UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re	:
	: Chapter 15
Petition of David McGuigan, as foreign	:
representative of	: Case No. 10-14990 (SMB)
	:
Allianz Global Corporate & Specialty (France),	: (Jointly Administered)
Allianz IARD,	:
Delvag Luftfahrtversicherungs-AG, and	:
Nürnberger Allgemeine Versicherungs-AG.	:
	:
Debtors in a Foreign Proceeding.	:

SUPPLEMENTAL MEMORANDUM OF LAW IN SUPPORT OF VERIFIED PETITION UNDER CHAPTER 15 FOR RECOGNITION OF FOREIGN PROCEEDINGS AND MOTION FOR PERMANENT INJUNCTION

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David McGuigan (the "Petitioner"), as the duly appointed and authorized foreign representative of the Scheme Companies,[1] by its counsel, submits this supplemental memorandum of law (the "Supplemental Memorandum") in further support of the Scheme Companies' Verified Petition Under Chapter 15 For Recognition Of Foreign Proceedings And Motion For Permanent Injunction [Docket No. 2] (the "Petition and Motion"). This Supplemental Memorandum is in addition to the Scheme Companies' initial memorandum of law ("Memorandum of Law") filed in support of the Petition and Motion [Docket No. 3], and other supporting documents, all of which are incorporated herein by reference.

PRELIMINARY STATEMENT

1. On September 27, 2010, this Court held a hearing (the "Scheduling Hearing") on the Scheme Companies' Motion for the Joint Administration of the Chapter 15 Cases [Docket No. 7] and Motion for an Order Scheduling the Recognition Hearing and Approving the Form and Manner of Service of the Notice Related Thereto [Docket No. 8], and granted the relief requested therein. Publication and service of the notice of the recognition hearing was accomplished pursuant to, and in full compliance with, the Court's Order Scheduling the Recognition Hearing and Approving the Form and Manner of Service of the Notice. See Notice of Filing of Affidavits of Publication filed on October 22, 2010 [Docket No. 13] and Affidavit of Service of 1st Day Motions and Related Orders filed on October 28, 2010 [Docket No. 14] (collectively, the "Notice Affidavits"). Objections to entry of a proposed recognition order were due on November 1, 2010 by 4:00 p.m. (Eastern Time). We are pleased to report that no objections were filed to the relief requested by the Petition and Motion.

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[1] All capitalized terms not defined herein shall have the meanings ascribed to them in the Schemes or the Petition and Motion.

2. The Petitioner respectfully submits this Supplemental Memorandum to provide supporting authority for certain of the relief requested in the proposed recognition order, specifically with respect to the exculpation and immunity clauses contained therein. In addition, a revised proposed recognition order (the "Revised Recognition Order"), which seeks to address the Court's comments provided at the Scheduling Hearing, is attached hereto as Exhibit A, together with a blackline comparing the Revised Recognition Order to the initial proposed recognition order is attached hereto as Exhibit B.

3. For the reasons provided in the Memorandum of Law and those set forth below, the Petitioner respectfully submits that (a) the English Proceedings should be recognized as foreign main proceedings because the Scheme Companies in connection with the CUAL Business have their center of main interests ("COMI") in the United Kingdom or, in the alternative, as foreign nonmain proceedings because the Scheme Companies maintain an "establishment" in connection with the CUAL Business in the United Kingdom, as such term is defined under section 1502(2) of the Bankruptcy Code,[2] and (b) the Revised Recognition Order should be entered.

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[2] Petitioner's support under section 1517(b) and related provisions of the Bankruptcy Code was set forth in detail in the Memorandum of Law and Declaration of David McGuigan in Support of the Petition and Motion [Docket No. 4]. Consistent with such documents, Petitioner believes that the Scheme Companies' CUAL Business has its center of main interest in the United Kingdom or, alternatively, the Scheme Companies have an establishment there. Petitioner relies, among the other evidence provided, on the activities and office location of the Scheme Companies' agents for the CUAL Business (including, CUAL, Whittington and the Scheme Manager). See In re British American Ins. Co. Ltd. (In re BAICO), 425 B.R. 884, 911-12 (S.D. Fla. 2010) (holding that the location of the debtors' agents was directly relevant to and supported the determination that the debtor's COMI was in Trinidad because all of the daily activities and primary management and business functions took placed in Trinidad, rather than in the Bahamas where the debtor maintained its registered office); see also In re Bear Stearns High-Grade Structured Credit Strategies Master Fund, 374 B.R. 122, 130 (Bankr. S.D.N.Y. 2007) (taking into account that the debtor's agent conducted the primary management, administration and business functions for the debtor in determining that COMI was more appropriately the agent's location in the U.S. rather than the Cayman Islands where the foreign proceedings were pending); see also In re SPhinX, 351 B.R. 103, 107, 119 (Bankr. S.D.N.Y. 2006) (applying the location and activities of the debtors' agents in determining COMI).

I. The Proposed Exculpation and Immunity Provisions of the Revised Recognition Order Clauses are Supported by Applicable Law

4. While exculpatory provisions and immunity clauses are routinely included in and approved in recognition orders, there is a dearth of case law under chapter 15 with respect to these clauses. Certainly, the purposes of chapter 15 – to provide effective mechanisms for dealing with cross-border insolvencies with the objectives of, among other things, promoting principles of cooperation and comity and maximizing the value of assets for the benefit of creditors – support such a grant.[3] Moreover, section 1507(a) of the Bankruptcy Code authorizes a court granting recognition to "provide additional assistance to a foreign representative under [the Bankruptcy Code] or under other laws of the United States." 11 U.S.C. § 1507(a). "Chapter 15 specifically contemplates that the court should be guided by principles of comity and cooperation with foreign courts in deciding whether to grant the foreign representative additional post-recognition relief." See In re Metcalfe & Mansfield Alternative Invs., et al. (In re Metcalfe), 421 B.R. 685, 696 (Bankr. S.D.N.Y. 2010) (citing In re Atlas Shipping A/S/, 404 B.R. 726, 738 (Bankr. S.D.N.Y. 2009)). The broad statutory grant under section 1507 provides discretion to assure that the policies of the Bankruptcy Code are implemented by insulating the individuals and entities involved in a foreign proceeding from liability and actions that may arise in connection with the chapter 15 process.

5. The reasoning applied to exculpation provisions in the chapter 11 context, where such provisions are commonplace, also is instructive for the chapter 15 context and,

[3] Section 1501 of the Bankruptcy Code articulates the purposes and scope of Chapter 15, and the Model Law of Cross-Border Insolvency on which is it based, realized through five objectives: (1) to promote cooperation between the United States courts and parties of interest and the courts and other competent authorities of foreign countries involved in cross-border insolvency cases; (2) to establish greater legal certainty for trade and investment; (3) to provide for the fair and efficient administration of cross-border insolvencies that protects the interests of all creditors and other interested entities, including the debtor; (4) to afford protection and maximization of the value of the debtor's assets; and (5) to facilitate the rescue of financially troubled businesses, thereby protecting investment and preserving employment. See 11 U.S.C. § 1501.

specifically, for the terms of the Revised Recognition Order. For example, pursuant to sections 1123 and 1125(e) of the Bankruptcy Code, claims or interests belonging to the debtor's estate may be settled through a plan of reorganization (11 U.S.C. § 1123(b)(3)(A)) and persons that participate in good faith with plan solicitation or the issuance of securities under a plan shall not be liable on account of such participation (11 U.S.C. § 1125(e)). See, e.g., In re Greyfriars Ins. Co. Ltd., et al., Case No. 07-12934 (JMP), Docket No. 23 (Bankr. S.D.N.Y. 2007) (approving exculpatory clauses and injunction provisions in recognition order to exculpate and limit the liability of the parties for their actions in relation to the scheme of arrangement); In re Oslo Reinsurance Co. (UK) Ltd. and Oslo Reinsurance Co. ASA, Case No. 07-12211 (RDD), Docket No. 15 (Bankr. S.D.N.Y. 2007) (same); In re NRG Victory Reinsurance Ltd., Case No. 06-11052 (JMP), Docket No. 26 (Bankr. S.D.N.Y. 2006) (same); In re Europaische Ruckversicherungs-Gesellschaft in Zurich (European Reinsurance Co. of Zurich), Case No. 06-13061 (REG), Docket No. 14 (Bankr. S.D.N.Y. 2006) (same); La Mutuelle du Mans Assurances IARD UK Branch MMA Account, Case No. 05-60100 (BRL), Docket No. 9 (Bankr. S.D.N.Y. 2005) (same); In re Lion City Run-Off Private Ltd., Case No. 06-10461 (SMB), Docket No. 12 (Bankr S.D.N.Y. 2006) (same). Indeed, in the one reported case in which the scope of a third party release was examined in the chapter 15 context, the court specifically looked to, among other things, governing law in the chapter 11, or plenary, context. In re Metcalfe, 421 B.R. at 694-699 (Bankr. S.D.N.Y. 2010) (approving broad release and injunction provisions in recognition order after analysis of jurisdictional grant, governing case law in the 2nd circuit and principles of comity).

6. As a general matter, to obtain approval of exculpation provisions in a chapter 11 plan, a debtor must show that the relevant provision is "reasonable and customary and

in the best interest of the estate." See In re Enron Corp., 326 B.R. 497, 504 (S.D.N.Y. 2005). Additionally, courts will permit exculpation provisions, such as those that grant injunctions and enjoin actions or stay proceedings against former directors, officers or individuals, if such provisions were subject to mutual agreement based upon arm's length negotiations and were made in good faith. See id. at 503-04 (affirming bankruptcy order which confirmed the debtor's plan on the basis that the broad exculpation clause was reasonable and customary because the clause resulted from extensive arm's length negotiations between the parties and was a factor in the parties agreeing to the plan); see also In re Winn-Dixie Stores, Inc., 356 B.R. 239, 261 (Bankr. M.D. Fla. 2006) (confirming a plan of reorganization over objection to a broad exculpation clause because, among other factors, such provisions were the result of negotiation by all parties and the overwhelming acceptance of the plan); see also In re RCN Corp., Case No. 04-13638 (Bankr. S.D.N.Y. Dec. 8, 2004) (RDD) (affirming broad exculpation provision in plan for numerous entities, including lenders, because sophisticated parties consented to the provision after arm's length negotiations and the provision was one of the terms that incentivized certain parties to agree to the plan).

7. Moreover, the exculpation and immunity provisions for the benefit of the Scheme Parties are analogous to the limited exculpation and immunity afforded to creditors' committees and their members for their critical participation in the formulation and acceptance or rejection of a plan. Indeed, Courts in this District have found that the "significant and central role for committees in the scheme of a business reorganization … set forth in section 1103(c)(3) of the Code, which provides that official committees are empowered to 'participate in the formulation of a plan, advise those represented by such committee of such committee's determination as to any plan formulated, ... implies both a fiduciary duty to committee

constituents, and a grant of limited immunity to committee members.'" See In re L.F. Rothschild Holdings, Inc., 163 B.R. 45 (S.D.N.Y. 1994). Similarly, the Scheme Parties play critical roles in the implementation and administration of the Schemes as authorized by the English Court and the sanctioned Schemes, and accordingly should be granted the narrowly tailored exculpation and immunity provisions in the Revised Recognition Order.

8. Applying these standards to the terms of the Revised Recognition Order makes clear that the exculpation provision should be granted here because such provision is not only consistent with the principles of the Bankruptcy Code and standards required by bankruptcy courts in plenary chapter 11 cases, but also appropriate in the chapter 15 context under section 1507 and principles of comity, as discussed below.

A. *The Exculpation Provision in the Revised Recognition Order is Customary and Reasonable*

9. The exculpatory language in the Revised Recognition Order is reasonable because it is narrowly tailored to limit the liability of the Scheme Parties *solely* with respect to their actions in connection with the Chapter 15 Cases and administration of the Schemes, including actions related to the preparation, dissemination, or application of the recognition process and for the implementation or enforcement of the Revised Recognition Order and Schemes. See Revised Recognition Order at pgs. 7-8.[4]

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[4] The Revised Recognition Order provides that the Scheme Creditors shall be permanently enjoined and stayed from:

> commencing or continuing any proceeding against the duly appointed Foreign Representative, each of the Scheme Companies, the Centre for Effective Dispute Resolution ("CEDR"), any person who holds or has held the position of Chief Executive of CEDR, any person who holds or has held the position of President of the Institute of Actuaries in England, any person holding or who has at any time held the position of Scheme Manager, Scheme Adjudicator or Actuarial Adjudicator, the Chairman of the Creditors' Meetings, the Vote Assessor and any past or present director of any of the Scheme Companies, including their respective successors, delegates, directors, officers, agents, employees, representatives, advisers or attorneys, or any of them (the "Scheme Parties"), solely with respect to any claim or cause of action, in law or in equity, arising out of or relating to (i) any action taken or omitted to be taken as of the Effective Date by any of the Scheme Parties in connection with these Chapter 15 Cases or in preparing, disseminating, applying for or implementing the Schemes or the Order, or (ii) the construction or interpretation of the

10. In the chapter 11 context, exculpation clauses are commonly used to release officers, directors and other third parties related to a reorganization for actions arising in connection with a chapter 11 case and its reorganization, except for claims related to fraud, gross negligence or willful misconduct. See In re PWS Holding Corp., 228 F.3d 224, 245 (3d Cir. 2000) (referring to exculpation clauses as a "commonplace provision in chapter 11 plans"). Courts consistently have found such clauses reasonable because the protected parties – frequently extending not only to the debtors and reorganized debtors and their agents, but also to their subsidiaries, pre-petition lenders, a creditors' committee, or their professionals – and the covered activities are instrumental to the successful administration and enforcement of the chapter 11 case and the plan process. See id. at 246-47. Moreover, such exculpations have their roots in section 1125(e) of the Bankruptcy Code which provides that persons should not be liable for good faith actions in connection with their participation in plan solicitation or the issuance of securities under a plan of reorganization. See, e.g., In re EnviroSolutions of New York, LLC, 2010 WL 3373937, *4 (Bankr. S.D.N.Y. July 22, 2010); In re Citadel Broad. Corp., 2010 WL 2010808, *9 (Bankr. S.D.N.Y. May 19, 2010).

11. The exculpatory language set forth in the Revised Recognition Order also is entirely customary and similar provisions have been routinely approved in this District in the chapter 15 context. Specifically, courts have approved recognition orders that prevent any action taken against the relevant foreign actors in respect of their involvement in administering the scheme or implementing the scheme process. See, e.g., In re Greyfriars Ins. Co. Ltd., et al., Case

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> Schemes or out of any action taken or omitted to be taken by any of the Scheme Parties in connection with the administration of the Schemes...

Revised Recognition Order, pg. 5, ¶ (c) and pg. 7.

No. 07-B-12934 (JMP), Docket No. 23 (Bankr. S.D.N.Y. 2007); In re Oslo Reinsurance Co. (UK) Ltd. and Oslo Reinsurance Co. ASA, Case No. 07-12211 (RDD), Docket No. 15 (Bankr. S.D.N.Y. 2007); In re NRG Victory Reinsurance Ltd., Case No. 06-11052 (JMP), Docket No. 26 (Bankr. S.D.N.Y. 2006); In re Europaische Ruckversicherungs-Gesellschaft in Zurich (European Reinsurance Co. of Zurich), Case No. 06-13061 (REG), Docket No. 14 (Bankr. S.D.N.Y. 2006); La Mutuelle du Mans Assurances IARD UK Branch MMA Account, Case No. 05-60100 (BRL), Docket No. 9 (Bankr. S.D.N.Y. 2005); In re Lion City Run-Off Private Ltd., Case No. 06-10461 (SMB), Docket No. 12 (Bankr S.D.N.Y. 2006).

B. *The Proposed Exculpatory and Immunity Provisions in the Revised Recognition Order are in the Best Interests of the Debtors*

12. In addition, the Petitioner believes that it is in the best interests of the Scheme Companies to protect the Scheme Parties as set forth in the Revised Recognition Order. See In re Winn-Dixie Stores, Inc., 356 B.R. at 260-62 (approving plan, including release and exculpation provisions, that exculpated certain parties related to the organization process because the plan was not only reasonable and customary, but also "in the best interests of the estate").

13. Each of the Scheme Parties plays, has played, or potentially plays, a critical role in connection with the Schemes and/or (where relevant) the Creditors' Meetings. For example, in relation to the Creditors' Meetings, the roles of the Chairman and Vote Assessor were provided for in the Convening Order. The Chairman's role included determining the right and entitlement of a Scheme Creditor to vote (either at all, or in relation to particular contracts for which it had submitted values on its Voting Form) at the Creditors' Meetings. In addition, David McGuigan, the Petitioner and Foreign Representative, was tasked with seeking recognition of the English Proceedings in the United States and commencing the Chapter 15 Cases on behalf of the Scheme Companies. See Convening Order at ¶ 31. Arguably most

importantly, the Scheme Manager (currently, David McGuigan), plays a critical role in connection with the implementation and administration of the Scheme. Pursuant to the sanctioned Scheme, the Scheme Manager, in carrying out his duties and functions under the Scheme, is empowered to, among other things: (i) negotiate and enter into agreements for the commutation, compromise, waiver or settlement of Scheme Claims, (ii) do all acts, and to execute in the name of and on behalf of the Scheme Companies in connection with the Scheme any deed, transfer, instrument, cheque, bill of exchange, receipt or other document which may be necessary for, or incidental to, the full implementation of the Scheme, (iii) bring, commence or defend any Proceedings in the name of and, in so far as permitted by law, on behalf of the Scheme Company, in any matter affecting the Scheme Company; and (iv) exercise any other powers necessary for, or incidental to, the full and proper implementation of the Scheme whether in the name of the Scheme Company or otherwise. See Scheme at ¶ 5.2.1. In relation to any Adjudication pursuant to the Scheme, if the Scheme Manager and the relevant Scheme Creditor are unable to agree on the appointment of a mutually acceptable Scheme Adjudicator, the Scheme Manager is required to ask the Chief Executive of the Centre for Effective Dispute Resolution "CEDR")[1] to nominate a Scheme Adjudicator. Id. at ¶ 6.2.2. In case of a conflict of interest (or any other good reason why it may be inappropriate for the Scheme Adjudicator to adjudicate the relevant matter), the Scheme Manager is required to ask the Chief Executive of CEDR to nominate a substitute Scheme Adjudicator. Id. at ¶ 6.3.1.1. In the case of a conflict of interest (or any other good reason why it may be inappropriate for the Actuarial Adjudicator to adjudicate the relevant matter), the Scheme Manager is required to ask the President of the

[1] CEDR is an independent, non-profit organization with a mission to cut the cost of conflict and create choice and capability in dispute prevention and resolution. It is described on its website "...as an impartial third party used to facilitate negotiations in complex and sensitive multi-party conflict and dialogue. It has over 19 years experience in dispute resolution, conflict management, training and civil justice systems.

