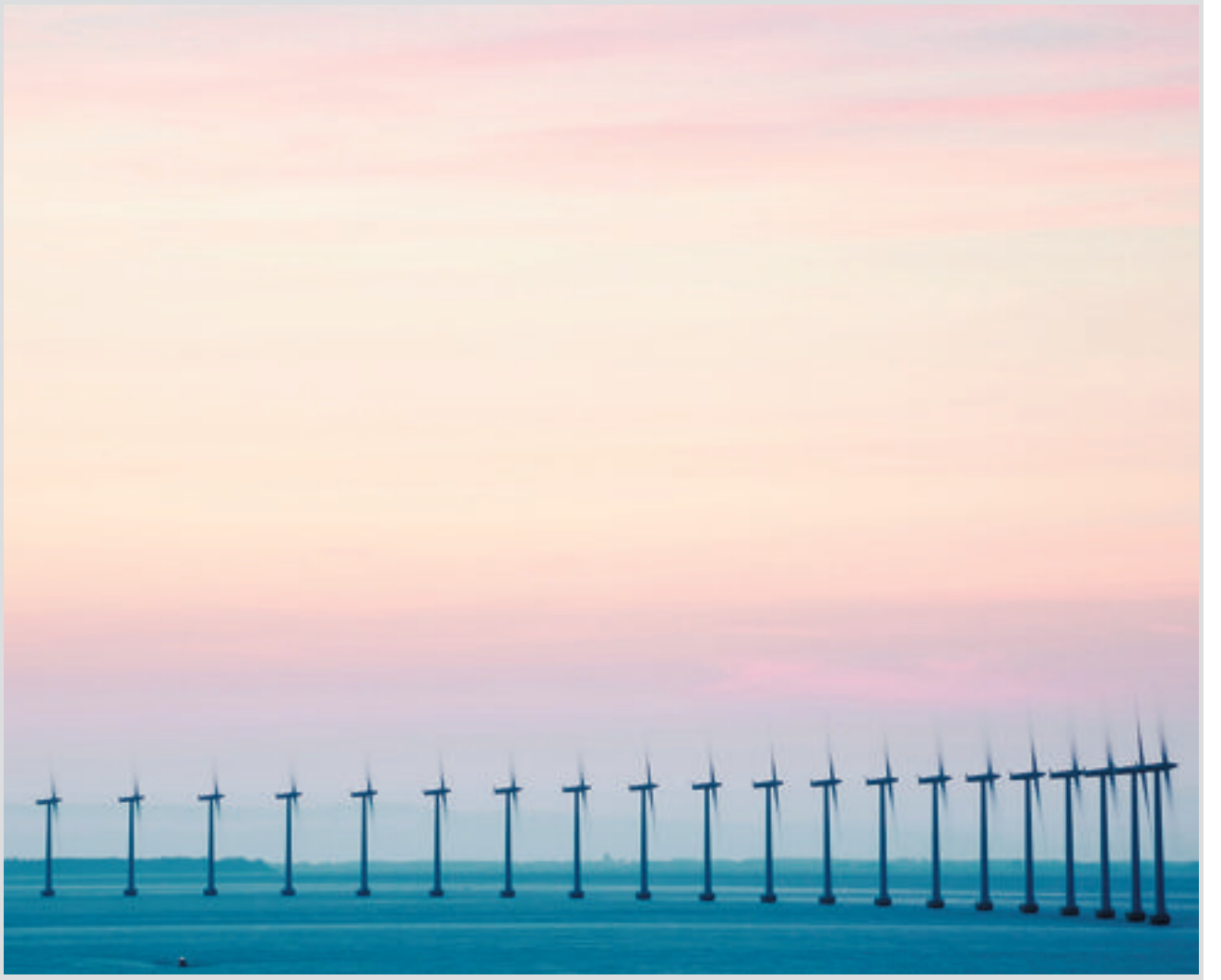
COMMENT



Shipbuilding holds key to lower pricing

THE BUILDING of new vessels able to construct offshore turbines could see an increase in the number of insurers offering offshore windfarm owners delay in start-up cover.

With the turbines for round three of the UK's offshore wind energy plan expected to be further offshore, in deeper water and on different sea-bed conditions from those found during rounds one and two, new vessels for the construction and repair of the turbines will have to be built.

The limited availability of jack-up rigs has meant that companies whose offshore windfarms use five megawatt turbines and larger have been priced out.

However, there has now been a definite push to build more jack-up rigs capable of building the turbines, as well as an increase in the number of companies prepared to build new vessels which can transport the various elements of the turbines to their designated areas at sea.

Mike Prowse, UK sales and marketing manager for offshore windfarm construction services suppliers A2SEA, explained the existing fleet could not cope with the construction of the turbines for round three of the UK's offshore plans, let alone the repairs that may need to be undertaken at a later date.

But Prowse warned it will take time for the new vessels to be built – perhaps some three years – and there are also concerns about the credit crunch and the likelihood of banks lending money so the vessels can be built.

One possible solution would be for the energy companies themselves to finance and build their own small fleet of vessels which could build and repair the turbines. One company which has gone down this route is Dong Energy, which announced yesterday that it had purchased A2SEA.

This, one source explained, could lead to rates for delay in start up and business interruption insurance to come down owing to the increased availability of the vessels needed to construct Dong Energy's windfarms and to conduct repairs.