Institute of Actuaries to nominate a substitute Actuarial Adjudicator. See Id. ¶ 6.3.1.2. Accordingly, it is appropriate to include each of these parties, as well as those listed in the Revised Recognition Order, in the exculpation provision, with respect to actions undertaken in connection with the Schemes and the recognition and enforcement of such Schemes.

14. The exculpation provision also serves the best interests of the estates because it avoids a potentially costly waste of estate assets and resources. If the Scheme Parties do not obtain the contemplated exculpation as to their actions in connection with the Schemes – as well as the immunity from broad jurisdiction discussed below – these parties would be subjecting themselves to potential litigation in the United States, the cost of which would be covered by the Scheme Companies, thereby dissipating estate assets and using estate resources to the severe detriment of Scheme Creditors. See In re Winn-Dixie Stores, Inc., 356 B.R. at 260 (enforcing order with broad exculpatory language because it is in the best interests of the debtor "rather than facing the specter of pursuing the claims and expending time, energy, effort and management attention on an exercise in futility").

15. Similarly, the exculpation and immunity provisions serve the best interests of the estates because they are important in retaining the Scheme Parties who carry out critical roles in implementing, administering and enforcing the Schemes. See In re Enron Corp., 326 B.R. at 503 (noting that "[w]ithout such protection from liability, key personnel might abandon efforts to help the reorganized debtor entities follow through on the Plan" and "the implementation of the Plan might falter, leading to an 'unmanageable, uncontrollable situation for the Bankruptcy Court'") (citations omitted). Refusing to exculpate the Scheme Parties in the Chapter 15 Cases might result in the resignation of certain difficult-to-replace Scheme Parties,

thus potentially frustrating the implementation and administration of the Schemes contrary to the wishes of all of the Scheme Creditors that voted on the Scheme.

16. In these ways, and as further described in the Memorandum of Law, the relationship between the Scheme Parties and Debtors in relation to the Scheme and its effectuation supports the entry of the Revised Recognition Order and its exculpation terms.

C. *The Exculpation Provision is Based on Consent*

17. The fact that the exculpation provision in the Revised Recognition Order is consistent with the exculpatory language in the Schemes, and that such language was unanimously approved by voting Scheme Creditors and sanctioned by the English Court, also should weigh heavily in favor of upholding the exculpation provision in the Revised Recognition Order.[5] Effectively, such exculpation provision was approved by the Scheme Creditors (the parties against whom enforcement would be sought) who voted in favor of the Scheme and did not oppose the exculpation provisions. See In re Winn-Dixie Stores, Inc., 356 B.R. at 259-61 (approving broad exculpation provision in plan that releases actions in connection with the plan process against the present or former directors, officers and employees of the Debtors due to mutual consent and in the best interest of the debtors). Significantly, the parties listed as "Released Parties" in the Schemes, including former individuals and entities involved in the planning and implementation of the Schemes, are the same parties listed as Scheme Parties in the

[5] Section 4.1 of the Scheme provides, in pertinent part, that "[n]o Scheme Creditor nor any party acting on its behalf or deriving title from it shall be entitled to take or continue any step, or do or continue any act by way of Proceedings or otherwise in any jurisdiction whatsoever after the Effective Date … save as permitted by clause 7.1 against or in respect of any of the Released Parties either individually or collectively in connection with their duties and obligations under the Scheme; unless the Scheme Company has failed to perform any obligation to make payment to a Scheme Creditor in respect of a Net Ascertained Claim and then only in respect of such failure."

Revised Recognition Order and the Petition and Motion who are to receive the exculpations and immunity set forth in the Revised Recognition Order.[6]

18. Courts will enforce exculpation provisions that broadly exculpate or limit the liability of former as well as current and future individuals or entities that may be involved in the reorganization or plan process as long as there is mutual consent and, as discussed above, the exculpatory language "is reasonable and customary and in the best interest of the debtor." Id. at 259-60. Each of the Scheme Creditors located in the United States (for whom Whittington held a current address) was sent notice of the Schemes and had the opportunity to object both in England and before this Court. See Notice Affidavits; see also Declaration of David McGuigan [Docket No. 4] (the "McGuigan Declaration") at ¶¶ 32-35, 41. In England, all Scheme Creditors who voted did so unanimously in favor of the Schemes, including the provision that provided for the release of former, as well as current and future, parties and entities. See McGuigan Declaration at ¶ 37. Similarly, no objection to the entry of a proposed recognition order has been received in connection with this proceeding. The parties' consent further supports the exculpation terms provided in the Revised Recognition Order.

D. *The Immunity Provision of the Revised Recognition Order is Sanctioned under the Bankruptcy Code*

19. As with the exculpation provision discussed above, the immunity clause of the Revised Recognition Order serves a critical purpose by ensuring that foreign representatives acting in the United States in a manner consistent with their authority as granted by a foreign

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[6] Specifically, the Released Parties are defined under the Scheme as "the Scheme Company, CEDR, any person who holds or has held the position of Chief Executive of CEDR, the Foreign Representative, any person who holds or has held the position of President of the Institute of Actuaries, any person holding, or who has at any time held, the position of Scheme Appointee, Chairman, Vote Assessor and any past or present director of the Scheme Company, including any Delegate Employee, partner or alternate of any of the foregoing, in each case in their capacity as such", which are the same parties in the defined term "Scheme Parties" under the exculpation and immunity provisions of the Revised Recognition Order. See Scheme at pgs. 14-15; see Revised Recognition Order at pg. 5.

court in connection with the applicable foreign proceeding do not unintentionally subject themselves to the broad jurisdiction of U.S. courts. This fundamental precept is embodied in and consistent with the immunity provided under sections 306 and 1510 of the Bankruptcy Code, which expressly provide for a foreign representative to receive certain immunities and protections by limiting the jurisdiction of United States' courts over a foreign representative. See 11 U.S.C. §§ 306 and 1510. Under section 101(24), a "foreign representative" is defined as "a person or body, including a person or body appointed on an interim basis, authorized in a foreign proceeding to administer the reorganization or the liquidation of the debtor's assets or affairs or to act as a representative of such foreign proceeding." 11 U.S.C. § 101(24). Each of the Scheme Parties is or has been authorized by the English Court or pursuant to the sanctioned Schemes to play a critical role in connection with the Creditors' Meetings and/or the English Proceedings and the administration or implementation of the Schemes and, therefore, each qualifies as a foreign representative for purposes of receiving the protections afforded by sections 306 and 1510 of the Bankruptcy Code. See Convening Order ¶¶ 12-20, 22-28, 31 and Scheme at ¶¶ 1.1, 6-7.5. Moreover, for the same reasons discussed above, the immunity also is consistent with general constructs applicable to protections under chapter 11, in that the immunity provision is reasonable and customary, and in the best interests of the estate. Accordingly, the terms of the Revised Recognition Order granting the Scheme Parties limited immunity should be approved.

20. Indeed, this Court has granted recognition orders that contain immunity provisions similar to that requested in the Revised Recognition Order. See, e.g., In re Greyfriars Ins. Co. Ltd., et al., Case No. 07-B-12934 (JMP), Docket No. 23 (Bankr. S.D.N.Y. 2007); In re Oslo Reinsurance Co. (UK) Ltd. and Oslo Reinsurance Co. ASA, Case No. 07-12211 (RDD),

Docket No. 15 (Bankr. S.D.N.Y. 2007); In re NRG Victory Reinsurance Ltd., Case No. 06-11052 (JMP), Docket No. 26 (Bankr. S.D.N.Y. 2006); In re Europaische Ruckversicherungs-Gesellschaft in Zurich (European Reinsurance Co. of Zurich), Case No. 06-13061 (REG), Docket No. 14 (Bankr. S.D.N.Y. 2006); La Mutuelle du Mans Assurances IARD UK Branch MMA Account, Case No. 05-60100 (BRL), Docket No. 9 (Bankr. S.D.N.Y. 2005); In re Lion City Run-Off Private Ltd., Case No. 06-10461 (SMB), Docket No. 12 (Bankr S.D.N.Y. 2006).

II. ***Principles of Comity and Cooperation Support Entry of the Revised Recognition Order***

21. The exculpatory and immunity provisions are critical to the effectiveness of the Schemes. As discussed above, the exculpated parties in the Revised Recognition Order are identical to the exculpated parties in the Schemes that have been sanctioned by the English Court, and are exculpated for the same narrow litany of acts and circumstances. Upholding the exculpatory and immunity provisions set forth in the Revised Recognition Order, which have already been sanctioned by the English Court, is entirely consistent with the fundamental goals of the Bankruptcy Code in general and chapter 15 in particular. By contrast, failing to provide exculpation would create an inconsistent and unpredictable regime under which Scheme "officers" could be sued in the U.S. notwithstanding the fact that they cannot be sued in the U.K. by consent of relevant parties and the governing court order.

22. As such, the relief requested in the Revised Recognition Order should be granted pursuant to section 1507 of the Bankruptcy Code, which directs the court to consider comity in granting additional assistance to a foreign representative. See 11 U.S.C. § 1507. Indeed, chapter 15 specifically contemplates that courts "should be guided by principles of comity and cooperation with foreign courts" in deciding whether to grant additional assistance under chapter 15. In re Metcalfe & Mansfield Alternative Invs., et al. (In re Metcalfe), 421 B.R. 685, 696 (Bankr. S.D.N.Y. 2010). Further, this Court has noted the importance in the Second

Circuit of extending comity in foreign proceedings in order to facilitate the equitable, orderly and systematic distribution of the foreign debtor's estate. See In re Ionica PLC, 241 B.R. 829, 835 (Bankr. S.D.N.Y. 1999) (noting that the Second Circuit has often underscored the importance of granting comity in foreign proceedings); see also Cunard S.S. Co. Ltd. v. Salen Reefer Servs. AB, 773 F.2d 452, 458 (2d Cir. 1985) (emphasizing that deference to foreign insolvency proceedings typically "facilitate[s] equitable, orderly and systematic" distribution of the debtor's assets").

23. This Court's recent Metcalfe case is particularly instructive. Earlier this year, the bankruptcy court in In re Metcalfe found that principles of comity in chapter 15 cases "strongly counsel[ed]" granting a Canadian foreign representative additional assistance under section 1507 of the Bankruptcy Code by enforcing certain Canadian orders containing third-party non-debtor releases and injunction provisions (much broader than the narrowly tailored exculpation and immunity provisions being requested in the Revised Recognition Order), regardless of whether such provisions would have been proper in a chapter 11 plenary case. In re Metcalfe, 421 B.R. at 696. In evaluating whether to extend comity, the court took into account several factors, including, among others, that extending comity would not be "manifestly contrary to U.S. public policy", because the release provision in question did not fail to meet fundamental U.S. standards of fairness.[9] Indeed, although U.S. law might have required additional limitations on non-debtor third party releases, the applicable Canadian statute provided the Canadian court the jurisdiction and authority to grant such relief and, therefore, the U.S. bankruptcy court had the authority and discretion to recognize such foreign order pursuant

[9] Section 1506 provides a public policy exception by limiting the extension of comity if doing so "would be manifestly contrary to U.S. public policy." This public policy exception embodied in section 1506 "should be narrowly interpreted", restricting the public policy exception "to the most fundamental policies of the United States." See H.R. Rep. No. 109-31(I) at 109, reprinted in 2005 U.S.C.C.A.N. 88, 172.

to section 1507 of the Bankruptcy Code. In addition, the court noted that Canada was a "sister common law jurisdiction with procedures akin to [the United States]" and, thus, the bankruptcy court should extend comity with "less hesitation" because there are "fewer concerns over the procedural safeguards employed in those foreign proceedings." Id. at 698 (citing Hilton v. Guyot, 159 U.S. 113, 202-03 (1895)). Finally, the court also considered that the plan had been adopted with nearly unanimous creditor support after the Canadian courts had specifically considered and ruled on the release provisions. Id. at 700.

24. The same principles and factors that persuaded the Metcalfe court to extend comity are present here and support entry of the Revised Recognition Order. Granting the exculpation provisions would not violate U.S. public policy given that, as discussed above, they are consistent with the principles of the Bankruptcy Code as applied by U.S. courts and, moreover, they are not contrary to the most fundamental policies and standards of fairness in the United States since they were granted after adequate notice and a hearing. Indeed, the exculpation and immunity clauses of the Revised Recognition Order are substantially more narrow than those at issue in Metcalfe and, as such, are entirely supported by applicable U.S. law, as discussed above. Further, England is a "sister common law jurisdiction" with closely analogous judicial procedures and, therefore, there are fewer concerns over the procedural safeguards employed in the English proceedings. In re Ionica PLC, 241 B.R. at 835 ("English law is consistent with [United States'] concepts of due process and impartiality."); see Howard Seife and Francisco Vazquez, U.S. Courts Should Continue to Grant Recognition to Schemes of Arrangement of Solvent Insurance Companies, 17 J. Bankr. L. & Prac. 4 Art. 4, 571, 580 (July 2008) ("England is a 'sister common law jurisdiction' and its laws have procedures similar to those of the U.S.… Moreover, the [English Court] would not sanction a scheme unless it is one

that an intelligent and honest man may reasonably approve and would not be manifestly unfair.") (citations omitted). Moreover, as this Court noted in In re Ionica, "the laws of the United Kingdom, and specifically its insolvency laws, are generally afforded comity". In re Ionica PLC, 241 B.R. at 835. Finally, just as in In re Metcalfe, the fact that the Schemes received unanimous creditor approval and have been sanctioned by the English court after notice and upon a hearing should be dispositive in extending comity to the Schemes, including the exculpation and immunity provisions in the Revised Recognition Order, in order to facilitate the recognition and enforcement of the Schemes in the United States.

III. Consistency in the Reinsurance Market Further Supports the Approval of the Proposed Exculpatory and Immunity Provisions in the Revised Recognition Order

25. It is also important from the more global point of view of the London insurance market (the "London Insurance Market") that the relief granted in recognizing schemes of arrangement that are specific to insurers with business in run-off is uniform and consistent. Schemes of arrangement for insurers are of critical importance to the London Insurance Market and are a frequently-used, and often preferred, method in that market for closing direct and/or reinsurance business in an efficient manner. The London Insurance Market is the world's leading international insurance center for internationally traded insurance and a multi-billion dollar industry.[10] Further, reinsurance and insurance run-offs comprise 15% of this market,[11]

[10] The London Insurance Market is a distinct and separate part of the UK insurance and reinsurance market, which is the largest in Europe and the third in the world, accounting for 11% of the total worldwide premium income. See "UK Insurance-Key Facts", Association of British Insurers, Sept. 2009 (figures related to 2008).

[11] Insurance run-offs have total liabilities of approximately £30 billion. Statistics from the KPMG Run-off Survey: Non-life Insurance (hereinafter, the "KPMG Run-off Survey") (published in 2010) *available at* http://www.kpmg.co.uk/pubs/221144%20Run%20off%20survey_Accessible1.pdf, and attached hereto as Exhibit B..

with solvent run-offs constituting nearly half of total run-offs conducted.[12] U.K. schemes of arrangements have been used for many years to bring closure to insurance and reinsurance business in run-off. Such schemes require the sanction of the English Court, and often the recognition of such schemes by the United States bankruptcy courts based specifically on the authority and precedent of the decisions granted by the English and U.S. courts.[13] For the sake of consistency in this specific and critical market, uniform treatment is clearly important: the parties must know how they will be treated and what to expect in terms of, for example, liability in order for them to approach and utilize the scheme and recognition process, confident in a steady and predictable application of the law.

26. Moreover, while not legally dispositive, the multitude of schemes of arrangement recognized previously pursuant to section 304 of the Bankruptcy Code and currently pursuant to chapter 15, each of which contains similar exculpation and immunity provisions, also provides strong precedential support for the relief sought herein. See, e.g., In re Greyfriars Ins. Co. Ltd., et al., Case No. 07-B-12934 (JMP), Docket No. 23 (Bankr. S.D.N.Y. 2007); In re Oslo Reinsurance Co. (UK) Ltd. and Oslo Reinsurance Co. ASA, Case No. 07-12211 (RDD), Docket No. 15 (Bankr. S.D.N.Y. 2007); In re NRG Victory Reinsurance Ltd., Case No. 06-11052 (JMP), Docket No. 26 (Bankr. S.D.N.Y. 2006); In re Europaische Ruckversicherungs-Gesellschaft in Zurich (European Reinsurance Co. of Zurich), Case No. 06-13061 (REG), Docket No. 14 (Bankr. S.D.N.Y. 2006); La Mutuelle du Mans Assurances IARD

[12] Solvent run-offs comprise 46% of the run-offs conducted in the London Insurance Market. Further, solvent company run-offs in the London Insurance Market have total liabilities of approximately £13 billion and approximately £4 billion of capital tied-up in companies involved in solvent insurance run-off, excluding Lloyd's vehicles and companies with runoff portfolios that are combined with live business. See KPMG Run-off Survey at 8.

[13] A total of 227 solvent schemes of arrangement for non-life insurance companies had become effective by the end of 2009. See KPMG Run-off Survey at 8.