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3 IAIS supported

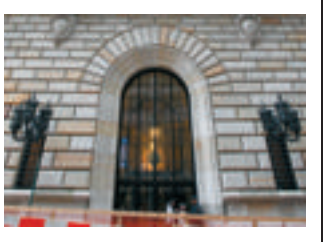
At least 17 regulatory bodies are queuing up to sign a new multilateral memorandum of understanding compiled by the International Association of Insurance Supervisors

4 Holler takes stake

Munich-based Holler Foundation is taking a stake of 15% in Düsseldorf broker Schneider Golling & Cie Assekuranzmakler AG, paying for its stake in kind by bringing its broker Wertschutz into the group

5 AIG seeks Fed deal

AIG has struck a deal with the Federal Reserve Bank of New York to slash its substantial debt by publicly listing two operating units, American International Assurance and American Life Insurance Co



6 Putting out fires

Fire extinguishers are an essential feature of modern life. Almost no UK office, shop, school, church or other public building is without them. But a recent case showed they can have unexpected consequences

7 Jackson's review

Lord Woolf's Civil Procedure Rules 1998 had a revolutionary effect on the conduct of litigation. Although reducing the costs of civil litigation was a central objective, research suggests costs have actually risen

8 This Week...

Chaucer started the week the centre of attention and ended it in the hunt for a new chief executive and chief financial officer, plus Brit Insurance called an end to its interest in buying the rival Lloyd's insurer

NEWS

Regulators line up to sign co-operation agreement

Richard Banks

AT LEAST 17 regulatory bodies are queuing up to sign a new multilateral memorandum of understanding (MMoU) compiled by the International Association of Insurance Supervisors (IAIS).

Three insurance supervisory bodies – the Bermuda Monetary Authority, the Financial Supervisory Commission of Chinese Taipei and the Federal Financial Supervisory Authority (BaFin) of Germany – have already signed the MMoU, which sets minimum standards on co-operation and exchange of information.

The MMoU's intention is to improve the effectiveness of cross-border supervision of insurance companies.

Peter Braumüller, who chairs the IAIS executive committee, said: "It has never been more important for supervisors to co-operate with each other. The successful use of the MMoU is one of the IAIS's key responses to the G20 declaration to strengthen international co-operation among supervisors."

Braumüller explained the MMoU was now operational and said the association intended to build on this foundation.

"There is strong commitment from IAIS members to this project. I look forward to seeing a steady increase in the number of signatories to the MMoU and its widespread use between supervisors."

Richard Walker, chairman of the IAIS MMoU interim signatories working group, stressed that strong and effective co-operation and information exchange were key to preserving financial stability and insisted the MMoU had a crucial part to play in this.

"Each authority applying to be a signatory undergoes a rigorous and independent validation process to ascertain whether the minimum standards of the MMoU are satisfied. Signatories can therefore take comfort that the information they exchange is properly protected," he said.

Signed up: the Federal Financial Supervisory Authority, Germany

French carriers ask to have input

Fabien Buliard, Paris

FRENCH insurers have demanded to be consulted on the forthcoming revamp of France's financial regulation.

During the presentation of the sector's 2008 results this week, the chairman of the French Federation of Insurance Companies (FFSA), Bernard Spitz, said insurers had written to finance minister Christine Lagarde to emphasise their willingness to discuss the issue and the importance of consultation, as the sector has been left in the dark as to the government's plans.

Spitz said insurers were hoping for the creation of an independent and transparent regulator, in line with the proposals of the de Larosière report on EU financial supervision.

Parliament last year cleared the government to legislate directly on the matter by next January. Insurers were initially opposed to a possible merger of France's insurance and banking supervisory bodies, insisting the insurance business was fundamentally different from other financial services (*InsuranceDay.com* Jun 12, 2008).

However, the FFSA's new leadership seems to have accepted the potential oversight of France's central bank, but remains determined to be included in the reform process and continues to emphasise the specifics of the insurance business.

In particular, insurers are keen to avoid a separation between prudential supervision and the regulation of insurance products. Indeed, the government has commissioned a report on the regulation of financial and insurance products, which could potentially lead to the supervision of insurance policies by AMF, France's financial market authority, with insurance companies themselves being looked after by a separate entity.

The FFSA warned about potential inconsistencies between the two regulators. It also insisted insurance policies were already heavily regulated with complex, successive layers of legislation, and called for a simplification of the rules.

Paris: French insurers have called on the government to include them in regulation revamp talks

Kochkina urges marine underwriters and salvors to stop arguing and co-operate

Continued from p1

Her intervention, during the two-day event Marine Insurance Forum 2009: Russia & CIS, showed that the controversy that has led to reform of aspects of the Lloyd's Open Form system is having worldwide repercussions.

She expressed concern that underwriters were trying to influence shipowners and masters not to sign the Lloyd's covenant but instead to negotiate a daily hire or a lump-sum contract.

Kochkina warned: "Underwriters should be aware that if a vessel in distress becomes a catastrophe with regard to loss of life and/or damage to the environment and at the investigation it becomes apparent underwriters were responsible for the delay in commencement of salvage, then they, as well as the ship's master, might face criminal proceedings."

Kochkina indicated the clash between underwriters and salvors was as keenly felt in the Russian market as elsewhere. "I believe that underwriters do not fully understand what it means to be a professional salvor and why salvors differ from ordinary tug companies. Likewise salvors do not understand the insurance industry."

She commended salvage officials at Lloyd's for seeking opinion on how the system should be conducted in the future. "But, sadly, no Russian underwriters were consulted for our views. Hopefully, our market views will be considered too and we in Russia are looking forward to playing an active part in this process rather than sitting out in the wings", she said.

Test facility brings hope of accurate offshore windfarm prices

Christopher Munro

A NEW testing facility for prototypical wind turbines could provide the renewable energy insurance industry with an opportunity to price offshore windfarms more accurately.

The prototypical nature of the technology used in the renewable energy market is a cause for concern for insurers as they have no loss experience to fall back on when pricing the risks.

In the past, prototypical machinery malfunctioning has caused renewable energy insurers to suffer heavy losses.

Dr Richard Court, a technology specialist at New and Renewable Energy Centre (NaREC), explained: "The need is to improve reliability before deployment… but reliability comes from enhanced and rigorous testing."

Consequently, NaREC is in the process of building the world's largest drive-train test facility for wind turbines. The proposed 15 megawatt drive system, which is expected to be in operation in 2011, would be capable of testing the complete nacelle and equipment on a 10 megawatt turbine.

This will be especially useful for the new and technologically advanced 5 megawatt turbines that are expected to be employed during round three of the offshore windfarm project, the introduction of which is already concerning some insurers.

The test rig will also allow the prototype turbines to be subjected to a variety of strains and stresses, thereby ensuring its reliability and ability to withstand the pressures it will experience out at sea.

The 5 megawatt turbines are seen as an integral part of the UK's move to increasing the amount of electricity it produces from renewable resources, and Court explained the problems that the turbines face when at sea.