UK Branch MMA Account, Case No. 05-60100 (BRL), Docket No. 9 (Bankr. S.D.N.Y. 2005); In re Lion City Run-Off Private Ltd., Case No. 06-10461 (SMB), Docket No. 12 (Bankr S.D.N.Y. 2006). Indeed, courts have granted recognition orders that contain exculpatory language identical to that set forth in the Revised Recognition Order. In re Greyfriars Ins. Co. Ltd., et al., Case No. 07-B-12934 (JMP), Docket No. 23 (Bankr. S.D.N.Y. 2007). Granting the relief requested in the Revised Recognition Order will ensure a consistent and uniform approach to chapter 15 cases in the context of UK schemes of arrangements and in the vitally important London Insurance Market.

Dated: November 4, 2010
New York, New York

SIDLEY AUSTIN LLP

By: /s/ Lee S. Attanasio

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Attorneys for the Petitioner

EXHIBIT A

Clean Copy of Revised Recognition Order

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

--x	
In re	:
	: Chapter 15
Petition of David McGuigan, as foreign	:
representative of	: Case No. 10-14990 (SMB)
	:
Allianz Global Corporate & Specialty (France),	: (Jointly Administered)
Allianz IARD,	:
Delvag Luftfahrtversicherungs-AG, and	:
Nürnberger Allgemeine Versicherungs-AG.	:
	:
Debtors in a Foreign Proceeding.	:
--x	

ORDER AND FINAL DECREE GRANTING RECOGNITION OF FOREIGN PROCEEDINGS, PERMANENT INJUNCTION AND RELATED RELIEF

David McGuigan (the "Petitioner"), in his capacity as the duly appointed foreign representative, as defined in section 101(24) of title 11 of the United States Code (the "Bankruptcy Code"), of Allianz Global Corporate & Specialty (France) (formerly known as Compagnie d'Assurances Maritimes Aeriennes et Terrestres when writing direct insurance and reinsurance business in the CUAL Pool[1] and hereinafter "Allianz Global"), Allianz IARD (formerly known as Assurances Générales de France I.A.R.T. when writing direct insurance and reinsurance business in the CUAL Pool and hereinafter "Allianz IARD"), Delvag Luftfahrtversicherungs-AG ("Delvag") and Nürnberger Allgemeine Versicherungs-AG ("Nürnberger") (each a "Scheme Company" or "Debtor" and together, the "Scheme Companies" or "Debtors"), which were subject to jointly administered adjustment of debt proceedings (the "English Proceedings") and bound by those certain Schemes of Arrangement pursuant to Part 26 of the Companies Act 2006 (the "Schemes") sanctioned by the High Court of Justice of England and Wales (the "English Court") on July 9, 2010 for the Scheme Companies, filed the Verified Petition Under Chapter 15 For Recognition Of Foreign Proceedings (the "Petition") And Motion For Permanent Injunction (the "Petition and

---

[1] All capitalized terms not defined herein shall have the meaning ascribed to them in the Schemes or the Petition and Motion.

Motion"), the Memorandum Of Law In Support Of the Verified Petition Under Chapter 15 For Recognition Of Foreign Proceedings And Motion For Permanent Injunction (the "Memorandum of Law"), the Declaration of David McGuigan In Support Of Petition Under Chapter 15 For Recognition Of A Foreign Proceedings And Motion For Permanent Injunction And Order (the "McGuigan Declaration"), the Statement of Foreign Representative Identifying All Foreign Proceedings With Respect To Debtor Pursuant To 11 U.S.C. § 1515(c) (the "Section 1515(c) Statement"), and the List Filed Pursuant To Bankruptcy Rule 1007(a)(4) Of Administrators In Foreign Proceedings, Litigation Parties And Entities Against Whom Provisional Relief Is Being Sought Under 11 U.S.C. §1519 (the "Bankruptcy Rule 1007(a)(4) List") (collectively, the "Chapter 15 Pleadings") on September 22, 2010; and the Petitioner having given notice of the Petition in accordance with the Scheduling Order, on or before October 8, 2010 and by publication in The Wall Street Journal (US Edition) and Business Insurance magazine on or before October 8, 2010; and upon the record of the hearing before this Court on November 9, 2010 and all prior hearings and status conferences herein; this Court hereby finds and concludes as follows:

1. The Petitioner has demonstrated that:

   (a) This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 1334 and 157 and the "Standing Order of Referral of Cases to Bankruptcy Judges" of the United States District Court for the Southern District of New York (Ward, Acting C.J.), dated July 10, 1984; and

   (b) This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(P); and

   (c) The Petitioner, acting at the direction of the English Court, is a person duly appointed to act as the foreign representative (the "Foreign Representative") of the Scheme Companies within the meaning of section 101(24) of the Bankruptcy Code; and

   (d) The chapter 15 cases (the "Chapter 15 Cases") were properly commenced in compliance with and pursuant to 11 U.S.C. §§ 1504

and 1515; and

(e) The Verified Petitions satisfy the requirements of 11 U.S.C. § 1515; and

(f) The English Proceedings are "foreign proceedings" pursuant to 11 U.S.C. § 1517(a) and within the meaning of section 101(23) of the Bankruptcy Code; and

(g) The English Proceedings are "foreign main proceedings" pursuant to 11 U.S.C. §§ 1502(4) and 1517(b)(1) or, alternatively, "foreign non-main proceedings" pursuant to 11 U.S.C. § 1502(5); and

2. The Scheme Companies are entitled to all the relief pursuant to 11 U.S.C. § 1520 without limitation; and

3. The Scheme Companies are entitled to all the relief expressly set forth in 11 U.S.C. §§ 1521(a) and (b) and that is granted hereby. The Petitioner has demonstrated that the Scheme Companies are entitled to all the relief requested, including that permanent injunctive relief is necessary and appropriate, in the interests of the public and international comity, consistent with the public policy of the United States and warranted pursuant to section 1521 of the Bankruptcy Code and 7065 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules").

4. The Petitioner has demonstrated that permanent injunctive relief would not cause any hardships to Scheme Creditors of the Scheme Companies or other parties-in-interest that would not be outweighed by the benefits of such relief. Unless a permanent injunction is issued, it appears to this Court that one or more persons or entities may take action that is inconsistent with or in contravention of the terms of the Scheme Companies' Schemes, thereby interfering with, and causing harm to, the efforts of the Scheme Manager to administer the Schemes, and that as a result, the Scheme Companies and Scheme Creditors will suffer irreparable

injury for which there is no adequate remedy at law;

5. The interest of the public will be served by this Court's granting the relief requested by the Petitioner; and

6. Venue is properly located in this District pursuant to 28 U.S.C. § 1410.

NOW, THEREFORE, IT IS HEREBY

ORDERED, that the Petitioner is recognized as a "foreign representative" pursuant to 11 U.S.C. § 101(24); and

ORDERED, that the English Proceedings are recognized as "foreign main proceedings" pursuant to 11 U.S.C. §§ 1502(4) and 1517(a), (b)(1), or, alternatively, are "foreign nonmain proceedings" pursuant to 11 U.S.C. § 1502; and

ORDERED, that all relief afforded to a debtor in a foreign main proceeding pursuant to 11 U.S.C. § 1520 of the Bankruptcy Code is automatically effective as to the Scheme Companies, without modification and/or that all relief afforded under 11 U.S.C. §§ 1521(a) and (b) is automatically effective as to the Scheme Companies; and it is further

ORDERED, that comity shall be granted and the Schemes and the Sanction Orders shall be given full force and effect; and

ORDERED, that the Petitioner shall be awarded such other and further relief as this Court may deem just and proper; and

ORDERED, that all additional relief as authorized by section 1521 of the Bankruptcy Code shall be awarded; and

ORDERED, that the Schemes (including any amendments or modifications to the Schemes on or before the date of this Order) shall be given full force and effect and be binding on and enforceable against all Scheme Creditors, including without limitation, against a Scheme Creditor in its capacity as a debtor of the Scheme Companies, in the United States; and it is further

ORDERED, that all Scheme Creditors are hereby permanently enjoined and restrained from:

(a) taking or continuing any act to obtain possession of, or exercise control over

any property of the Scheme Companies or the proceeds of such property in the United States, and its territories, that is not in compliance with the Schemes, and seizing, repossessing, transferring, relinquishing, or disposing of any property of the Scheme Companies, or the proceeds of such property in the United States, and its territories that is not in compliance with the Schemes; and

(b) commencing or continuing any legal or equitable action or proceedings (including, without limitation, arbitration, mediation or any judicial, quasi-judicial, administrative or regulatory action, proceedings or process whatsoever), including by way of counterclaim, against the Scheme Companies or any of their property in the United States, and its territories, that is involved in the English Proceedings, or the proceeds thereof, or seeking discovery of any nature against the Scheme Companies; and

(c) commencing or continuing any proceeding against the duly appointed Foreign Representative, each of the Scheme Companies, the Centre for Effective Dispute Resolution ("CEDR"), any person who holds or has held the position of Chief Executive of CEDR, any person who holds or has held the position of President of the Institute of Actuaries in England, any person holding or who has at any time held the position of Scheme Manager, Scheme Adjudicator or Actuarial Adjudicator, the Chairman of the Creditors' Meetings, the Vote Assessor and any past or present director of any of the Scheme Companies, including their respective successors, delegates, directors, officers, agents, employees, representatives, advisers or attorneys, or any of them (the "Scheme Parties"), with respect to any claim or cause of action, in law or in equity, arising out of or relating to (i) any action taken or omitted to be taken as of the Effective Date by any of the Scheme Parties in connection with these Chapter 15 Cases or in preparing, disseminating, applying for or implementing the Schemes or the Order, or (ii) the construction or interpretation of the Schemes or out of any action taken or omitted to be taken by any of the Scheme Parties in connection with the administration of the Schemes; and

(d) enforcing any judicial, quasi-judicial, administrative or regulatory judgment, assessment or order or arbitration award and commencing or continuing any act or any other legal or equitable action or proceedings (including, without limitation, arbitration, mediation or any

judicial, quasi-judicial, administrative or regulatory action, proceedings or process whatsoever) to create, perfect or enforce any lien or other security interest, set off, attachment, garnishment, or other claim against a Scheme Company or any of its property in the United States, and its territories, or any proceeds thereof, including, without limitation, rights under reinsurance or retrocession contracts; and

(e) invoking, enforcing or relying on the benefits of any statute, rule or requirement of federal, state, or local law or regulation requiring the Scheme Companies to establish or post security in the form of a bond, letter of credit or otherwise as a condition of prosecuting or defending any proceedings (including, without limitation, arbitration, mediation or any judicial, quasi-judicial, administrative or regulatory action, proceedings or process whatsoever) in connection with an actual or alleged Scheme Claim or Scheme Debt and such statute, rule or requirement will be rendered null and void for proceedings, provided, however, that nothing in the Order shall in any respect affect any security in existence at the Effective Date or the replacements for such security; and

(f) withdrawing from, setting off against, or otherwise applying property that is the subject of any trust or escrow agreement or similar agreement in which the Scheme Companies have an interest in excess of amounts expressly authorized by the terms of the trust, escrow, or similar agreement;

(g) drawing down any letter of credit established by, on behalf or at the request of, the Scheme Companies, in excess of amounts expressly authorized by the terms of the contract or other agreement pursuant to which such letter of credit has been established;

(h) accelerating, terminating, exercising remedies or modifying any agreement, contract or arrangement with a Scheme Company on account of the filing of the Chapter 15 Pleadings or the recognition of the Schemes pursuant to chapter 15; and it is further

ORDERED that all Scheme Creditors of the Scheme Companies are permanently enjoined from taking any action in contravention of or inconsistent with the Schemes; and it is further

ORDERED, that except as otherwise provided herein or in the Schemes, in the absence of a bona fide dispute raised and conducted in accordance with the Schemes, all persons and entities in possession, custody, or control of property of any Scheme Company in the United States, or the proceeds thereof, are required to turn over and account for such property or proceeds thereof to the Scheme Companies; and it is further

ORDERED, that nothing in this Order prevents the continuance or commencement of proceedings against any person, entity, or other insurer other than the Scheme Companies, provided, however, that if any third party shall reach a settlement with, or obtain a judgment against, any person or entity other than the Scheme Companies, such settlement or judgment shall not be binding on or enforceable against the Scheme Companies or their property, or any proceeds thereof; and it is further

ORDERED, that the security provisions of Rule 65(c) of the Federal Rules of Civil Procedure, pursuant to Bankruptcy Rule 7065, shall be, and the same hereby are, waived with respect to the injunctive relief provided in this Order; and it is further

ORDERED, that no action taken by the Scheme Parties in preparing, disseminating, applying for, implementing or otherwise acting in furtherance of the Schemes, this Order, these Chapter 15 Cases, any further order for additional relief in these Chapter 15 Cases, or any adversary proceedings in connection therewith as may be commenced under the Bankruptcy Code, will be deemed to constitute a waiver of the immunity afforded pursuant to section 306 or section 1510, as applicable, of the Bankruptcy Code, or under the law of the United States or otherwise; and it is further

ORDERED, that all Scheme Creditors that are beneficiaries of letters of credit established by, on behalf or at the request of a Scheme Company or parties to any trust, escrow or similar arrangement in which a Scheme Company has an interest, are required to:

(a) provide notice to the Petitioner's United States counsel of any drawdown on any letter of credit established by, on behalf or at the request of, a Scheme Company, or any withdrawal from, set-off against, or other application of property that is the subject of any trust or

escrow agreement or similar arrangement in which any of the Scheme Companies has an interest, together with information sufficient to permit the Scheme Manager to assess the propriety of such drawdown, withdrawal, set-off or other application, including, without limitation, the date and amount of such drawdown, withdrawal, setoff or other application and a copy of any contract, related trust or other agreement pursuant to which any such drawdown, withdrawal, setoff, or other application was made, and provide such notice and other information contemporaneously therewith; provided, however, no drawing against any letter of credit or withdrawal from any escrow, trust or similar arrangement shall be made in connection with any commutation unless the amount of such drawing has been agreed in writing with the Scheme Companies and the Scheme Manager; and

(b) turn over and account to the Scheme Manager for any funds resulting from the drawdown of any letter of credit or the application of funds subject to any trust, escrow or similar arrangement, withdrawal, set-off, or other application in excess of amounts expressly authorized by the terms of the contract, any related trust or other agreement pursuant to which such letter of credit, trust, escrow or similar arrangement has been established; and it is further

ORDERED, that the Scheme Companies and the Scheme Manager be authorized to transfer to the foreign proceedings for distribution pursuant to the Schemes any monies or assets of the Scheme Company which the Scheme Company or the Scheme Manager have or may hereafter recover; and it is further

ORDERED, that all persons that have a claim of any nature or source against a Scheme Company and who are parties to any proceedings (including, without limitation, arbitration or any judicial, quasi-judicial, administrative action, proceeding or process whatsoever) in which a Scheme Company is or was named as a party, or as a result of which a liability of a Scheme Company may be established, is required to place the Petitioner's United States counsel (Sidley Austin LLP, 787 Seventh Avenue, New York, NY 10019, Attn: Lee S. Attanasio, Esq., and Alex R. Rovira, Esq.) on the master service list of any such action or other legal proceeding, and to take such other steps as may be necessary to ensure that such counsel receives:

(a) copies of any and all documents served by the parties to such action or other

legal proceeding or issued by the court, arbitrator, administrator, regulator or similar official having jurisdiction over such action or legal proceeding; and

(b) any and all correspondence, or other documents circulated to parties named in the master service list; and it is further

ORDERED, that the English Court has exclusive jurisdiction to hear and determine any suit, action, claim or proceeding and to settle any dispute which may arise out of the construction or interpretation of the Schemes, or out of any action taken or omitted to be taken by any of the Scheme Parties (as defined in page 5 of this Order) in connection with the administration of the Schemes; provided, however, that in relation to the determination of Scheme Claims nothing in this Order affects the validity of provisions determining governing law and jurisdiction, whether contained in any contract between the Scheme Companies and any of its Scheme Creditors or otherwise; and it is further

ORDERED, that this Court shall retain jurisdiction with respect to the enforcement, amendment, or modification of the Order or requests for any additional relief in these Chapter 15 Cases and all adversary proceedings in connection therewith properly commenced and within the jurisdiction of this Court; and it is further

ORDERED, that this Order shall be served:

(a) by United States mail, first class prepaid, on or before November 19, 2010 as prescribed by this Court upon all the known Scheme Creditors in the U.S. of whose current address the Scheme Manager is aware at the date of service; and

(b) by publication in The Wall Street Journal (US Edition) and Business Insurance magazine on or before November 19, 2010; and it is further

ORDERED, that such service will be good and sufficient service and adequate notice of this Order for all purposes.

Dated: November 9, 2010
New York, New York

____
UNITED STATES BANKRUPTCY JUDGE

EXHIBIT B

Blackline comparing the Revised Recognition Order
to the Proposed Recognition Order

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

-- x	
In re	:
	: Chapter 15
Petition of David McGuigan, as foreign	:
representative of	: Case No. 10-14990 (SMB)
	:
Allianz Global Corporate & Specialty (France),	: (Jointly Administered)
Allianz IARD,	:
Delvag Luftfahrtversicherungs-AG, and	:
Nürnberger Allgemeine Versicherungs-AG.	:
	:
Debtors in a Foreign Proceeding.	:
-- x	

ORDER AND FINAL DECREE GRANTING RECOGNITION OF FOREIGN PROCEEDINGS, PERMANENT INJUNCTION AND RELATED RELIEF

David McGuigan (the "Petitioner"), in his capacity as the duly appointed foreign representative, as defined in section 101(24) of title 11 of the United States Code (the "Bankruptcy Code"), of Allianz Global Corporate & Specialty (France) (formerly known as Compagnie d'Assurances Maritimes Aeriennes et Terrestres when writing direct insurance and reinsurance business in the CUAL Pool[1] and hereinafter "Allianz Global"), Allianz IARD (formerly known as Assurances Générales de France I.A.R.T. when writing direct insurance and reinsurance business in the CUAL Pool and hereinafter "Allianz IARD"), Delvag Luftfahrtversicherungs-AG ("Delvag") and Nürnberger Allgemeine Versicherungs-AG ("Nürnberger") (each a "Scheme Company" or "Debtor" and together, the "Scheme Companies" or "Debtors"), which were subject to jointly administered adjustment of debt proceedings (the "English Proceedings") and bound by those certain Schemes of Arrangement pursuant to Part 26 of the Companies Act 2006 (the "Schemes") sanctioned by the High Court of Justice of England and Wales (the "English Court") on July 9, 2010 for the Scheme Companies, filed the Verified Petition Under Chapter 15 For Recognition Of Foreign Proceedings (the "Petition") And Motion For Permanent Injunction (the "Petition and Motion"), the Memorandum Of Law In Support Of the Verified Petition Under Chapter 15 For

[1] All capitalized terms not defined herein shall have the meaning ascribed to them in the Schemes or the Petition and Motion.

Recognition Of Foreign Proceedings And Motion For Permanent Injunction (the "Memorandum of Law"), the Declaration of David McGuigan In Support Of Petition Under Chapter 15 For Recognition Of A Foreign Proceedings And Motion For Permanent Injunction And Order (the "McGuigan Declaration"), the Statement of Foreign Representative Identifying All Foreign Proceedings With Respect To Debtor Pursuant To 11 U.S.C. § 1515(c) (the "Section 1515(c) Statement"), and the List Filed Pursuant To Bankruptcy Rule 1007(a)(4) Of Administrators In Foreign Proceedings, Litigation Parties And Entities Against Whom Provisional Relief Is Being Sought Under 11 U.S.C. §1519 (the "Bankruptcy Rule 1007(a)(4) List") (collectively, the "Chapter 15 Pleadings") on September 22, 2010; and the Petitioner having given notice of the Petition in accordance with the Scheduling Order, on or before [______]October 8, 2010 and by publication in The Wall Street Journal (US Edition) and Business Insurance magazine on or before [__________]October 8, 2010; and upon the record of the hearing before this Court on [_______]November 9, 2010 and all prior hearings and status conferences herein; this Court hereby finds and concludes as follows:

1. The Petitioner has demonstrated that:

   (a) This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 1334 and 157 and the "Standing Order of Referral of Cases to Bankruptcy Judges" of the United States District Court for the Southern District of New York (Ward, Acting C.J.), dated July 10, 1984; and

   (b) This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(P); and

   (c) The Petitioner, acting at the direction of the English Court, is a person duly appointed to act as the foreign representative (the "Foreign Representative") of the Scheme Companies within the meaning of section 101(24) of the Bankruptcy Code; and

   (d) The chapter 15 cases (the "Chapter 15 Cases") were properly commenced in compliance with and pursuant to 11 U.S.C. §§ 1504

and 1515; and

(e) The Verified Petitions satisfy the requirements of 11 U.S.C. § 1515; and

(f) The English Proceedings are "foreign proceedings" pursuant to 11 U.S.C. § 1517(a) and within the meaning of section 101(23) of the Bankruptcy Code; and

(g) The English Proceedings are "foreign main proceedings" pursuant to 11 U.S.C. §§ 1502(4) and 1517(b)(1) or, alternatively, "foreign non-main proceedings" pursuant to 11 U.S.C. § 1502(5); and

2. The Scheme Companies are entitled to all the relief ~~set forth in section 1~~ pursuant to 11 U.S.C. § 1520 without limitation; and

3. The Scheme Companies are entitled to all the relief expressly set forth in 11 U.S.C. §§ 1521(a) and (b) and that is granted hereby. The Petitioner has demonstrated that the Scheme Companies are entitled to all the relief requested, including that permanent injunctive relief is necessary and appropriate, in the interests of the public and international comity, consistent with the public policy of the United States and warranted pursuant to section 1521 of the Bankruptcy Code and 7065 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules").

4. The Petitioner has demonstrated that permanent injunctive relief would not cause any hardships to Scheme Creditors of the Scheme Companies or other parties-in-interest that would not be outweighed by the benefits of such relief. Unless a permanent injunction is issued, it appears to this Court that one or more persons or entities may take action that is inconsistent with or in contravention of the terms of the Scheme Companies' Schemes, thereby interfering with, and causing harm to, the efforts of the Scheme Manager to administer the Schemes, and that as a result, the Scheme Companies and Scheme Creditors will suffer irreparable

injury for which there is no adequate remedy at law;

5. The interest of the public will be served by this Court's granting the relief requested by the Petitioner; and

6. Venue is properly located in this District pursuant to 28 U.S.C. § 1410.

NOW, THEREFORE, IT IS HEREBY

ORDERED, that the Petitioner is recognized as a "foreign representative" pursuant to 11 U.S.C. § 101(24); and

ORDERED, that the English Proceedings are recognized as "foreign main proceedings" pursuant to 11 U.S.C. §§ 1502(4) and 1517(a), (b)(1), or, alternatively, are "foreign nonmain proceedings" pursuant to 11 U.S.C. § 1502; and

ORDERED, that all relief afforded to a debtor in a foreign main proceeding pursuant to 11 U.S.C. § 1520 of the Bankruptcy Code is automatically effective as to the Scheme Companies, without modification and/or that all relief afforded under 11 U.S.C. §§ 1521(a) and (b) is automatically effective as to the Scheme Companies; and it is further

ORDERED, that comity shall be granted and the Schemes and the Sanction Orders shall be given full force and effect; and

ORDERED, that the Petitioner shall be awarded such other and further relief as this Court may deem just and proper; and

ORDERED, that all additional relief as authorized by section 1521 of the Bankruptcy Code shall be awarded; and

ORDERED, that the Schemes (including any amendments or modifications to the Schemes on or before the date of this Order) shall be given full force and effect and be binding on and enforceable against all Scheme Creditors, including without limitation, against a Scheme Creditor in its capacity as a debtor of the Scheme Companies, in the United States; and it is further

ORDERED, that all Scheme Creditors are hereby permanently enjoined and restrained from:

(a) taking or continuing any act to obtain possession of, or exercise control over

any property of the Scheme Companies or the proceeds of such property in the United States, and its territories, that is not in compliance with the Schemes, and seizing, repossessing, transferring, relinquishing, or disposing of any property of the Scheme Companies, or the proceeds of such property in the United States, and its territories that is not in compliance with the Schemes; and

(b) commencing or continuing any legal or equitable action or proceedings (including, without limitation, arbitration, mediation or any judicial, quasi-judicial, administrative or regulatory action, proceedings or process whatsoever), including by way of counterclaim, against the Scheme Companies or any of their property in the United States, and its territories, that is involved in the English Proceedings, or the proceeds thereof, ~~and~~or seeking discovery of any nature against the Scheme Companies; and

(c) commencing or continuing any proceeding against the duly appointed Foreign Representative, each of the Scheme Companies, the Centre for Effective Dispute Resolution ("CEDR"), any person who holds or has held the position of Chief Executive of CEDR, any person who holds or has held the position of President of the Institute of Actuaries in England, any person holding or who has at any time held the position of Scheme Manager, Scheme Adjudicator or Actuarial Adjudicator, the Chairman of the Creditors' Meetings, the Vote Assessor and any past or present director of any of the Scheme Companies, including their respective successors, delegates, directors, officers, agents, employees, representatives, advisers or attorneys, or any of them (the "Scheme Parties"), with respect to any claim or cause of action, in law or in equity, arising out of or relating to (i) any action taken or omitted to be taken as of the Effective Date by any of the Scheme Parties in connection with these Chapter 15 Cases or in preparing, disseminating, applying for or implementing the Schemes or the Order, or (ii) the construction or interpretation of the Schemes or out of any action taken or omitted to be taken by any of the Scheme Parties in connection with the administration of the Schemes; and

(d) enforcing any judicial, quasi-judicial, administrative or regulatory judgment, assessment or order or arbitration award and commencing or continuing any act or any other legal or equitable action or proceedings (including, without limitation, arbitration, mediation or any

judicial, quasi-judicial, administrative or regulatory action, proceedings or process whatsoever) to create, perfect or enforce any lien or other security interest, set off, attachment, garnishment, or other claim against a Scheme Company or any of its property in the United States, and its territories, or any proceeds thereof, including, without limitation, rights under reinsurance or retrocession contracts; and

(e) invoking, enforcing or relying on the benefits of any statute, rule or requirement of federal, state, or local law or regulation requiring the Scheme Companies to establish or post security in the form of a bond, letter of credit or otherwise as a condition of prosecuting or defending any proceedings (including, without limitation, arbitration, mediation or any judicial, quasi-judicial, administrative or regulatory action, proceedings or process whatsoever) in connection with an actual or alleged Scheme Claim or Scheme Debt and such statute, rule or requirement will be rendered null and void for proceedings, provided, however, that nothing in the Order shall in any respect affect any security in existence at the Effective Date or the replacements for such security; and

(f) withdrawing from, setting off against, or otherwise applying property that is the subject of any trust or escrow agreement or similar agreement in which the Scheme Companies have an interest in excess of amounts expressly authorized by the terms of the trust, escrow, or similar agreement;

(g) drawing down any letter of credit established by, on behalf or at the request of, the Scheme Companies, in excess of amounts expressly authorized by the terms of the contract or other agreement pursuant to which such letter of credit has been established;

(h) declaring or treatingaccelerating, terminating, exercising remedies or modifying any agreement, contract or arrangement with a Scheme Company on account of the filing of the Chapter 15 Pleadings or the Schemes as a default or event of default under any agreement, contract or arrangement;

and it is further

ORDERED, that a Net Valuation Statement, including all amounts (including,

~~without limitation, Scheme Debt) determined by the Scheme Adjudicator or Actuarial Adjudicator, shall be final and binding on the Scheme Companies and any person or entity that is a Scheme Creditor of a Scheme Company, including, without limitation, against such person or entity in its capacity as a debtor of a Scheme Company in the United States; and it is furtherORDERED, that a Net Ascertained Claim or Net Debt (as defined in the Schemes) determined as provided under the Schemes shall be final and binding on the Scheme Companies and any person or entity that is a Scheme Creditor~~recognition of the Schemes pursuant to chapter 15; and it is further

ORDERED that all Scheme Creditors of the Scheme Companies are permanently enjoined from taking any action in contravention of or inconsistent with the Schemes; and it is further

ORDERED, that except as otherwise provided herein or in the Schemes, in the absence of a bona fide dispute raised and conducted in accordance with the Schemes, all persons and entities in possession, custody, or control of property of any Scheme Company in the United States, or the proceeds thereof, are required to turn over and account for such property or proceeds thereof to the Scheme Companies; and it is further

ORDERED, that nothing in this Order prevents the continuance or commencement of proceedings against any person, entity, or other insurer other than the Scheme Companies, provided, however, that if any third party shall reach a settlement with, or obtain a judgment against, any person or entity other than the Scheme Companies, such settlement or judgment shall not be binding on or enforceable against the Scheme Companies or their property, or any proceeds thereof; and it is further

ORDERED, that the security provisions of Rule 65(c) of the Federal Rules of Civil Procedure, pursuant to Bankruptcy Rule 7065, shall be, and the same hereby are, waived with respect to the injunctive relief provided in this Order; and it is further

ORDERED, that no action taken by the ~~duly appointed Foreign Representative, the Scheme Companies, CEDR, any person who holds or has held the position of Chief Executive of CEDR, any person who holds or has held the position of President of the Institute of Actuaries in~~

~~England, any person holding or who has at any time held the position of Scheme Manager, Scheme Adjudicator or Actuarial Adjudicator, the Chairman of the Creditors' Meetings, the Vote Assessor and any past or present director of any of the Scheme Companies, including their respective successors, delegates, directors, officers, agents, employees, alternates, partners, representatives, advisers, or counsel, or any of them,~~ Scheme Parties in preparing, disseminating, applying for, implementing or otherwise acting in furtherance of the Schemes, this Order, these Chapter 15 Cases, any further order for additional relief in these Chapter 15 Cases, or any adversary proceedings in connection therewith as may be commenced under the Bankruptcy Code, will be deemed to constitute a waiver of the immunity afforded ~~to the Scheme Companies, CEDR, any person who holds or has held the position of Chief Executive of CEDR, any person who holds or has held the position of President of the Institute of Actuaries in England, any person holding or who has at any time held the position of Scheme Manager, Scheme Adjudicator or Actuarial Adjudicator, the Chairman of the Creditors' Meetings, the Vote Assessor and any past or present director of any of the Scheme Companies, including their respective successors, delegates, directors, officers, agents, employees, alternates, partners, representatives, advisers, or counsel~~ pursuant to section 306 or section 1510, as applicable, of the Bankruptcy Code, or under the law of the United States or otherwise; and it is further

ORDERED, that all Scheme Creditors that are beneficiaries of letters of credit established by, on behalf or at the request of a Scheme Company or parties to any trust, escrow or similar arrangement in which a Scheme Company has an interest, are required to:

(a) provide notice to the ~~Scheme Manager~~Petitioner's United States counsel of any drawdown on any letter of credit established by, on behalf or at the request of, a Scheme Company, or any withdrawal from, set-off against, or other application of property that is the subject of any trust or escrow agreement or similar arrangement in which any of the Scheme Companies has an interest, together with information sufficient to permit the Scheme Manager to assess the propriety of such drawdown, withdrawal, set-off or other application, including, without limitation, the date and amount of such drawdown, withdrawal, setoff or other application and a

copy of any contract, related trust or other agreement pursuant to which any such drawdown, withdrawal, setoff, or other application was made, and provide such notice and other information contemporaneously therewith; provided, however, no drawing against any letter of credit or withdrawal from any escrow, trust or similar arrangement shall be made in connection with any commutation unless the amount of such drawing has been agreed in writing with the Scheme Companies and the Scheme Manager; and

(b) turn over and account to the Scheme Manager for any funds resulting from the drawdown of any letter of credit or the application of funds subject to any trust, escrow or similar arrangement, withdrawal, set-off, or other application in excess of amounts expressly authorized by the terms of the contract, any related trust or other agreement pursuant to which such letter of credit, trust, escrow or similar arrangement has been established; and it is further

ORDERED, that the Scheme Companies and the Scheme Manager be authorized to transfer to the foreign proceedings for distribution pursuant to the Schemes any monies or assets of the Scheme Company which the Scheme Company or the Scheme Manager have or may hereafter recover; and it is further

ORDERED, that all persons that have a claim of any nature or source against a Scheme Company and who are parties to any proceedings (including, without limitation, arbitration or any judicial, quasi-judicial, administrative action, proceeding or process whatsoever) in which a Scheme Company is or was named as a party, or as a result of which a liability of a Scheme Company may be established, is required to place the Petitioner's United States counsel (Sidley Austin LLP, 787 Seventh Avenue, New York, NY 10019, Attn: Lee S. Attanasio, Esq., and Alex R. Rovira, Esq.) on the master service list of any such action or other legal proceeding, and to take such other steps as may be necessary to ensure that such counsel receives:

(a) copies of any and all documents served by the parties to such action or other legal proceeding or issued by the court, arbitrator, administrator, regulator or similar official having jurisdiction over such action or legal proceeding; and

(b) any and all correspondence, or other documents circulated to parties named

in the master service list; and it is further

ORDERED, that the English Court has exclusive jurisdiction to hear and determine any suit, action, claim or proceeding and to settle any dispute which may arise out of the construction or interpretation of the Schemes, or out of any action taken or omitted to be taken by any of the Scheme Parties (as defined in page 5 of this Order) in connection with the administration of the Schemes; provided, however, that in relation to the determination of Scheme Claims nothing in ~~the~~this Order affects the validity of provisions determining governing law and jurisdiction, whether contained in any contract between the Scheme Companies and any of its Scheme Creditors or otherwise; and it is further

ORDERED, that this Court shall retain jurisdiction with respect to the enforcement, amendment, or modification of the Order or requests for any additional relief in these Chapter 15 Cases and all adversary proceedings in connection therewith properly commenced and within the jurisdiction of this Court; and it is further

ORDERED, that this Order shall be served:

(a) by United States mail, first class prepaid, on or before ~~[~~____~~]~~November 19, 2010 as prescribed by this Court upon all the known Scheme Creditors in the U.S. of whose current address the Scheme Manager is aware at the date of service; and

(b) by publication in The Wall Street Journal (US Edition) and Business Insurance magazine on or before ~~[~~__________~~]~~November 19, 2010; and it is further

ORDERED, that such service will be good and sufficient service and adequate notice of this Order for all purposes.

Dated: _______ ~~of~~ __________~~,~~November 9, 2010
New York, New York

____
UNITED STATES BANKRUPTCY JUDGE

Document comparison by Workshare Professional on Thursday, November 04, 2010 1:55:45 PM

Input:	
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Document 2 ID	interwovenSite://NADMS/NY1/7441862/1
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Format change	
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Moved cell	
Split/Merged cell	
Padding cell	

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Insertions	21
Deletions	25
Moved from	1
Moved to	1
Style change	0
Format changed	0
Total changes	48

EXHIBIT C

KPMG Run-off Survey

cutting through complexity™

RESTRUCTURING

The KPMG Run-off survey: Non-life insurance

October 2010

kpmg.co.uk

This well regarded and long-running survey continues to deliver incisive views into the UK run-off market. As can be expected, the traditional toxic legacy years, primarily consisting of APH exposures, are running-off. A number of new schemes of arrangement became effective in the last year, and others have been proposed, which will continue to bring finality to the legacy liabilities that have hung around London's neck for the last two decades or more. However, with the finalisation of the Equitas/Berkshire Hathaway deal as an example, we do not expect all the historic toxic liabilities to be extinguished in an accelerated manner as there are clearly some consolidators who prefer the long game.

A significant issue for run-off insurers in the coming period continues to be the ever nearer Solvency II implementation. As mentioned in my foreword to last year's survey, ARC created a working party to analyse the impact of the new regime, provide feedback to CEIOPS and FSA, and where appropriate to represent the interests of run-off insurers. The working party has made some inroads in this regard but requires much greater feedback from run-off insurers of all sizes. Apart from the main run-off consolidators, there seem to be very few run-off insurers participating in the analysis of the incoming regime and without sufficient evidence of the actual effect of Solvency II the working party is unable to adequately represent the sector. It is apparent that the relevant authorities are expecting compliance and I encourage all run-off companies to review QIS5 and assist the working party in presenting the results and the possible impact on the sector.