"The offshore environment is a horrible place. There are difficulties in installing and operating the turbines, variable weather conditions and marine air and salt water, while access for maintenance and repair is not guaranteed.

"We are putting these turbines in very deep seas – the ocean almost– with larger turbines, and financial losses from not generating power [when the turbines are out of service] will become significant," he said.

The introduction of the test rig is expected to result in a reduction of the number of turbine faults that are only discovered following installation.

Let it blow: renewable energy insurance welcomes a new testing facility for prototypical wind turbines

NEWS

Murphy: 'THB has been held back by external factors in short term'

Insurers charging too little prevent market hardening

CERTAIN insurers are holding back the hard market by underpricing to maintain market share, a broking leader has alleged.

Frank Murphy, chief executive of specialist broker THB Group, made his comments as he unveiled the company's interim financial results. He did not name the companies he felt were undercutting the market but warned the insurance sector was not immune from the impact of the global recession.

THB Group saw a 22.6% year-on-year decline in underlying pre-tax profit for the six months to the end of April but turnover was up 20%.

That growth reflected what Murphy termed "a strong performance" from divisions within the group's Lloyd's broking operations, Thompson Heath & Bond. In January last year, the group acquired the London market operations of PWS International, which contributed to the growth. Progress in the risk-management business at the group's non-broking operation THB UK also contributed to the rise in turnover.

THB Group produced underlying pre-tax profit for the period of £2.4m ($3.9m). Murphy said: "The slowdown in global economic activity, plus the series of interest rate cuts by US and UK central banks in response to the economic crisis, have had a material effect on operating profit in the period."

He added: "We continue to focus on making the right decisions, including cost control, to ensure we remain in a strong position when rates harden. Undoubtedly, THB has been held back by external factors in the short term but overall is in very good shape."

Holler Foundation acquires stake in Schneider Golling

Herbert Fromme, Cologne

MUNICH-BASED Holler Foundation is taking a stake of 15% in Düsseldorf broker Schneider Golling & Cie Assekuranzmakler AG.

The foundation is paying for its stake in kind by bringing its Berlin-based broker Wertschutz into the Schneider Golling group.

Wertschutz, set up in 1922, adds eight people to Schneider Golling's staff of 30. The Düsseldorf broker was set up in 2006.

The Holler Foundation was set up in 1990 by Asta Holler, widow of the well-known German insurance broker Christian Holler. He was one of the founders and long-term chiefs of the famous Stuttgart-based broker Gradmann & Holler, which is now Marsh Germany. The name Holler still has a good reputation in the German market.

The foundation supports six charitable projects. It was not prepared to name figures but it will have substantial assets. Up until 1999, it owned the giant Volkswagen Versicherungsdienst, which acted as an in-house broker for all Volkswagen dealers and the company. It was then sold to the car maker itself.

Wertschutz' head, Wolfgang Lüssenheide, will become a board member of Schneider Golling, while the latter's manager, Ado Lehne, joins Lüssenheide as co-manager at Wertschutz.

Berlin: Wertschutz will keep its base in the city, meaning Schneider Golling has four locations

Schneider Golling's co-founder and co-chief executive, Franz-Rudolf Golling, was a member of Marsh's top management in Germany, in charge of large key accounts between 2003 and 2006.

Golling was previously a management board member of Wüba, the industrial and marine insurer later sold to AIG.

Wertschutz will continue to be based in Berlin, bringing Schneider Golling's locations to four. In addition to Berlin and Düsseldorf, it has offices in Munich and Regensburg.

De Peretti wants 'green' policies to qualify for tax relief in France

Fabien Buliard, Paris

AXA FRANCE is calling for tax incentives on environmentally friendly insurance products, as it expands its "green" offering aimed at French businesses.

During a press conference, Jacques de Peretti, the head of Axa Entreprises, a unit dedicated to French business segments, said the insurance industry could go further in encouraging environmentally friendly behaviour if public authorities lowered taxes on green policies.

He pointed out the French state charges a 33% tax on motor liability premiums and a 30% tax on fire policies.

However, de Peretti, who also chairs the French insurance federation's property/casualty commission, said the French sector as a whole had not yet made any proposal to the government in that regard.

He also called for the creation of a green label to clearly identify environmentally friendly insurance contracts.

Axa Entreprises offers a range of products relating to the environment, from liability policies, following the transposition of the 2004 European Union Environmental Liability Directive and its "polluter pays" principle into French law, to specific construction insurance policies, covering "green" technologies and offering discounts to encourage their use.

The company said it was working heavily on the risk analysis of new construction techniques and materials, such as solar panels, given its lack of experience in this field.

Its latest environmentally friendly offering, called Green Miles, grants a discount of up to 15% on motor policies to companies committing to reduce their fleets' fuel consumption, measured by an onboard device. Policyholders are also encouraged to enrol their drivers in eco-driving courses, at special rates negotiated by the insurer.

De Peretti said that in the absence of specific prior-year data, the company was making a bet in terms of claims, by assuming a correlation between "green" behaviour at the wheel and lower accident rates.

The company said it expects to launch similar motor offerings in the consumer segment "in a few weeks".

European companies – news in brief

PARIS RE'S chief executive, Hans-Peter Gerhardt, and two other directors have been re-elected to the company's board at the annual general meeting of shareholders in Zug Switzerland. Also re-elected was Björn Jansli, the former chairman of Gerling General Insurance and chief executive of the Gerling Group of Insurance Companies, who has been on the Paris Re board since May 2007. Roberto Mendoza, a former non-executive director of Prudential plc, who became a Paris Re director in 2005, was also re-elected. At the same meeting shareholders approved all the other proposals put forward by the Paris Re board, including no increase in the value of Paris Re shares by conversion of general reserves. The shareholders did approve a request to create an authorised capital and allow the board to issue new shares if required and increase the share capital of Paris Re by no more than 25% over two years.