With its valuable training program and member networking events, ARC provides a valuable resource to the whole insurance community. But as the "traditional" run-off sector diminishes, either through closure or merger, it will become increasingly more important for those companies with embedded run-off to support the association and the work it undertakes. ARC continues to provide support to the sector and is again delighted to endorse this successful publication.

Paul Corver, ARC Chairman

ARC (Association of Run-off Companies Limited) is the UK market body for insurance and reinsurance legacy management professionals. It is a limited company with its members as shareholders. ARC has been in existence since 1998 and has in excess of 200 members.

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Foreword

On the face of it, there appears to have been no fundamental change in the size of the UK non-life run-off market over the past two years.

Liabilities rose significantly in 2008 and have fallen someway back to 2007 levels this year. The principal reasons for the significant rise and fall were the same: currency fluctuations and the fortunes of the monoline insurers which went into run-off in 2008 as a result of the financial crisis. In terms of market size, pre-2008, the trend was downwards.

The make up of the UK non-life run-off market is certainly changing: long tail US asbestos, pollution and health hazard (APH) liabilities, so long the driver for the run-off industry in the London market, continue to be eliminated through settlement and commutation. However, new entrants to the run-off market — such as the monoline insurers in 2008 — have been introducing, and will continue to introduce, predominantly short-tail liabilities. Whilst the nature of it may be changing, there is no question that the run-off market and the industry it has generated are alive and well; the industry continues to rise to its challenges and adapt to the changing requirements of the insurance market.

The longer term business strategies of some of the major run-off acquirers will ensure that the traditional run-off market will survive for a considerable period yet. We will also see that there is at least one other significant class of long tail liability, not wholly recorded in our data, which is becoming increasingly prominent: UK asbestos.

Two years ago, the UK run-off market was particularly active with the continued growth of solvent schemes and the fantastically buoyant market for the sale of run-off portfolios. As the Chronicle of run-off events on pages 38-39 shows, 2009/10 has been no less active. However, while this survey shows that the search for an effective exit plan is still high on the agenda of the market's leaders, there are other issues that have come to the fore in 2009/10. Preparations for Solvency II are occupying more and more time and resource; and for service providers in particular, diversification of services may be the difference between their survival or demise as income previously earned from the traditional run-off market tails off. Service providers may be required to look for opportunities further afield, and to use the skills that run-off professionals have demonstrated successfully in the live market. The run-off industry is showing its flexibility once again.

Whilst the insurance market has emerged relatively unscathed from the recession and recent major catastrophes have not translated into paradigm shifting losses, insurance companies still face a number of difficult challenges; for example, cycle management whilst pricing is soft, investment performance in a low interest rate environment and the time and cost associated with the burden of compliance in a changing regulatory framework. The market has seen the impact of these and other challenges in jurisdictions outside of the UK as evidenced by an increase in run-off in Ireland, certain offshore jurisdictions, the United States and Continental Europe. It seems inevitable that these challenges, and the continuing macro-economic uncertainty, will impact upon the size and characteristics of the UK non-life run-off market in the future.

This is the eighth KPMG survey of the UK non-life insurance market, endorsed by ARC. We have continued to conduct interviews with leading figures in the UK and Continental European run-off markets, who comment on the current developments in the sector. I am extremely grateful to these executives who have kindly given up their time to contribute to this survey. Their input is invaluable.

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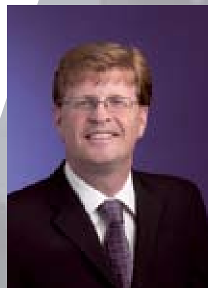
Key findings

- Total liabilities of the UK non-life run-off market are estimated at £29.7 billion (2008: £37.4 billion).
- Liabilities of the non-life run-off market in the UK represent approximately 15 percent of the non-life market as a whole, compared to 18 percent in 2008.
- Total capital tied up in solvent UK non-life companies in run-off is approximately £4.2 billion (2008: £5.4 billion).
- By the end of 2009, liabilities of UK companies whose entire non-life insurance business has been subject to a solvent scheme of arrangement totalled approximately £527 million (2008: £506 million).
- A total of 227 solvent schemes of arrangement for non-life insurance companies had become effective by the end of 2009 (2008: 177).
- There were eight Part VII transfers of non-life portfolios in 2009, of which four involved predominantly discontinued business[1].
- Economic interest in over 65 percent of the total solvent run-off market is now owned by six insurance groups.



Mike Walker
Head of Restructuring's Insurance Solutions Practice
KPMG LLP (UK)
October 2010

1 Insurance business transfers under Part VII of the Financial Services and Markets Act 2000

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1. UK non-life insurance market

In this section we review the size of the UK non-life run-off market.

In summary, we look at the components of the run-off market, whilst in the following sections we consider in more detail what constitutes these component parts and examine their unique features.

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Survey specifics

There are approximately 525 firms and Lloyd's of London (Lloyd's) managing agents currently authorised by the Financial Services Authority (FSA) to carry on general insurance business in the UK, including composite insurers which write both life and non-life insurance. Of this number, there are approximately 450 companies for which publicly held information is available. Our survey is based on an analysis of this publicly available financial information, including regulatory returns submitted to the FSA, utilising A.M.Best Best's Statement File UK and from audited statutory accounts filed at Companies House.

This information has not, however, been verified or validated in any way by KPMG LLP (UK).

A number of industry executives have provided commentary on the run-off market. The views and opinions expressed are those of the survey respondents and do not necessarily represent the views and opinions of their organisations or KPMG LLP (UK).

This survey analyses the state of the UK non-life run-off market as at the end of 2009, unless specifically described otherwise. As in our previous surveys, UK non-life business of companies established in other EU countries has not been included.

For the purposes of the survey, insurance companies classified as 'in run-off comprise those companies that have ceased to actively underwrite new business. Whether a company has ceased underwriting has been determined by reference to public announcements by the applicable companies or in the absence of such information, by application of a premium volume test. Due to the inherent delays in the reporting and accounting of financial transactions in non-life insurance business, and in particular reinsurance, premiums (including adjustment and reinstatement premiums) may continue to be received long after a company ceases underwriting. Nevertheless, premium income will, in general, reduce substantially shortly after a company ceases underwriting.

Conversely, 'run-off at Lloyd's comprises liabilities of open syndicate years in respect of underwriting years from 1993 to 2007 inclusively. A syndicate year remains open until its business is fully concluded or is transferred to another syndicate or insurer. Underwriting years 2008 and 2009 are not included as open syndicate years; under Lloyd's Bye Laws, a syndicate s results are not finally determined until at least two years after the end of each underwriting year.

Lloyd's is not an insurance company but a society of members, both corporate and individual, who underwrite in syndicates, on an annual joint venture basis.

Unless otherwise stated, liabilities are expressed gross of reinsurance.

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1.1 Current size

The gross liabilities of the UK non-life run-off market in 2009 were £29.7 billion (a 21 percent reduction from £37.4 billion in 2008) representing approximately 15 percent of the non-life market as a whole, as shown in Table 1.

The UK non-life run-off market can be divided into four distinct components as shown in Table 2.

Table 1: Size of the UK non-life market

As at end of 2009	Total liabilities (£ billion)	Percentage share of market	Technical provisions (£ billion)	Percentage share of market
Active market	170.4	85%	139.9	85%
Run-off market	29.7	15%	25.4	15%
Total	200.1	100%	165.3	100%

Source: A.M. Best - Best's Statement File – UK, KPMG LLP (UK) 2010, Lloyd's

Table 2: Main components of the UK non-life run-off market

As at end of 2009	Total liabilities (£ billion)	Percentage share of market	Technical provisions (£ billion)	Percentage share of market
Solvent company run-off	13.4	45%	11.6	46%
Insolvent company run-off	9.1	31%	6.7	26%
Equitas (Lloyd's 1992 and prior)	5.3	18%	5.3	21%
Lloyd's (1993 onwards)	1.9	6%	1.8	7%
Total	29.7	100%	25.4	100%

Source: A.M. Best – Best's Statement File – UK, KPMG LLP (UK) 2010, Lloyd's

The principal drivers of the 21 percent reduction in size of the run-off market in the year to 2009 are as follows:

- The appreciation of UK sterling against the US dollar and euro currencies (approximately 10 percent and 12 percent, respectively);
- Favourable prior year claims development which has contributed to a number of prior year reserve releases;
- A significant reduction in the reported technical provisions of monoline insurers which went into run-off in 2008; and
- The continued elimination of syndicate open years in the Lloyd's market.

Steve Goodlud, Director, KPMG in the UK explains that "a large proportion of the UK non-life run-off liabilities arise from overseas claims, in particular APH claims originating from the US. Any UK sterling: US dollar exchange rate movements will, therefore, distort the results of companies with US dollar denominated claims which report their results in UK sterling. There is a strong correlation between the size of the run-off market and the UK sterling: US dollar exchange rate."

During 2008, UK sterling depreciated by approximately 30 percent against the US dollar which significantly increased insurers' technical provisions when expressed in UK sterling. In 2009, UK sterling appreciated by 10 percent against the US dollar, which decreased the reported UK sterling liabilities of these US dollar denominated claims. These exchange rate movements have impacted all areas of the run-off market.

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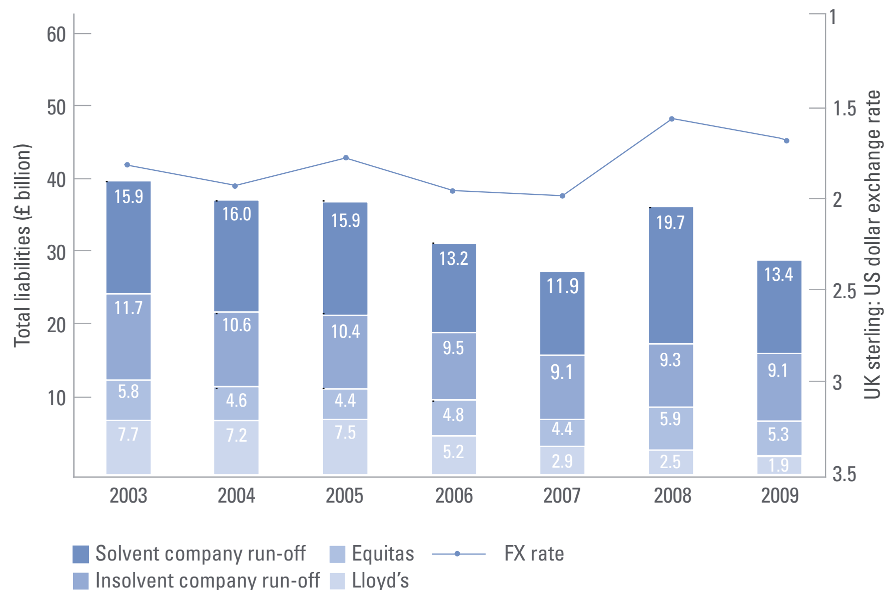
1.2 Change in size

Since 2003, the UK non-life run-off market has shrunk steadily apart from one exceptional year when run-off liabilities jumped in 2008 as a result of the financial crisis and its impact on exchange rates and specialist monoline insurers (see Figure 1). Generally, insurers have been successful in extinguishing run-off liabilities from earlier decades and Ken Randall, Chairman and CEO of R&Q, is of the view that "the traditional London run-off market is in terminal decline"! This may be true for insurers seeking early closure of their discontinued business, because much of that has now been achieved. However, longer term business strategies adopted by some carriers suggest that a residual element of run-off will persist for many years to come.

Longer term business strategies adopted by some carriers suggest that a residual element of run-off will persist for many years to come.

Figure 1: Change in size of UK non-life run-off market[2]



Source: A.M. Best – Best's Statement File – UK, KPMG LLP (UK) 2010, Lloyd's

We consider the future prospects for the UK non-life run-off market later in our survey.

In contrast to the steady reduction in the liabilities of the UK non-life run-off market, our 'sister' survey[3] into the German-speaking run-off market suggests that discontinued business is moving in the other direction. The size of the market has increased from €75 billion to €115 billion since 2007 and now represents 29 percent of the entire liabilities of German-speaking non-life (re)insurance market.

2 The total liabilities for Equitas for 2003–2005 (year end 31 March 2004–2006) are discounted values taken from its audited financial statements. Thereafter, Equitas presented its results on an undiscounted basis. The undiscounted liabilities for prior years are: 2003 – £7.7 billion, 2004 – £6.4 billion, 2005 – £6.4 billion.

3 KPMG in Germany: Run-off survey 2010

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2. Company market

2.1 Solvent market

The largest component of the UK non-life run-off market is solvent company run-off.

2.1.1 Change in size

At the end of 2009, the solvent company market had total liabilities of £13.4 billion.

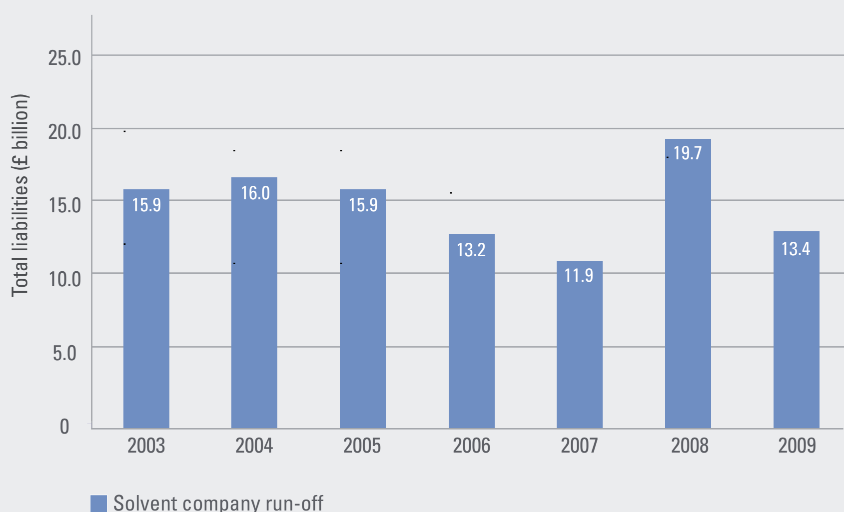
Table 3: Main components of the UK non-life run-off market

At end of 2009	Total liabilities (£ billion)	Percentage share of market	Technical provisions (£ billion)	Percentage share of market
Solvent company run-off	**13.4**	**45%**	**11.6**	**46%**
Insolvent company run-off	9.1	31%	6.7	26%
Equitas (Lloyd's 1992 and prior)	5.3	18%	5.3	21%
Lloyd's (1993 onwards)	1.9	6%	1.8	7%
Total	29.7	100%	25.4	100%

Source: A.M. Best – Best's Statement File – UK, KPMG LLP (UK) 2010, Lloyd's

This sector accounted for 45 percent of the liabilities of the UK non-life run-off market (2008: 53 percent). The change in the size of the solvent run-off market since 2003 is shown in Figure 2.

Figure 2: Change in the size of the solvent run-off market



Source: A.M. Best – Best's Statement File – UK, KPMG LLP (UK) 2010

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The solvent run-off market has reduced in size by 32 percent in 2009; total liabilities have decreased by £6.3 billion.

The solvent run-off market has reduced in size by 32 percent in 2009; total liabilities have decreased by £6.3 billion which includes a £5.0 billion decrease in technical provisions.

As reported earlier, the appreciation of UK sterling against the US dollar was key driver of the reduction in size of the solvent company run-off market during 2009. The impact is so marked because US APH claims continue to dominate run-off liabilities as a result of their long latency period and because they were insured under loss occurring policies.

New run-off liabilities also feature and in last year's survey we highlighted the demise of financial guarantee monoline insurers. Indeed, the significant rise in the size of the UK non-life run-off market in 2008 was principally a result of a number of these monolines emerging as new run-offs due to their massive scaling back of underwriting. While the major monolines have continued to be the subject of intense scrutiny from ratings agencies and other commentators, there were no significant new entrants to the UK run-off market in 2009.

The monoline insurers, however, continued to contribute to the change in size of the run-off market during 2009. Certain monolines reported large reductions in technical provisions in the year as a result of claims settlement, commutation and/or other significant balance sheet restructuring.

The survey also indicates that commutation and other claims settlement activities generally have continued to contribute to the reduction in size of the solvent company run-off market. Maik Wandres CEO, GLOBAL General and Reinsurance Services Limited, in common with some of the other respondents, noted that: "We have continued to make good progress with commutations in 2009. In particular, certain counterparties wished to commute more quickly than we had previously thought."

It is possible that the new anti-avoidance tax legislation that was introduced late in 2009 may reduce further the total liabilities in run-off. The new legislation requires general insurers to provide written confirmation to HMRC that their reserves are not excessive. If the reserves disclosed in the financial statements are deemed to be excessive, HMRC can require that the undiscounted actuarial best estimate be used as the tax basis. Since this legislation was only introduced late in 2009, it is likely that any potential effect will only become apparent in next year's survey.

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2.1.2 Capital

At the end of 2009, total capital tied up in solvent UK non-life companies in run-off was approximately £4.2 billion (2008: £5.4 billion), excluding Lloyd's vehicles and companies with run-off portfolios that are combined with other live business.

The net assets figure as calculated for regulatory solvency purposes is £3.2 billion (2008: £4.0 billion).

The reduction in capital is due in part to a decrease of approximately £310 million in the net worth of one monoline insurer in particular. After significant losses incurred as a result of the financial crisis, the credit rating of its US parent and largest reinsurer was downgraded and any reinsurance recovery from its parent was written off in the UK subsidiary's 2009 accounts.

Another cause of the fall in trapped capital in 2009 is attributable to a number of companies extracting surplus funds through dividend of profits or statutory capital reduction. Efficient capital management strategies have become increasingly important as the lack of liquidity in the capital markets remains acute. Run-off companies have been at the forefront in seeking new methods to release capital over the past ten years or so; the methods and their effectiveness are discussed further in Section 2.1.4 Exit solutions.