GERMAN reinsurer Munich Re has not yet seen any effect of the global recession on July renewals, according to chief financial officer, Jörg Schneider, speaking on the sidelines of a conference yesterday, reported Dow Jones. Scheider said he felt that the recession overall would have an impact on the demand for reinsurance, with falls in sales of cars working through the insurance chain. However, so far, there had been no measurable impact, according to Munich Re. Scheider said that the industry needed an increase of between 3% and 5% in rates, just to compensate for recent declines in capital market rates. He noted that Munich Re had been able to push through average rate rises of 3% and 7% respectively in the January and April renewals.

EUROPEAN private investment company Cevian Capital II has increased its shareholding in Old Mutual plc (*pictured*) to 264,362,994 shares, corresponding to 5.01% of the company's voting rights. At June 1, 2009, Cevian Capital II disclosed a shareholding corresponding to 4.1% of voting rights.

NEWS

AIG seeking to cut debt to Fed via AIA and ALICO listings


DANIEL ACKER/BLOOMBERG NEWS

AIG has struck a deal with the Federal Reserve Bank of New York (FRBNY) to slash its substantial debt by publicly listing two operating units.

The insurer hopes the agreement, which will see American International Assurance (AIA) and American Life Insurance Co (ALICO) positioned for initial public offerings, depending on market conditions, will reduce its outstanding balance under the FRBNY credit facility to $15bn from its existing $40bn level.

Under the agreement with the the reserve bank, AIG will contribute the equity of each of AIA and ALICO to separate special-purpose vehicles (SPVs), in exchange for preferred and common interests in the SPVs. The FRBNY will receive preferred interests in the AIA SPV of $16bn and in the ALICO SPV of $9bn.

The face value of the preferred interests represents a percentage of the estimated fair market value of AIA and ALICO. AIG will hold the common interests in the AIA and ALICO SPVs and will benefit from the fair market value of AIA and ALICO in excess of the value of the preferred interests as the SPVs monetise their stakes in these companies in the future.

Upon closing, which AIG expects to be in the second half of 2009, the transactions will result in a reduction in the debt owed by AIG under the FRBNY credit facility and the line available to AIG by $25bn.

Until their separation as independent companies, AIG said both AIA and ALICO will remain as wholly owned subsidiaries, consolidated in the group's reported financial statements.

"Placing AIA and ALICO into SPVs represents a major step toward repaying taxpayers and preserving the value of AIA and ALICO, two terrific life insurance businesses with great futures," said Edward Liddy, outgoing AIG chairman and chief executive.

"Operating AIA's and ALICO's successful business models in the SPV format will enhance the value of these franchises as we move forward with our global restructuring."

The FRBNY said the agreements "further the goals of enabling AIG to fully repay the assistance that it has received from US taxpayers and advancing the company's global restructuring process".

Federal Reserve Bank of New York: AIG is listing AIA and ALICO to reduce its debt


DANIEL ACKER/BLOOMBERG NEWS

No AIG/Starr deal agreed, says Zarb

AIG had not reached an agreement with its Starr International Co affiliate to end a deferred compensation programme for select AIG executives that Starr International had managed for AIG, according to one-time AIG chairman, Frank Zarb (*pictured*), who testified on Wednesday in the AIG/Starr International case.

Zarb, who succeeded long-time chairman Maurice "Hank" Greenberg on an interim basis in 2005 and 2006, was testifying in a federal court in Manhattan, where AIG is suing Starr International over the return of 185 million AIG shares and $4.3bn in proceeds that Starr International grossed from the sale of AIG shares.

Zarb said he did not authorise anyone at AIG to strike a deal with Starr International to shut down the compensation plan. "Absolutely not," Zarb said.

AIG asserts Starr International, which is still led by Greenberg, ransacked a trust fund that financed the compensation programme by selling tens of millions of AIG shares after Greenberg was forced out of AIG in March 2005.

Zarb's testimony comes two days after Greenberg testified that AIG and Starr International mutually agreed in May 2005 to end the programme, saying it was "common knowledge" AIG wanted to end the plan if it could not account for it as a business expense.

Mexico's Desarrollo de Negocios snaps up consumer units

AIG has continued its disposal programme by agreeing to sell its consumer finance operation in Mexico to Desarrollo de Negocios Integrados and Inversiones DNI, affiliates of Mexican finance companies Afirme Grupo Financiero and Consorcio Villacero.

The terms of the deal were not disclosed.

The businesses that AIG is selling include AIG Universal and Markcenter Services.

AIG Universal, launched in 2005, offers personal loans and third-party insurance through 50 branch offices in 12 states of northern and central Mexico.

UBS Investment Bank and law firm Kramer Levin Naftalis & Frankel advised AIG on the deal.

Meanwhile, AIG is having trouble with the sale of broker-dealer security business AIG Advisor Group, the *New York Post* has reported.

The operation, with 2007 revenues of $1.7bn, was close to being sold in April but the deal fell through when Fidelity Investments backed out of a role to provide finance for the unidentified buyer, the report said.

With no deal in sight, AIG Advisor Group has been losing employees and could end the year with less than half of its staff, the paper said.

LEGAL FOCUS

Legal news in brief

Risk management call

UK solicitors have been urged to adopt a proactive stance towards risk management by Allianz in response to increasing professional indemnity exposures. In a speech to more than 250 UK solicitors and delegates at the inaugural Allianz solicitors' conference, Mark Carver, head of Allianz Global Corporate & Specialty's financial lines team, pointed out the need for solicitors to establish an active risk management strategy for their businesses. Carver explained: "Prevention is better than cure. Professional indemnity risks are increasing across many sectors and particularly so for the legal profession. These exposures can be protected by insurance but this should not be regarded in isolation but as part of a comprehensive strategy which addresses risk proactively."

VAT ruling

THE UK High Court has decided insurance commissions earned from internet introductions are exempt from value-added tax (VAT). This followed jointly-heard appeals by the taxpayer and HM Revenue & Customs (HMRC) from two conflicting decisions of the VAT tribunal on similar facts. The judge held in *InsuranceWide.com Services Ltd v RCC* and *RCC v Trader Media Group* that the act of introduction alone is sufficient to count as an exempt insurance intermediary service within the meaning of European Union and UK VAT law. HMRC argued that maintaining a website amounted to advertising, which is subject to VAT, and that an introducer was not sufficiently involved with the parties to constitute being an insurance intermediary within the existing legislation. Mark Chesham, of BTG Tax, part of Begbies Traynor Group, said: "This is a welcome clarification of a particularly contentious area of VAT law and brings the law into the 21st century."