Appreciation of UK sterling against the US dollar also contributes to the reduction, but to a lesser extent.

Table 4: Capital tied up in the solvent run-off market

	2003 (£ billion)	2004 (£ billion)	2005 (£ billion)	2006 (£ billion)	2007 (£ billion)	2008 (£ billion)	2009 (£ billion)
Capital in solvent companies	3.8	4.0	4.8	4.9	4.6	5.4	4.2

Source: A.M. Best – Best's Statement File – UK, KPMG LLP (UK) 2010

In addition to the challenges associated with attempts to release surplus capital, capital efficiency is coming under even greater scrutiny as run-off companies and those in the live market grapple with the implementation of Solvency II. This is discussed further in the Section 2.1.3 Management of discontinued business.

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2.1.3 Management of discontinued business

Impact of the financial crisis

At the time of writing, commentators are split over whether the global recovery is underway or whether a double dip recession is still a possibility. What appears clearer, however, is that the non-life insurance sector has fared much better than many others over the course of the global economic crisis. This has not been lost on the sector's bankers, and according to Richard Askey, Relationship Director, Lloyds Banking Group, "From a banking perspective, the strength of the performance of the insurance sector through the recession has been viewed as a significant positive, facilitating access to capital when availability of this capital to other sectors has perhaps reduced."

Nonetheless, he, like a number of other commentators, recognises the most obvious consequence of the crisis for insurers, acutely felt in the run-off sector: the loss of investment income. According to Richard Askey "the major impact of the global economic recession on many insurance firms is the significantly reduced return on investments that they have been able to generate. This impact is exacerbated by a reduction in risk appetite of senior management and shareholders following losses in 2008. This has resulted in companies realigning their portfolios on a more conservative basis and further hampering the ability to generate high returns."

"From a banking perspective, the strength of the performance of the insurance sector through the recession has been viewed as a significant positive, facilitating access to capital when availability of this capital to other sectors has perhaps reduced."

Richard Askey, Lloyds Banking Group

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Alan Quilter, Group Finance Director, R&Q, echoes Richard Askey's sentiments: "A major impact on R&Q's business of the current challenging economic climate is the reduction in investment income. We don't expect to see any significant increase in returns until 2012. Consequently, our strategy for developing our business has taken, and will continue to take, the low interest rate environment into account." Equally, Nick Steer, CEO Compre Holdings, reports that "we have had to move from a reasonably passive investment management to a more active management, and investment returns will continue to be a challenge."

While a disciplined approach to cash flow management through claims handling and the collection of reinsurance has been fundamental to the success of the UK's legacy sector, the heightened focus on investment strategy can make all the difference from a profitability or even survival perspective.

Efficiency improvements

Our survey respondents suggest this focus is part of a much wider drive for continued improvement in the efficiency of managing run-offs. Klaus Endres, Head of Business Development and Acquisitions, AXA Liabilities Managers, highlights the depth of the review that AXA LM has undertaken to identify efficiency improvements: "We are working our business harder than we might have done in the past. We have taken a critical look at how we run and organise our business. We have looked at our processes, our cost base and our productivity."

Nick Steer agrees that low investment income has meant a need "to look at tighter cost control, whilst at the same time maintain Compre's capabilities to manage our own business and continue to provide effective solutions to the market."

Barry Gale, Director, KPMG in the UK states "without the buffer of new premium to fall back on, companies in run-off need to manage their legacy business more effectively. In our experience, however, there are still a number of improvements that can be made to business practice, in particular through improved cash flow management."

Finance

As run-off plans are coming under further pressure from reduced investment yields in particular, those businesses that cannot support their strategic objectives by efficiency improvements alone are turning to the sector's bankers for support. Paul Johnson, Director Insurance, Barclays Corporate, explains the role that bankers have sought to play in the current economic climate as one where "we have been and will continue to talk to clients with regard to their short and medium term plans, to monitor developments and keep abreast of changes, to support and assist our clients with their treasury planning, and where appropriate, their acquisition opportunities."

Richard Askey notes that the impact of the financial crisis has led to a "more protracted internal approvals process, but one of which clients have been supportive, understanding the need for additional rigour at this time."

While run-off companies and investors may have suffered in a harsher lending environment, there is another environment which most respondents have cited as a major challenge for their business over the last year: Solvency II.

Solvency II

Companies in the non-life insurance sector are investing a significant amount of time and resource into assessing the impact of Solvency II on their businesses. According to Klaus Endres "AXA LM has worked very intensively on preparing for Solvency II, including many scenario calculations under the (Quantitative Impact Studies) QIS 4 and the current QIS 5 parameters for our own run-off portfolios." Insurance groups with significant live operations, such as AXA, and the larger run-off acquirers, are more likely to be well advanced in their planning for Solvency II. "This is less true for single, static run-off companies", says Paul Corver, Chairman, ARC, who chairs a working party established by ARC in 2009 to explore the impacts of Solvency II on the run-off community. "Their limited involvement so far is not surprising given the resources required to prepare the processes, systems and structures expected under Solvency II."

A key issue for all run-off companies is the uncertainty over exactly how they will be treated under the new legislation. "There are still a number of unanswered questions, which will shape the impact of Solvency II for companies in run-off" according to Paul Corver. "The FSA has confirmed that the specific application of Solvency II to run-off companies will be proportionate. But what does proportionate mean? And what will the FSA's response be to a run-off company which fails to meet Solvency II capital requirements? Solvency II is principally written for live companies; there must be appropriate recognition for the dynamics of run-off."

Even if that recognition is forthcoming, it is clear that Solvency II is here to stay. The FSA has confirmed that very few insurers will be exempt and escape its tentacles, despite what some run-off companies may believe themselves. David Vaughan, COO & Director, Tawa plc, confirmed that Tawa has been spending a considerable amount of time planning for Solvency II but believes that those who have not focused on it will soon wake up to the fact that it cannot be ignored: "At some stage, we are going to reach a tipping point, when people realise that Solvency II exists and think insurers are over capitalised or under capitalised. Do we stop writing a line of business or perhaps even create a new one?"

These sentiments are echoed by most run-off executives. Luke Tanzer, Managing Director, RiverStone UK, comments "we at RiverStone, like all major run-off companies involved in acquisition opportunities are committed to investing

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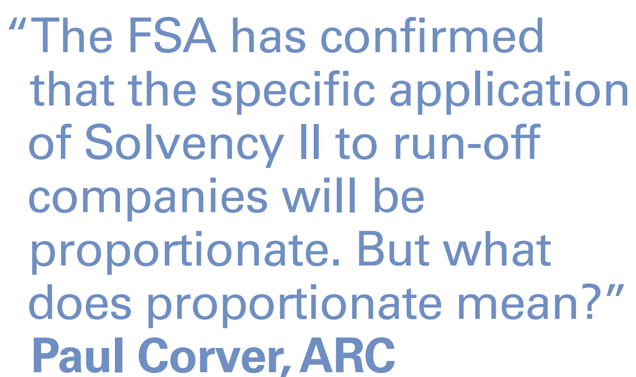

"The FSA has confirmed that the specific application of Solvency II to run-off companies will be proportionate. But what does proportionate mean?"
Paul Corver, ARC

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a significant amount of time and resource in planning for Solvency II, however, some of the smaller companies in run-off might be content to do minimal work and simply face the consequences of failing to meet the requirements rather than invest heavily in the process." But the significant level of resources that the FSA has committed to Solvency II initiatives which has added enormously to its workload, has led some commentators to express concerns about the FSA's ability to respond to non-Solvency II matters in a timely matter, such as regulatory transactions (schemes and Part VII transfers) and changes of control (acquisitions and disposals).

John Wardrop, Partner, KPMG in the UK comments: "We fully expect some companies who do not wish to be subject to Solvency II to look to sell their business or, at the very least, the more capital intensive parts. This may lead to more M&A activity in the period leading up to the implementation of Solvency II and may generate many opportunities for run-off investors and practitioners." Nonetheless, it is important to consider that while there may be significant demand for such portfolios, there are Solvency II implications for potential acquirers. Klaus Endres believes the implications of Solvency II are likely to put considerable downward pressure on the sale price of some portfolios in the coming years, as buyers will factor in the future capital requirements and compliance costs in their pricing. He comments that "even if Solvency II only comes into effect in two or three years, it is important to adopt a "post-Solvency II" mindset right away. As a by-product of the work we have done preparing ourselves for Solvency II, AXA LM has analysed what it is likely to mean in terms of capital charge for a typical run-off portfolio. In many cases the required equity capital will increase significantly, in particular if the current capital level is calculated under Solvency I."

Potential acquirers also need to be mindful of the finance structure used for acquisitions as Solvency II is expected to introduce limitations on the nature of capital and debt structures.

The survey further examines the potential impact of Solvency II on the M&A landscape in Section 2.1.4.3 Mergers and acquisitions.

Service provision

One of the consequences of a shrinking run-off market and the drive for efficiency improvements in the sector, is an inevitable reduction in large scale outsourcing. Steve Goate, Senior Vice President, Reinsurance Solutions Limited, identifies that "these are extremely tough conditions for service providers at the moment which has resulted in a drop in staffing levels. Not only have companies reduced the use of consultants and other service providers but there is a lot more competition with regard to the pricing of those outsourced contracts that remain."

Philip Grant, Chairman, Ambant Limited believes that opportunities for service providers still exist but they need to adapt to the changing demands of the run-off sector: "Ambant has experienced an increasing demand for our regulatory and resource/capital management services". R&Q, like a number of service providers in the sector, has been very actively diversifying into the provision of services for the live market. Alan Quilter suggests that "run-off does eventually run-off. We have been raising income and profit levels by being involved in live and legacy business. Many of the skills that run-off professionals have learnt are transferable into the live market as legacy business runs-off. Many of the systems and processes we have built can provide efficiency gains to active carriers".

Some of this work is already underway. Jason Richards, Managing Director, Head of Reinsurance Asset and Liability Management, Swiss Re, says that: "The live parts of Swiss Re's business can learn from its claims and run-off teams. We have introduced a feedback loop process to incorporate lessons learned and findings from the past into our current business. This for example helps with underwriting guidelines and policy wordings".

UK run-off specialists have also looked to Continental European markets, where run-off practice is still in its relative infancy. However, well known cultural and language barriers are difficult to overcome. Philip Grant notes that "while the European insurance industry is clearly aware of the role that legacy liabilities play in capital management, it is unlikely to use third party management to any great extent, preferring to create in-house legacy management units".

Luke Tanzer feels that is important for service providers "to get out of their comfort zones, and look to offer services outside the London market, however, opportunities in Europe may be limited due to differences in culture, language and local legal requirements".

Nick Steer echoes this sentiment: "trying to impose a London market way of doing run-off does not work in Europe." He continues "I believe it is best for local people to deal with local issues under a one team umbrella."

Our survey of the German-speaking markets reported a much greater knowledge and willingness to engage with external run-off service providers to access their considerable run-off expertise and to deal with resourcing constraints. The companies surveyed, however, continued to cite their own staff's knowledge of the business and concerns around third parties having access to their data as the major reasons why many of them still prefer to manage these liabilities in-house. Swiss-based reinsurer Glacier Re whose portfolio of business has recently been placed into run-off has already said that it "will manage the run-off itself and has not decided at present to outsource the work to a legacy market specialist."

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2.1.4 Exit solutions

While run-off executives have been focusing heavily on the challenges outlined in the previous section, many are still exploring the various exit mechanisms that have continued to develop for discontinued business. These include solvent schemes, Part VII transfers and sale.

2.1.4.1 Solvent schemes

Schemes continue to be a popular mechanism for companies to achieve finality.

Table 5 plots the number of solvent schemes of UK businesses over time both by entity and by pool/ business portfolio, represented by the calendar year in which the schemes became effective. There have been a total of 227 solvent schemes for individual entities to the end of 2009, an increase of 50 on 2008. This is principally a result of the schemes for the Trimark pools (see below). When considered on a pool or portfolio basis, the 2009 year end aggregate total is 56 (2008: 52).

We continue to work closely with numerous companies that have participated in the plethora of London market pool arrangements to identify if a pool scheme is the most appropriate solution".

He notes that the use of "allocation schemes" (where IBNR is allocated to creditors) as opposed to "submission schemes" (where creditors submit their own IBNR) in the context of major pool schemes, has enabled large and complex pooling arrangements to be collapsed with relative simplicity, to the benefit of all stakeholders."

Table 5: Solvent schemes of UK non-life business

Number of solvent schemes	2003 and prior	2004	2005	2006	2007	2008	2009	Total
By entity	14	16	24	9	27	87	50	227
By pool/portfolio	9	11	7	9	10	6	4	56

Source: KPMG LLP (UK) 2010

"Many of the skills that run-off professionals have learnt are transferable into the live market as legacy business runs-off."
Alan Quilter, R&Q

Schemes have not just retained their attractiveness and utility, but have evolved over a period of years to reflect the challenges that they can be designed to tackle. Schemes are now regularly proposed to assist an increasing number of non-UK companies to deal with elements of their legacy portfolios; over 70 of the companies in the EW Payne Pools Schemes and over 40 companies in the Trimark Pools Schemes were not domiciled in the UK.

There is clearly still an appetite for using solvent schemes of arrangement in the right circumstances, particularly as a mechanism to close down complicated underwriting pools.

Mike Walker who advised on the Trimark Pools Schemes, states "we have been encouraged by the interest generated from the success of both the EW Payne and Trimark Pools Schemes.

In addition to the EW Payne and Trimark Pools Schemes, the recent Deutsche Ruck Scheme followed an innovative cross-border portfolio transfer from Germany into the UK.

There are a number of very large schemes currently being implemented or in the final stages of development. The recent Minster Scheme is one of the biggest single solvent schemes promoted to date. The English & American Underwriting Agency (EAUA) Pools Scheme, whose meetings of creditors were held in late April 2010, has over US$1 billion of estimated liabilities across three major, complex pools with 16 scheme companies (13 solvent and three insolvent).

There is and will continue to be a serious debate regarding the impact of schemes on policyholders and cedants. Despite some vocal opposition, it is worth pointing out that the vast majority of schemes have succeeded in gaining the creditor support required under the dual voting tests set out in

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the legislation, as well as the support of the FSA and sanction of the Court. Even in the supposed hiatus caused by the much discussed Scottish Lion decision at first instance and its reversal on appeal, schemes continued to be sanctioned by the Court.

The initial decision in Scottish Lion was surprising, principally because the judge introduced new tests for schemes which appeared to fly in the face of the statute wording and many years of legal precedent. Many commentators were not surprised that it did not stand up to the scrutiny of the appeal Court. Maik Wandres was particularly happy with the appeal decision, which "confirmed schemes are valid and when done properly and fairly to policyholders they can be a very useful mechanism."

These large, complex, multi-jurisdictional proposals are being debated — and consulted on — in much greater detail, with a wider and far better scheme-educated stakeholder base than at any time since solvent schemes became popular in the insurance industry. This is positive for the market. The fact that schemes continue to be promoted and sanctioned reinforces the belief that there is still significant policyholder appetite for this process in the right circumstances.

Table 6 highlights the change in assets and liabilities of UK companies subject to solvent schemes by comparing year end results before and after the respective scheme bar dates.

Our analysis reveals that UK solvent schemes with a 2009 or prior bar date have generated an increase in net worth of approximately £90 million after the elimination of £440 million (or 84 percent of their liabilities). On a relative basis, the increase in the net assets (or net worth) of these businesses following the launch of the scheme averages 11 percent (2008: eight percent).

Table 6: Changes in total assets and total liabilities following bar dates for UK companies subject to solvent schemes[4]

As at end of 2009	Total assets (£ million)	Total liabilities (£ million)	Net assets (£ million)
Year end immediately preceding bar date	1,345	526	819
Latest audited balances following bar date	995	86	909
Increase/(reduction)	(350)	(440)	90
Increase/(reduction)	(26%)	(84%)	11%

Source: KPMG LLP (UK) 2010

> "The use of allocation schemes… in the context of major pool schemes, has enabled large and complex pooling arrangements to be collapsed with relative simplicity, to the benefit of all stakeholders."
> **Mike Walker, KPMG LLP (UK)**

4 For the purpose of verification, the analysis of solvent schemes is restricted to accounts filed for solvent schemes of UK companies with bar dates falling on or before 31 December 2009 and excludes companies where only certain parts of the business have been schemed. Non-UK companies have been excluded from the analysis. As a result of the limitation in the scope of this analysis a number of solvent schemes have been excluded. However, the impact of all solvent schemes on the liabilities of UK companies is reflected in the overall size of run-off as at the end of 2009.

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2.1.4.2 Part VII transfers and reinsurance

From December 2001, when the Financial Services and Markets Act 2000 took effect, to the end of 2009, there have been 89 transfers of non-life portfolios, of which 44 involved predominantly or entirely business in run-off (see Table 7). Part VII transfers continue to be used as a tool for the reorganisation of run-off liabilities, although their number has decreased steadily since their peak in 2006.

There may yet be increased internal Part VII activity in the next few years as the Solvency II deadlines approach.

Table 7: Number of Part VII transfers in the UK non-life insurance market

Dominant portfolio	2003 and prior	2004	2005	2006	2007	2008	2009
Active	6	5	12	7	6	5	4
Run-off	4	3	4	13	9	7	4
Total	10	8	16	20	15	12	8
Cumulative	10	18	34	54	69	81	89

Source: KPMG LLP (UK) 2010, Sidley Austin LLP

Of the four Part VII transfers of run-off business to occur in 2009, two transfers were to third parties and facilitated the closure of business for their owners. In each case the transfer of business was to its 100 percent quota share reinsurer.

The other two transfers of legacy portfolios in 2009 were intra-group. One internal transfer during the year was the completion of the second phase of the Equitas/Berkshire Hathaway reinsurance arrangements and the transfer of business written at Lloyd's before 1993 to Equitas Insurance Limited. This brought an absolute end to the obligations of the pre-1993 members of Lloyd's (Names).