Corruption tackled

COMPANIES conducting business abroad, particularly in the emerging markets, are repeatedly faced with the thorny issue of corruption. Bribes, kickbacks and other unethical activities have been the norm in many parts of the world but recently there has been a marked increase in regulatory investigations and enforcement. Helping companies, Control Risks Group has recently launched Global Business Integrity Programmes. It helps with the implementation of a robust due diligence programme to adequately investigate and vet individuals and companies.

Negotiation course

THE CENTRE FOR EFFECTIVE DISPUTE RESOLUTION (CEDR) has introduced a Certificate in Advanced Negotiation. The certificate is intended for those who are explicitly involved in complex negotiations (for example, deal-makers, dispute professionals, procurement managers, human resources specialists) and for those for whom negotiation is a simple reality of daily life (for example, executives with a leadership role in a unit, department or business, senior civil servants or others who have to satisfy a range of stakeholder groups).

Extinguishing any threat of insurer/broker liability

FIRE extinguishers are an essential feature of modern life, write Tom Corrigan, a partner, and Michael Feakes, an associate, in the commercial and property risks group at Beachcroft LLP.

Almost no UK office, shop, school, church or other public building is without them. But a recent case showed that the presence of extinguishers can have unexpected consequences. Underwriters and brokers who insure such buildings should check that their clients are aware of the different types of extinguishers and their use, while liability insurers of companies supplying products such as extinguishers need to ensure the companies provide customers with sufficient information to make an informed decision about which product is suitable for them.

In *Vicar of Spalding v Chubb* (May 2009)*, children deliberately discharged a number of fire extinguishers in a church. One contained dry powder, which was sprayed around the church so that particles of powder settled on virtually every surface. It mixed with water from other extinguishers to form an acidic paste, which corroded and degraded many of the fabrics and other materials. The clean-up bill came to £300,000 ($489,157), which was paid for by the church's insurer, Ecclesiastical.

Although the children were clearly liable for what they had done, they were not worth pursuing. Ecclesiastical, advised by Beachcroft LLP, brought a subrogated claim against the company which supplied the extinguishers. It was well known within the fire industry that dry-powder extinguishers could damage churches and other ancient buildings.

The company's witnesses admitted at trial that they were aware of the potentially damaging effects of dry powder. The judge ruled that the company was liable, because it had not let the church reach an informed decision about the various options available to it.

Thankfully, incidents such as this are rare but the circumstances will be of interest to underwriters and brokers who insure large and older buildings, such as concert halls, stately homes and schools, as well as churches and chapels.

Underwriters and brokers might want insureds to question their suppliers about the type of extinguishers supplied (and where they are kept, if the building is open to the public) and, if a dry-powder model is not the most suitable, to change it at the next service.

The case is being appealed but it is an important confirmation that the supplier of a product can have an obligation to allow a customer to make an informed decision about which of various models is suitable for them. Failing to do so, and supplying a product which is not suitable to the customer's circumstances, can leave a supplier liable for any ensuing damage.

** Beachcroft LLP acted for Ecclesiastical in this case*

Legal focus edited by Liz Booth liz@lizbooth.co.uk

Insurers beware post-crisis regulatory mission creep

AS THE dust begins to settle on the crisis in the banking sector, policymakers are assessing the damage and getting tough, with an agenda for change going well beyond the banking industry, warns Paul Edmondson, a partner at CMS Cameron McKenna.

As these regulatory reforms take shape, insurers should be wary in case developments in the banking industry lead to regulatory overload in their own sector.

Apart from the high-profile exception of AIG in the US (whose problems arose outside its core insurance business), the banking sector has been the main focus of government bailouts during the financial crisis. Even so, it is becoming clear that the lessons to be learned from the crisis have a wider remit than banking alone.

Having been accused of being asleep on the job, financial regulators are going back to basics and thinking about the types of reform that are needed for financial institutions generally.

The UK's Financial Services Authority (FSA) recently signalled its intentions by announcing a new approach to banking regulation, which it is calling "intensive supervision". This new approach will be more challenging of management and represent a move away from the softer, principles-based approach.

Whereas in the past the FSA had been reluctant to encroach into certain areas (for example, questioning the competence of executive and non-executive directors or challenging accounting judgments and business decisions such as firms' product and business models), all of these taboos are now being swept away.

Lord Turner's review made it clear the FSA is gearing up to be a much more intrusive regulator. It is also clear the FSA intends to apply its new philosophy in other sectors, including insurance. Indeed, one example of the new approach in the insurance sector is that the authorities are now questioning the sustainability of structures such as the monoline insurer business model.

While banks face tougher financial rules under changes to the Basel regime, reforms are being introduced in the insurance sector as well and these are being rolled up into Solvency II, the European Commission's financial reform project for the insurance industry.

The changes will affect all European Union (EU) insurers and reinsurers and will be substantial, even for UK insurers. The FSA has made clear that under the new regime insurers will be expected to have the right amount and the right quality of capital. This reflects lessons learned in the banking crisis, where some types of instruments that qualify as regulatory capital (such as debt and hybrids) were found to be less effective forms of protection.

Another setback in this area, from the point of view of insurers, came when plans for a new concept of group support were dropped from Solvency II reforms. This would have enabled insurance groups to meet part of the capital requirement of a subsidiary by guaranteeing to transfer funds from the group.

The idea, for which the Association of British Insurers had campaigned and which the commission supported, was widely regarded as a positive and innovative development in the industry and would have given insurance groups welcome flexibility in their capital arrangements.

At international level, the structure of banking groups is also coming under scrutiny and this may well extend to insurance institutions. The failure of Icelandic bank Landesbanki highlighted issues concerning banks that operate across Europe on a branch basis. The failure led Lord Turner to the conclusion that the whole system of branching across Europe was "unsafe and untenable".