One of the major reasons for the other internal Part VII transfer was to increase regulatory capital surplus and was an important aspect of maximising group capital efficiency.

There may yet be increased internal Part VII transfer activity in the next few years as the Solvency II deadlines approach.

In last year's survey, we noted the 13 May 2009 opinion of the Advocate General (AG) in the European Court of Justice (ECJ) on whether VAT should apply on the transfer of a number of reinsurance contracts from a German Swiss Re entity to another group company based in Switzerland. It has since been confirmed by the ECJ, in its judgement on 22 October 2009, that the transfer is subject to VAT at the standard rate. The implications of this judgement should be considered carefully by any entity considering enacting an insurance business transfer (IBT) via the Part VII transfer mechanism.

Whole account reinsurance arrangements, which are sometimes also referred to as loss portfolio transfers, represent another method of passing economic interest in a business to another party. The first phase of the process that brought finality to the Lloyd's Names' liabilities, as described further in Section 2.3, was a reinsurance arrangement with Berkshire Hathaway. Berkshire Hathaway in particular, has continued to "invest" in the run-off sector in this manner, the latest example of which was the recent reinsurance of the legacy asbestos and environmental liabilities of CNA.

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Advocate General Opinion on Part VII VAT

The ECJ was not asked to rule on the question of whether the IBT could be classified as a Transfer of Going Concern (TOGC) and thereby be exempt from VAT under those rules. It had previously been determined in the German courts that the transfer was not a TOGC as the contracts transferred were not capable of "separate operation. However, the ECJ was asked to confirm whether or not the transfer would count as an exempt supply of services. On this point, it agreed with the AG that the transfer of the contracts did constitute a supply of services, but that the supply did not fall under the usual exemptions for banking, insurance or financial transactions and was therefore subject to VAT.

This decision is now binding throughout the EU but it is for the tax authorities of each member state to determine its implementation. It should be noted, however, that the UK government did make a submission in this case that these transactions should not be classified as insurance transactions. Another implication of the decision is that it confirmed the treatment of these transfers as a supply of services. They are therefore subject to the recent change in the VAT place of supply rules. As of 1 January 2010, the place of supply is now the jurisdiction of the recipient, rather than that of the supplier. Although this decision does not affect the transfers of business within the UK if it is considered a TOGC, the implications should be considered carefully, particularly when the UK's TOGC rules may not be satisfied and when there are cross-border transfers.

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2.1.4.3 Mergers and acquisitions

Insurance companies

As expected, we have seen very few insurance run-off company acquisitions take place since we reported last year, and those that have occurred have tended to be relatively small compared to some of the larger deals reported on in previous periods. This in part reflects the continuing impacts of the financial crisis and the difficulty for acquirers to obtain finance on acceptable terms to make acquisitions, but also, according to some commentators in our survey, the lack of supply of run-off portfolios coming on to the market.

Various factors may be responsible for this latter point, but Darryl Ashbourne, Director, KPMG in the UK believes "perhaps most important is the sellers' perception that the market has begun to turn slightly against them; prices achieved in the past may not be achievable in the current market. As a result, those deals that have been concluded were less opportunistic and were principally in response to stressed or distressed situations, to improve cost or capital efficiency or for strategic reasons."

In addition, the number of 'independent[5]' insurers in run-off has fallen over recent years (see Tables 8 and 9), whether as a result of their acquisition by the run-off consolidators or following a transfer of their insurance liabilities to another insurer. It was and still is these independent run-off insurers that comprise (at least, to date) the bulk of the opportunities for merger and acquisition activity in the run-off market. John Winter, Chief Executive, Ruxley Ventures Limited, however believes that "there have been fewer run-off acquisition opportunities".

In contrast, Alan Quilter commented that "the supply of opportunities is still strong" although he qualifies this by commenting "that few opportunities meet his group's purchasing criteria and provide the right risk/reward ratio".

These differing views may be a reflection of the specific parts of the market targeted by the commentators' companies; David Vaughan, for example, supported Alan Quilter's comments and sees "lots of opportunities appearing although not London Market centric".

Table 8: UK M&A transactions in 2009[6]

Purchaser	Target	Date	Purchase price	Liabilities (excluding capital and reserves)	Net assets/ (liabilities)
Independent Services Group	Paladin Reinsurance Corporation	April 2009	Undisclosed	–	–
Catalina Holdings	Alea UK (subsidiary of Bermuda based Alea Group)	June 2009	Slight discount to net assets	US$358 million as at 31 December 2008	US$88.6 million as at 31 December 2008
R&Q	Woolworths Insurance (Guernsey) Limited	June 2009	Undisclosed	£7.5 million	£1.2 million
Enstar	Copenhagen Re	October 2009	US$29.9 million	US$139.9 million	US$29.9 million
R&Q	Goldstreet Insurance	November 2009	US$9.6 million	–	US$9 million
Independent Services Group	Shared Services Group	December 2009	Undisclosed	–	Undisclosed

Source: KPMG LLP (UK) 2010

5 An insurer in run-off that is not part of a larger insurance group (with active business in the UK) or owned by one of the insurance run-off consolidators.

6 This table includes all those acquisitions that we have identified where either the purchaser or the acquired company is UK based.

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Table 9: UK M&A transactions in 2010[7]

Purchaser	Target	Date	Purchase price	Liabilities (excluding capital and reserves)	Net assets
Enstar	British Engine Insurance Limited (subsidiary of RSA Insurance Group plc)	March 2010	£28 million	£215.2 million as at 31 December 2008	£36.6 million as at 31 December 2008
R&Q	La Licorne Compagnie de Reassurances	April 2010	€3.2 million	€8.3m	€3.7 million
Berkshire Hathaway	Scottish Lion	April 2010	Undisclosed	£46.1 million	£12.3 million
Compre	London and Leith Insurance Co	June 2010	Undisclosed	£0.5 million	£4.2 million
Tawa	Island Capital	August 2010	US$7.4 million initial consideration up to US$40 million deferred consideration	US$20.6 million	US$28.1 million

Source: KPMG LLP (UK) 2010

The M&A activity that has taken place has led to a further concentration of insurers in run-off being owned by several run-off market consolidators; all the acquisitions noted in Tables 8 and 9 were by recognised run-off market consolidators. These tables include all those acquisitions that we have identified where either the purchaser or the acquired company is UK based.

Based on technical provisions at 31 December 2009, the economic interest in over 50 per cent of the total UK solvent run-off is now owned by three groups, of which two are recognised market consolidators. Berkshire Hathaway is the largest with over 36 percent of the solvent company run-off market including Equitas, which is currently the single largest run-off. The next three largest owners of run-off portfolios are all monoline insurers, which collectively represent another 15 percent of the market.

It is anticipated that this concentration will increase further. Klaus Endres comments that "while there are still a large number of players interested in run-off acquisitions, there are only a very small number of serious bidders left who can credibly finance medium and large transactions".

David Vaughan warns, however, that in his view, "certain major market acquirers are using predatory pricing which is not sustainable in the long term".

In the period since the last survey, the prices achieved for run-off insurers compared to their net assets appear to have dropped slightly as compared to prior periods. Most of the deals concluded in 2009/10, where the consideration was disclosed, have been at a slight discount to the insurer's last reported net assets.

The implementation of the Solvency II regulations at the end of 2012 may act as a catalyst for M&A activity. This may be a reaction either to an increase in a group's determination of the capital and solvency costs of maintaining run-off business under that new regime, or as a means to avoid the implementation costs of the new rules. Arndt Gossmann, Chief Operating Officer, DARAG, believes that the "approaching Solvency II implementation will lead to a rethinking of business strategies and a restructuring of existing portfolios". Other commentators agree that Solvency II will lead to opportunities for acquisitions in both the UK and Continental Europe; Luke Tanzer would also like to think that Solvency II will lead to acquisition opportunities but questions whether "given the historically passive approach to dealing with run-off portfolios and embedded legacy books of business in some parts of Continental Europe, will Solvency II by itself be the catalyst that everyone hopes it will be?"

Should more discontinued business be offered for sale as a result of preparations for Solvency II, sellers should not expect premium prices. Whilst there is still a healthy market looking to acquire run-off portfolios, two factors are likely to depress prices. Firstly, too many accounts being offered at the same time will shift the balance towards buyers due to basic economics of supply and demand. This would be exacerbated if sellers appear too eager to offload their business. Secondly, sales over the next two years may be considered by buyers as being offered in order to reduce capital inefficiencies or to avoid potential capital increases that could be inflicted on the vendor under Solvency II. The seller's capital burden would, therefore, land on the buyer to a greater or lesser extent. Consequently, that burden is an additional cost which the buyer will seek to recognise in discounting any purchase price.

7 This table includes all those acquisitions that we have identified where either the purchaser or the acquired company is UK based.

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Service providers

There has continued to be consolidation in the run-off service provider market and a number of transactions were concluded in 2009/10. It appears that several groups historically associated with acquisitions of insurers in run-off have made a strategic move to exit the market or to develop other strands to their business as they see limited scope for growth in the traditional run-off market servicing APH liabilities.

These acquisitions which are listed in Tables 10 and 11 have tended to broaden the service profile of the groups and, in particular, allowed them to increase their penetration of the live insurance market. It is likely that consolidation will continue as run-off service providers continue to diversify and, in addition, gain further efficiencies through economies of scale.

Bermuda run-off market

Outside of the UK and European run-off markets there have been a number of developments. In Bermuda, the run-off market remains fragmented with much of the large scale run-off embedded within the current operations of the island's big insurers and reinsurers. The Bermuda based run-off acquirers continue to be deal hungry, although the past 12 months have proved challenging for all. In July 2010, Catalina Holdings (Bermuda) Ltd completed its acquisition of Western General Insurance Limited for an undisclosed sum. At the time of purchase, Western General recorded total assets of US$53.5 million and liabilities of US$30.4 million.

Bermuda's captive sector continues to receive a high level of interest from run-off acquirers and outsource consultants, although this has not translated into a regular flow of transactions. Some industry professionals suggest that somewhere between 10–15 percent of the island's captives are in run-off, however, these opportunities can be challenging to unlock. Captives present unique challenges, both in terms of the accessibility to the captive decision makers and the issues in relation to the captive parent losing control of the claims management post sale.

We have seen consolidation in the captive management sector, with Marsh acquiring Independent Advisory Services Ltd (IAS) in September 2009. Prior to the acquisition, IAS was Bermuda's largest independent captive manager servicing around 150 captives. In recent years the sector has also seen new players enter this space, with Charles Taylor Consulting purchasing Allegro Insurance & Risk Management Ltd in 2007, the acquisition of Cedar Consulting LLC by US captive manager USA Risk Group in 2008 and the acquisition of the Quest Group of Companies by R&Q in 2009.

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Table 10: UK broker and service provider transactions in 2009[8]

Purchaser	Target	Date	Purchase price	Net assets/ (liabilities)
R&Q	Quest	January 2009	US$6.9 million	–
Independent Services Group	Syndicate and Corporate Management Services Inc (New York)	April 2009	Undisclosed	–
Charles Taylor Consulting	Axiom	May 2009	£7.9 million	(£0.2 million)
Tawa	PRO Insurance Solutions	September 2009	£38 million max	£0.5 million[9]
R&Q	RK Carvill Legacy Portfolio (R K Carvill & Co Ltd, Carvill America Inc and Syndicated Services Company Inc)	December 2009	Undisclosed	–

Source: KPMG LLP (UK) 2010

Table 11: UK broker and service provider transactions in 2010[10]

Purchaser	Target	Date	Purchase price	Net assets/ (liabilities)
R&Q	JMD Specialist Insurance Services	January 2010	£2 million	–
R&Q	Reinsurance Solutions Limited	September 2010	US$10 million	–

Source: KPMG LLP (UK) 2010

Although there have been no announcements of service providers exiting the run-off market, certain players appear to have quietly reduced their involvement in the legacy market and focused on other areas where they believe there are more opportunities. As mentioned earlier, players traditionally focused on the legacy market will need to continue to adapt to the changing market or combine with another entity where their skills can be applied to alternative markets.

In a very competitive marketplace it is now a matter of change or die. It is interesting to note that there are now very few service providers who would consider themselves principally focused on run-off, a situation very different to that which existed only a few years ago.

8 This table includes all those acquisitions that we have identified where either the purchaser or the acquired company is UK based.

9 Net assets at acquisition following payment of £20.9 million dividend to parent.

10 This table includes all those acquisitions that we have identified where either the purchaser or the acquired company is UK based.

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2.2 Insolvent market

In this survey, the insolvent run-off market comprises the liabilities of both failed UK insurers and the cost to the industry as a result of these failures through the Financial Services Compensation Scheme (FSCS).

2.2.1 Size

The insolvent company element of the UK non-life run-off market continues to be a significant component of this sector.

The insolvent run-off market marginally decreased in size from £9.3 billion in 2008 to £9.1 billion in 2009. The decrease is due almost entirely to the movement in exchange rates, in line with the solvent run-off market.

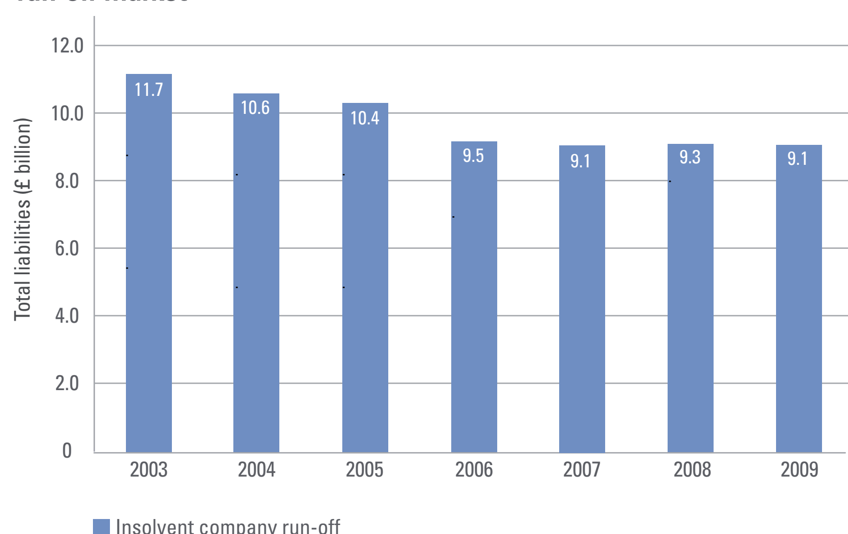
The size of the insolvent market is unlikely to change significantly, until the larger estates close or unless reserving for APH losses is significantly revalued. A change will occur of course if there are significant new insolvencies, although this is expected to be less likely to happen in a Solvency II environment.

Table 12: Main components of the UK non-life run-off market

As at end of 2009	Total liabilities (£ billion)	Percentage share of market	Technical provisions (£ billion)	Percentage share of market
Solvent company run-off	13.4	45%	11.6	46%
Insolvent company run-off	**9.1**	**31%**	**6.7**	**26%**
Equitas (Lloyd's 1992 and prior)	5.3	18%	5.3	21%
Lloyd's (1993 onwards)	1.9	6%	1.8	7%
Total	29.7	100%	25.4	100%

Source: A.M. Best – Best's Statement File – UK, KPMG LLP (UK) 2010, Lloyd's

Figure 3: Change in the size of the insolvent UK non-life company run-off market



Source: A.M. Best – Best's Statement File – UK, KPMG LLP (UK) 2010

There was one new small insolvency in 2009, The Exchange Insurance Company Limited. Following the sharp slowdown in housing markets, both in the UK and overseas, its exchange bonds business, which allowed guarantees to be made on homes without cash deposits, suffered.

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2.2.2 FSCS

The FSCS insurance compensation sub-scheme and its predecessor under the Policyholder's Protection Board (PPB) is funded (on a cash flow basis) by levies raised against active UK insurers plus recoveries from insolvent estates. The FSCS is the UK's statutory compensation scheme for customers of authorised financial services firms. This means that the FSCS can pay compensation if a firm is unable, or likely to be unable, to pay claims against it.

Levies raised and compensation payments made since 1990 in respect of non-life insurance are summarised in Table 13.

The total amount of compensation paid to protected policyholders of failed UK insurers in the year to 31 March 2010 was £59.8 million.

Table 13: Payments and levies by the FSCS and the PPB (non-life)[11]

Payments and levies	Industry levy (£ million)	Compensation payments (£ million)
PPB 1990–2001	341.5	418.7
FSCS 2001–2010	396.3	716.9
Total	737.8	1,135.6

Source: FSCS Annual Reports (2002–2010), PPB Annual Reports (1990–2001)

The total amount of compensation paid to protected policyholders of failed UK insurers in the year to 31 March 2010 was £59.8 million (2009: £50.8 million). The largest spend was in respect of employers' liability claims against Chester Street Insurance Holdings Limited. The compensation costs of this estate incurred by the FSCS in 2009/10 were £39.1 million, marginally lower than £40.3 million in 2008/09. The increase in total spend from £50.8 million in 2008/09 to £59.8 million in 2009/10 is also attributed to the settlement of one large professional indemnity claim across three older failed estates: English & American Insurance Company Limited, Bermuda Fire & Marine Insurance Company Limited and North Atlantic Insurance Company Limited.

The General Insurance Provision sub-class will charge a levy of more than £41 million for 2010/11, mainly to cover the ongoing employers' liability claims costs from the Builders Accident Insurance, Chester Street and Independent Insurance estates. The levy now includes a proportion based upon technical reserves of insurers, which means that companies in run-off will for the first time, take on their share of responsibility for meeting the cost of UK non-life insurance failures.

11 Analysis excludes recoveries from insolvent estates.

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2.3 Equitas

Whilst we do not generally chart specific company details from the UK non-life run-off company market in our survey, Equitas, as the largest single component, is worthy of individual comment.