If, in the future, banks are required to operate their business through ring-fenced subsidiaries rather than branches, what will this mean for insurers and brokers that use the same model? The FSA has said its thinking on EU passporting arrangements, although driven by concerns about cross-border banking, also has some read-across to other sectors. In the same way, the new macro-prudential approach to regulation has been triggered by the failure of the banking system but it is concerned with the broader financial system, which includes the insurance sector.

As the FSA points out, some insurers, reinsurers and life offices may be regarded as systemically important and could face even tougher regulation. Interestingly, insurers, as well as banks, will be required to carry out so-called reverse stress testing to test their business models and identify the scenarios that would cause them to default.

The regulation of remuneration started out as a debate about bankers' bonuses; it has developed into proposals for reform at both FSA and EU level. The FSA is consulting on whether to require firms to have remuneration policies that promote effective risk management and is considering whether its new remuneration code (which, for example, regulates how bonus and incentives can be structured) should also apply to the insurance sector.

Besides remuneration, Lord Myners has said the Walker review on governance issues will also now report on reforms relevant to insurers. This will include: directors' duties and the role of the key board committees, board pay and risk management, the role and competence of non-executive directors and whether they should have an enhanced role and resources in any independent review of the executive.

As policymakers consider rolling out all of these regulatory reforms to non-banking institutions, insurers should keep a wary eye on how policy is evolving and be ready to lobby against over-enthusiasm by regulators in applying the principles of banking reform to their industry.

LEGAL FOCUS

Jackson review promises significant costs revamp

JANET LAMBERT and **ANDREW HORROCKS** take a look at Lord Justice Jackson's review of civil litigation costs in the UK and his preliminary suggestions for reform

LORD WOOLF'S Civil Procedure Rules 1998 had a revolutionary effect on the conduct of litigation. Although reducing the costs of civil litigation to improve access to justice was a central objective of those reforms, research suggests costs have actually risen.

In this context, Lord Justice Jackson has been given the task of conducting his detailed review into civil litigation costs. He published a preliminary report on May 8, identifying and addressing the main issues that have an impact on civil litigation costs. Where possible, Jackson has tried to draw provisional views but before he makes any final recommendations he has been speaking at seminars about the issues raised and gauging responses to his tentative opinions.

On June 11, as part of this consultation process, Jackson spoke at a Barlow Lyde & Gilbert LLP (BLG) seminar to an audience of litigators, in-house counsel and insurers on several key aspects of his review.

Costs shifting

One of the most radical parts of Jackson's interim report considers changes to cost-shifting rules. While his tentative view is that the eixsting general rule – that the loser pays the winner's costs, as well as his own – must remain in some form for litigation generally, he notes that in some areas of litigation alternative cost-shifting provisions might be more appropriate.

In personal injury cases, Jackson points to research that shows "one-way" costs shifting may be more cost effective for defendant insurers dealing with large volumes of claims.

One-way costs shifting means that the claimant can recover its costs from the defendant if it wins but there is no order for costs if it loses. The defendant surrenders the chance of recovering its costs from the claimant if it wins but the trade-off is that it may not have to cover the claimant's after-the-event (ATE) insurance premium if it loses, since ATE policies covering defence costs would prove unnecessary.

One-way costs shifting could, therefore, clearly have a significant impact on reducing the overall costs burden faced by defendant insurers in personal injury litigation.

Although Jackson acknowledges the risk that one-way costs shifting may encourage speculative claims, his tentative view is that such risk is tempered by the risk which a claimant's lawyer faces under a typical "no win, no fee" conditional fee agreement (CFA) of recovering no costs if a speculative action fails and the claimant's risk of having to pay disbursements or an ATE premium if it loses.

Jackson notes that in some areas (for example, tribunals), a "no-costs" regime functions smoothly. He concludes that this regime, where neither party is liable for the other's costs, may be beneficial in collective actions. In these cases, claimant's lawyers would have to take their fees from damages recovered on a contingency basis.

Although this type of funding has not previously been permitted, Jackson is giving it serious consideration. While a no-costs regime is likely to be attractive to insurers, careful incentives will need to be built into the rules to deter unmeritorious claims.

Limiting recoverable costs

In limited areas of litigation such as employer's liability cases and fast-track trials (involving claims of less than £25,000 ($40,803)), the costs that can be recovered are fixed and predictable at present.

Jackson considers that the arguments for fixed costs are also compelling in other cases. As well as applying to all costs of cases on the fast track, Jackson proposes introducing the fixed-cost regime for small and medium-sized business disputes, where certainty over potential costs liability is valuable for court users, particularly insurers looking to fix reserves for the year ahead.

Alternatively, he proposes that the court could intervene to limit recoverable costs through more direct application of its costs-management powers, such as ordering exchange of budgets at every case-management hearing.

Jackson told the BLG seminar a voluntary costs case-management pilot scheme is in operation at Birmingham Specialist Court, the results of which will be received with interest.

Finally, Jackson has considered the controversial regime whereby a successful claimant can recover his ATE insurance premium and his lawyers' CFA success fee from a losing defendant. While he recognises that the recoverability of CFAs and ATE premiums has dramatically increased the costs burden upon defendants and their insurers, how to promote access to justice if they are not recoverable is another matter.

Nevertheless, he has made clear he thinks there is no rational justification for allowing recovery of success fees and ATE premiums in large-scale commercial litigation between equally matched parties. Any reform limiting their recovery will be very good news for defendant insurers.

In contrast, Jackson has tentatively concluded that it would be in the public interest to extend the use of before-the-event (BTE) insurance, which is taken out before the prospect of a claim arises and covers the costs of any subsequent proceedings. Insurers will be interested to hear that he believes that serious consideration should be given to proposals that compulsory BTE is taken out by employers and others required to take out public liability insurance at present.

Procedural changes

As part of his review, Jackson has also considered a wide range of changes to the court process which might affect costs.

For example, the Jackson report considers various proposals to deal with problems created by "pre-action protocols", which he calls some of the most "intractable questions" of his review.

The protocols impose a regime for dealing with claims before proceedings are issued and, although they have been successful in assisting parties to resolve claims early on, there are concerns they can lead to higher costs, for example where they are abused by the other side. Although the court can impose costs sanctions for non-compliance or abuse, it can only do so once proceedings have been issued.

A solution to this problem might be to issue proceedings immediately and then stay the claim to enable the protocol to apply, thus giving either side the immediate opportunity to apply to the court for sanctions. Insurers may welcome this idea since, as well as making pre-action costs recoverable, it should reduce incidences of late notification.

Jackson has also considered various other reforms which might streamline court procedure. This includes a list of reforms to the disclosure process such as limiting the scope of disclosure to the documents relied upon by a party and the appointment of disclosure assessors in heavy cases to review and limit the documents to be placed before the court.

He also proposes changes to the use of witness statements and expert evidence, including limiting witness statements to matters not within the documents that have already been disclosed and a rule that parties will be unable to recover the cost of expert reports that are not relied upon.

Any reform which makes the litigation process more efficient will be good news for insurers since, even if the case is won, a proportion of the costs incurred will not be recoverable from the loser.

Conclusion

The breadth and scope of Jackson's preliminary report must be applauded. His extensive proposals indicate that the recommendations in his final report, which are due to be presented in December, may well prove to be as significant to the civil litigation process in England and Wales as Lord Woolf's reforms of 1998.

Jackson will start work on his final report when the consultation stage of his review finishes at the end of July. BLG intends to make a submission to him before that date and would be interested to hear from any insurers with views of their own, so that they can be taken into account.

Janet Lambert is a partner in commercial risk and reinsurance and Andrew Horrocks is a partner in commercial litigation and arbitration teams at BLG

It all stacks up: the proposals put forward by Lord Jackson suggest his final recommendations could be as significant to the civil litigation process in England and Wales as Lord Woolf's reforms of 1998

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This Week...

CHAUCER started the week the centre of attention and ended it in the hunt for a new chief executive and chief financial officer (CFO). On Monday, Brit Insurance reaffirmed its interest in Chaucer, stating its intention to pay 0.23 new shares for every Chaucer share, valuing the Lloyd's insurer at around £220m ($361m). Days later, Chaucer announced it was " not in a position" to recommend the all-share offer from Brit, which responded by saying discussions "have now ceased".

That was not the end of the headlines for Chaucer, however, as the company revealed chief executive, Ewen Gilmour, and CFO, Mark Graham, were leaving. Gilmour is retiring and will leave as soon as a successor has been appointed. Chief underwriting officer, Bob Stuchberry, assumes his duties as chief executive of Chaucer Syndicates Ltd, the group's main operating subsidiary. Graham also decided to step down "with immediate effect" and is replaced on an interim basis by Ken Curtis, finance director of Chaucer Syndicates, while Chris Forbes, senior independent director, said he would be stepping down from the boards of the parent company and the main operating subsidiary on June 30. Turmoil indeed.

The acquisition battle for Chaucer, though, is still small scale when compared with the goings-on in Bermuda, where IPC, at one point a shoo-in for an amalgamation with Max Capital, announced it was engaged in discussions with several potential buyers, including Validus and its $1.72bn takeover offer. IPC said it and Validus had signed a confidentiality agreement and started mutual due diligence but that it had "reached out to other parties to solicit interest in a possible transaction".

At Lloyd's, syndicates have been busy setting out their capacity plans for the 2010 underwriting year, with many proposing substantial pre-emptions. Hiscox is looking to raise capacity for syndicate 33 to more than £1bn. The move would make the syndicate the second largest in the market behind Catlin, although the integrated Lloyd's vehicles that it would overtake have yet to publish their plans for next year; they do so on July 24. RJ Kiln, Beazley, Managing Agency Partners and Atrium are others hoping to lift their capacity, while only Jubilee Managing Agency's syndicate 779 is proposing a de-emption for 2010.

There was better news for vessels travelling in and out of Sri Lanka, after they were told they could pay smaller additional premiums. Sri Lanka's risk rating was lowered from severe to high by the Lloyd's Market Association's joint cargo committee after the government there defeated the Liberation Tigers of Tamil Eelam. Nick Gooding, a senior cargo underwriter at XL, said: "Cargo underwriters insuring transits to and from Sri Lanka, where contracts permit a rate to be agreed for level 3.0 (high), will look to charge an additional premium but it is likely to be less than has previously been the case when the risk level was 3.4 (severe)."

Meanwhile, insurers need to rethink how it looks at terrorism insurance in the US radically, with existing procedures unmanageable. That was the view this week from Clive Tobin, Torus chief executive. Speaking exclusively to *Insurance Day*, Tobin put forward the concept of a trading index for terrorism exposure limits. He wants businesses with high-value premises in low terror-risk areas, such as Wisconsin, to be able to trade exposures with companies in high-risk places, such as New York.

Finally, London market insurers should expect claims from Monday's Washington DC Metrorail collision. *Insurance Day* sources said the programme, believed to have been placed on behalf of the Washington Metropolitan Area Transit Authority by Aon, could lead to substantial business interruption, property damage and liability claims for insurers in London.

Jonathan Rest

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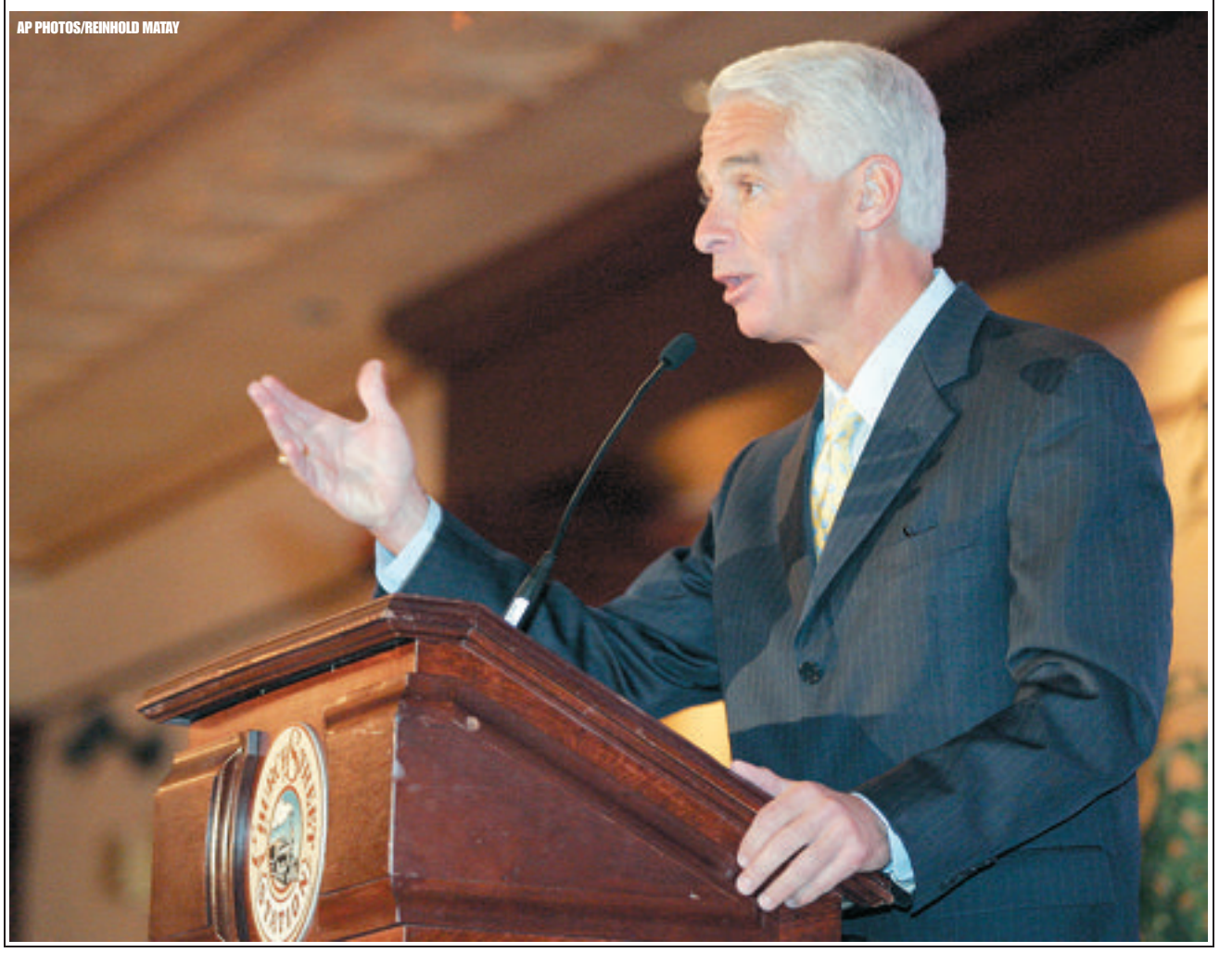
FLORIDA governor, Charlie Crist, has vetoed a measure that would have allowed large property insurers to set their own premiums without regulatory oversight. He said the Bill could have led to "significant and unpredictable" rate increases. He said that if the 323 target insurers in the Bill "are allowed to red-line areas of the state they do not wish to write, this will harm consumers and investors who have worked in good faith to create a competitive marketplace that has benefited all Florida". The Bill was largely designed to convince State Farm Florida to stay in the state property insurance market. The company wanted to leave the market in the wake of regulators' rejection of its request for a 48% rate hike. State Farm said this week that it would reconsider the move if Crist signed the Bill into law.

AP PHOTOS/REINHOLD MATAY



NEWS IN BRIEF

AM Best affirms MSI

GROWING overseas and life operations were a central factor behind AM Best's decision to affirm the A+ financial strength ratings on Japan's Mitsui Sumitomo Insurance Company Limited (MSI). The rating agency also cited the insurance giant's superior risk-adjusted capitalisation, consistent underwriting performance and efficient distribution channels. A fall in the Japanese stock index contributed to a drop in the company's capitalisation in the 2007 and 2008 fiscal years but AM Best said the level remained adequate and predicted it would improve over the coming years. The rating agency noted: "MSI is aggressive in expanding its overseas operations, especially in the Asian market. The company has one of the largest overseas networks among the Japanese non-life insurance companies." On the other hand, it observed the Japanese non-life market was stagnant and the investment market "unfavourable" and it forecast net premiums written for motor, fire and marine would continue to decline due to low car sales and less new house building.

Bajaj Allianz enters India motor deal with VW

INDIAN insurer Bajaj Allianz General Insurance company will in future sell motor insurance in India through Volkswagen dealers after an agreement to that effect was reached by Bajaj Allianz and Volkswagen Finance. Munich-based Allianz holds a stake of 26% in Bajaj Allianz, while car-maker Bajaj owns 74%. The agreement also applies to the brands Audi and Skoda. Trucks and other heavy-duty vehicles will also be insured in future. Volkswagen has a very good track record selling Allianz motor insurance in Germany and has already insured almost 1.1 million vehicles via Allianz.

Lowery announces departure from Lloyd's

LORIANNE LOWERY (*pictured*) is to step down as president of Lloyd's North America, sparking a search for new US leader, the insurance market has confirmed. Lowery announced about her imminent departure during last night's annual Lloyd's New York City Dinner. She is believed to be leaving because of family considerations and will return home to Texas. Her role with Lloyd's meant that she had to commute weekly to her office in New York, while also travelling frequently to London and across the US on the market's behalf. According to reports she has no other position lined up. Lowery joined Lloyd's in late April 2008.

Singapore ATE cover

THE SINGAPORE operation of broker Lockton has unveiled what it claims is the city state's first after-the-event (ATE) insurance product. Underwritten by First Capital Insurance, the product is designed to provide cover for the costs incurred in the pursuit or defence of litigation. Available in the UK for more than 10 years, Lockton claims the product has allowed many litigants to offset a considerable portion of their litigation costs risk. Tony Mitchell, president of Lockton Singapore, said the types of cases typical for this insurance are: commercial litigation, professional negligence cases, insolvency cases and civil litigation cases. But he denied the emergence of such products would encourage extra litigation, saying: "Despite the attractiveness of this form of insurance for litigants, its availability has not resulted in any significant increase in litigation in the UK. One principal reason is, at the end of the day, it is the insurer that will carry the exposure and they are selective as to which cases they choose to support."