In March 2007, Equitas entered into a transaction, by which Equitas's liabilities were reinsured by National Indemnity Company, a member of the Berkshire Hathaway Group. The second phase of the transaction, the Part VII transfer of the original liabilities to another Equitas special purpose vehicle, Equitas Insurance Limited, was completed in June 2009.

Table 14: Main components of the UK non-life run-off market

As at end of 2009	Total liabilities (£ billion)	Percentage share of market	Technical provisions (£ billion)	Percentage share of market
Solvent company run-off	13.4	45%	11.6	46%
Insolvent company run-off	9.1	31%	6.7	26%
Equitas (Lloyd's 1992 and prior)	**5.3**	**18%**	**5.3**	**21%**
Lloyd's (1993 onwards)	1.9	6%	1.8	7%
Total	29.7	100%	25.4	100%

Source: A.M. Best – Best's Statement File – UK, KPMG LLP (UK) 2010, Lloyd's

The second phase of the [Berkshire Hathaway] transaction, the Part VII transfer of the original liabilities to… Equitas Insurance Limited, was completed in June 2009.

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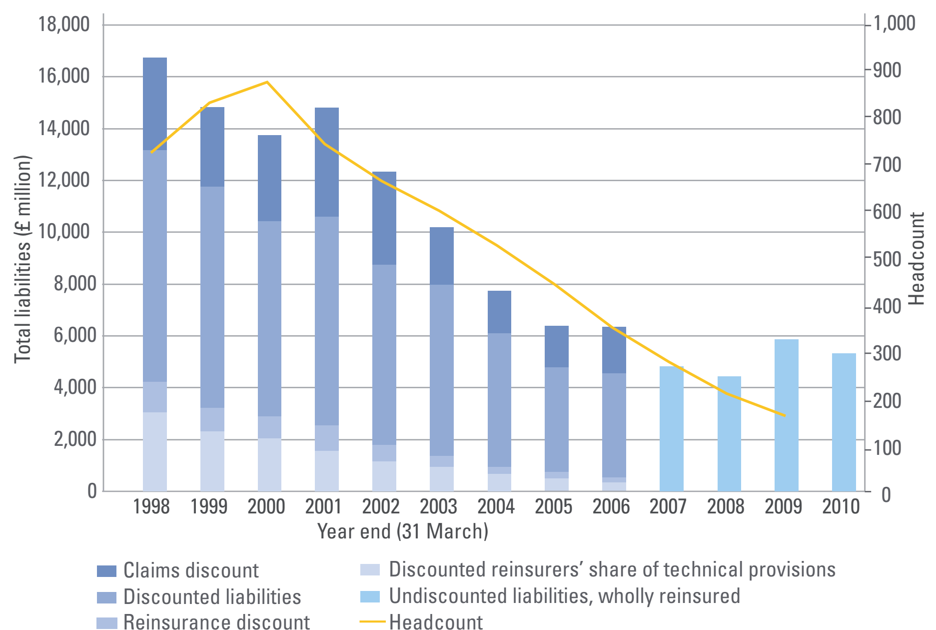
Figure 4 shows the reduction of the liabilities of Equitas's run-off since its inception. Equitas's total liabilities have reduced by £0.6 billion in the year to March 2010 to £5.3 billion (2009: £5.9 billion). The reduction in these reserves has been driven by claims payments as well as exchange gains during the financial year: its technical provisions are largely denominated in US dollars. The increase in reserves witnessed in the previous year was also almost entirely due to movements in exchange rates in 2008/9.

Ignoring the effect of exchange rate movements, Equitas's undiscounted liabilities have remained at or around £5 billion since Berkshire Hathaway's reinsurance arrangements commenced, and show little sign of changing. This is in stark contrast to the accelerated settlement and commutation strategy adopted by Equitas in its ten years before Berkshire Hathaway took over the reins. Given its market penetration, this is significant since without Equitas's support to do deals, many of its counterparties may find it more challenging to implement their own accelerated closure plans.

Figure 4: Development of run-off at Equitas



Source: Equitas Limited accounts (1998–2010) and Resolute Management Services Limited accounts (1998–2009)

Resolute Management Services Limited (formerly Equitas Management Services Limited) administers the Equitas run-off and reported revenues of £33.6 million in the year to March 2009 (2008: £43.1 million). There is a continuing downward trend in headcount, which is in line with previous years; the average number of staff for the year ended 31 March 2009 was 157 (2008: 204).

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3. Lloyd's of London

In existence as 'new' Lloyd's since 1993, the market's discontinued business is largely free of the APH liabilities that plague the company market.

3.1 Run-off at Lloyd's

The Lloyd's market is currently the smallest component of the UK non-life run-off sector. Lloyd's defines liabilities in run-off being those attributable to syndicate underwriting years that remain open, having not been closed via Reinsurance to Close (RITC). This survey has also consistently applied this definition in reporting run-off liabilities at Lloyd's.

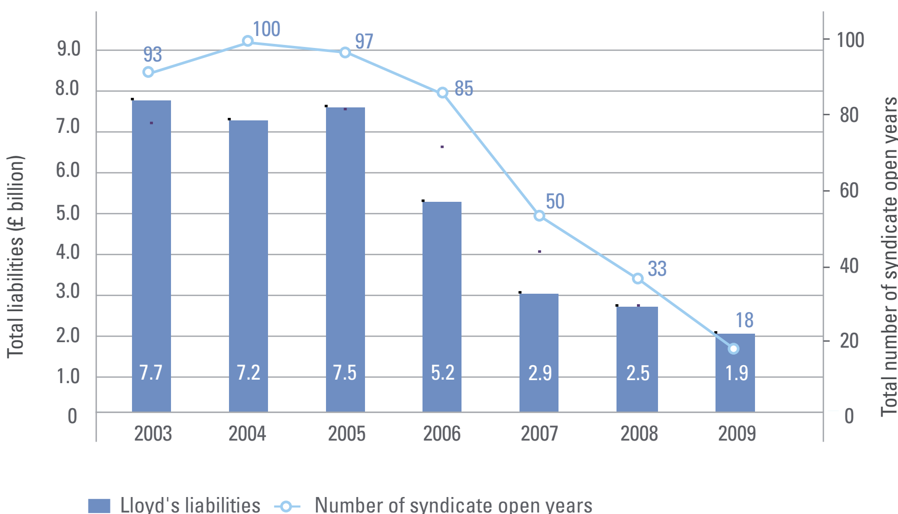
At the end of 2009, the total liabilities of Lloyd's non-life insurance syndicates in run-off were £1.9 billion (2008: £2.5 billion) across 18 open syndicate years (2008: 33 open years). The gross technical provisions of Lloyd's open year syndicates have decreased by £0.6 billion over the year.

Table 15: Main components of the UK non-life run-off market

As at end of 2009	Total liabilities (£ billion)	Percentage share of market	Technical provisions (£ billion)	Percentage share of market
Solvent company run-off	13.4	45%	11.6	46%
Insolvent company run-off	9.1	31%	6.7	26%
Equitas (Lloyd's 1992 and prior)	5.3	18%	5.3	21%
Lloyd's (1993 onwards)	**1.9**	**6%**	**1.8**	**7%**
Total	29.7	100%	25.4	100%

Source: A.M. Best – Best's Statement File – UK, KPMG LLP (UK) 2010, Lloyd's

Figure 5: Change in the size of the Lloyd's non-life run-off market



Source: A.M. Best – Best's Statement File – UK, KPMG LLP (UK) 2010, Lloyd's

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There is still strong demand for the purchase of syndicate open years by specialist third party RITC providers.

The reduction of £0.6 billion in the size of run-off liabilities at Lloyd's has been mainly driven by claims settlements and the continued use of RITC transactions in 2009. There is still strong demand for the purchase of syndicate open years by specialist third party RITC providers. During the year, seven run-off syndicates (made up of 17 syndicate years of account) were closed via RITC into two third party RITC purchasers. This removed liabilities totalling approximately £500 million from the run-off market under the Lloyd's definition. There was just one run-off year that closed via an internal RITC during 2009, accounting for the removal of £13 million of run-off liabilities. Claims settlements and reserve releases accounted for another £560 million reduction in liabilities.

There were three syndicate open years entering run-off during the year in respect of the 2007 year of account, accounting for approximately £470 million of additional liabilities.

This reduction in Lloyd's run-off has been a success story for Steve McCann, Head of Open Years, The Society of Lloyd's, whose permanent team supervising open year liabilities is becoming involved in more 'live' issues.

In this year's survey, for the first time we have also assessed the liabilities at Lloyd's that are not captured within its definition of run-off but that nevertheless relate purely to inactive business. A good indicator of this has been to review the liabilities of the main RITC purchasers which have reinsured run-off liabilities. As at 31 December 2009, there are approximately £1.1 billion of run-off liabilities held within active RITC acquirer syndicates. This includes £1.0 billion of gross technical provisions. This has increased from liabilities of £0.9 billion (including £0.8 billion of gross technical provisions) as at 31 December 2008.

Table 16: Reinsurance to close (RITC) transactions in 2009

RITC agent	Former managing agent	RITC transactions in 2009
RITC Syndicate Management Limited	Max at Lloyd's	Syndicate 994 closed into Syndicate 5678
	Capita Managing Agency	Syndicates 1688 and 1900 closed into Syndicate 5678
	Duncanson & Holt Syndicate Management	Syndicates 957 and 1101 closed into Syndicate 5678
Shelbourne Syndicate Services Limited	Renaissance Re Syndicate Management	Syndicate 53 closed into Syndicate 2008
	Capita Managing Agency	Syndicate 991 closed into Syndicate 2008
Equity Syndicate Management Limited	Equity Syndicate Management (internal)	Syndicate 4455 closed into Syndicate 4455

Source: Lloyd's

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3.2 Management of discontinued business

Lloyd's continues to write major international risks and is a significant player in the property/casualty arena. Crucially, however, it is not exposed to traditional APH liabilities having started life as 'new' Lloyd's in 1993, after exclusions for asbestos-related claims were introduced into policy wordings. Syndicates are not permitted to assume the old APH exposures, and Steve McCann states that "there is an absolute prohibition at Lloyd's on taking on pre-1993 liabilities. We offer ongoing business, not legacy business".

Lloyd's has a Franchise Board whose responsibility is to preserve the quality of underwriting, financial strength and, therefore, reputation of the Lloyd's market. This means adopting good practice and abiding by Lloyd's Bye Laws and guidelines.

Any syndicate, whether live or in run-off, is answerable to the Corporation of Lloyd's for any failure to adhere to Lloyd's regulations. An effect of this is that a syndicate may lose some control over when claims are paid, for instance in order to lever a commutation. Steve McCann continues "if the market [leader] pays the claim, then all other syndicates on that policy must pay the claim at the same time. If you want to play at Lloyd's, you have to behave yourself and play by the rules".

When it comes to Solvency II, Lloyd's appears to have taken a lead over much of the company market. Lloyd's has been building gradually towards Solvency II implementation in 2012: "We have a dual capital modelling process as Lloyd's needs to make sure that managing agents' models and their outcomes are incorporated into Lloyd's own models. To achieve this, Lloyd's has been offering guidance and running workshops for managing agents, as well as working closely with the FSA" advises Steve McCann.

When it comes to discontinued business, he repeats Lloyd's mantra on exit mechanisms. "RITC is a favoured route, which suits Lloyd's requirements. Solvent schemes for Lloyd's syndicates are not appropriate. Part VII transfers of business out of the market are acceptable, but unlikely due to Situs Fund issues. Lloyd's has no appetite for its syndicates to bring company market legacy business into Lloyd's, whether by Part VII transfer or any reinsurance mechanism."

Steve McCann is pleased with the work done by the run-off practitioners in Lloyd's and views this as "a good platform for them to move into the live market".

"There is an absolute prohibition at Lloyd's on taking on pre-1993 liabilities. We offer ongoing business, not legacy business"
Steve McCann, The Society of Lloyd's

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4. Future prospects for the run-off market

Our survey suggests that there is a shift in the shape of run-off liabilities from long tail APH towards shorter tail, transitory event exposures.

A combination of improved health and safety practice and changes to policy wordings (towards a claims made basis, as well as use of key exclusion clauses) has shortened the latency of many insurance claims, and in general new run-off has a much shorter lifespan. Notably, the days of the London market excess of loss (LMX) spiral and the one percent subscription market seem to be over and, as a result, the multiplying effect of losses that it created are not expected to be repeated.

2008 and 2009 were significant years for natural catastrophes and man-made disasters (Cat losses). At US$52.5 billion, 2008 was one of the costliest catastrophe years for property insurers in history. 2009 was another active year, during which insured losses attributable to Cats totalled US$26 billion[12]. 2010 has been another year of significant loss activity, including the explosion on the Deepwater Horizon oil rig in the Gulf of Mexico and the major earthquakes in Chile and New Zealand. Some commentators also believe this year's hurricane season, which began in earnest with Danielle and Earl in August may also be severe. At the time of writing, Bermuda was recovering from the effects of a direct hit from Hurricane Igor. Neither 2008, 2009 nor so far in 2010 have Cat losses created significant new run-offs in the UK non-life market. Luke Tanzer suggests that these and other property/casualty events "could produce some opportunities for the run-off market. The market is still soft at the moment and investment returns have not reversed. All this should be leading to more run-off but it's not happening yet".

It is not clear if these losses, other recent catastrophes or economic/political events will have any impact on the size of the run-off market in the short-term. Looking closer to home there may be some more significant issues found locally that may impact the run-off market in the next few years.

UK asbestos

Excluding insolvent insurers, the majority of reserves for UK asbestos liabilities covered by employers' liability insurance are held within balance sheets of active insurers and so by our run-off definition fall outside our estimate of the size of the run-off market. The largest proportion of reserves are contained in large UK insurance groups: RSA, Aviva, AXA and Zurich.

In January 2010 the Institute of Actuaries UK Asbestos Working Party published a new report with revised estimates of the future cost of UK asbestos-related claims to the insurance market. The report stated that the best estimate of the total undiscounted future cost could be £11.3 billion, a substantial change on the working party's 2004 estimate of £6.0 billion. The main driver of the change is the increase in the propensity of people suffering from mesothelioma to make an insurance claim. This has doubled since 2004 and accounts for £3.1 billion of the increase.

The number of mesothelioma claims is still rising and is not expected to peak until 2016. No allowance has been made for pleural plaque claims within the Working Party's estimate, which are estimated to have a total insured cost of between £4 billion and £9 billion if such claims are deemed compensatable (see Pleural Plaques section overleaf).

12 Source: Swiss Re, Sigma No 2/2009 and Sigma No 1/2010 respectively

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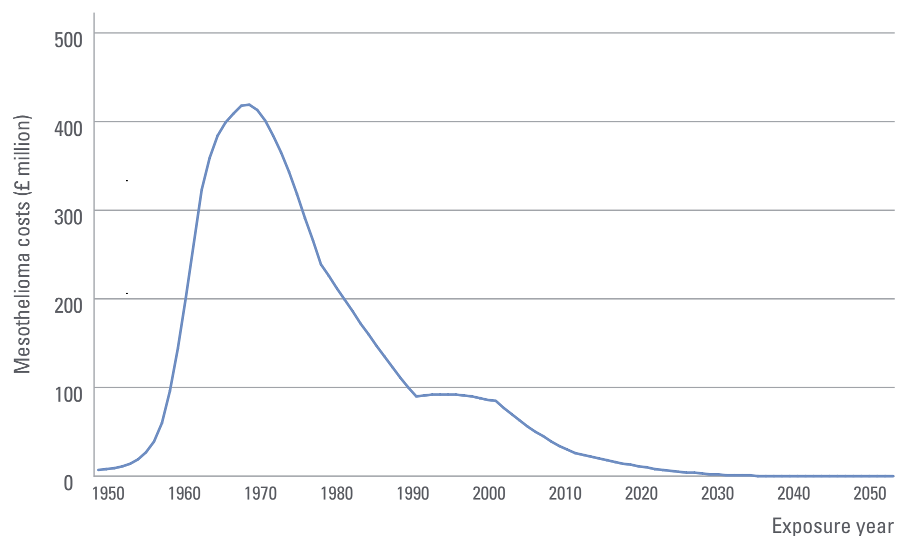
Pleural plaques

Insolvent insurers that are exposed to employers claims through protected UK employers liability policies, in particular Chester Street, are unlikely to close for a number of years. Those insurers and other solvent insurers of employers liability business have observed with interest recent legal developments regarding claims for pleural plaques, areas of thickening of the pleura (lining around the lungs) which are often attributed to asbestos exposure. In 2007, the House of Lords ruled that asymptomatic pleural plaques did not give rise to an entitlement to damages as the condition did not impair lung function. In 2008, however, the Scottish government announced a bill designed to overturn the House of Lords decision and make pleural plaques compensatable. The bill was enacted in April 2009[13] and immediately became subject to judicial review proceedings lodged by the insurance market. In January of this year, the Court of Session in Edinburgh ruled in favour of the Scottish Parliament. Meanwhile, England, Wales and Northern Ireland have announced plans to consult on the issue of compensation for pleural plaque claims. In February, the Ministry of Justice (MOJ) made a long awaited statement on pleural plaque claims in England and Wales. This announcement followed a government consultation on how to respond to the House of Lords ruling of 17 October 2007 (the "Rothwell" judgement) which decided that asymptomatic pleural plaques were not compensable. On the basis of medical evidence the MOJ concluded that it was unable to overturn this judgement but also stated that if new medical evidence or other significant evidence were to emerge the situation would be reassessed.

Figure 6 shows how the estimated £10.1 billion future mesothelioma cost is modelled to year of exposure, indicating that it is the employers' liability insurers of the 1960s and 1970s that are expected to cover the majority of the future claims cost.

Figure 6: Mesothelioma costs by year of exposure



Source: Institute of Actuaries UK Asbestos Working Party Update 2009

Karen Newbury, Director, KPMG in the UK observes "despite the report, considerable uncertainty remains over the future cost of UK asbestos claims and the report includes a number of scenarios ranging from a future cost of £5 billion to over £20 billion. Although many insurers had anticipated the increase in mesothelioma claims and the results of the report by strengthening their reserves in this area, the high levels of uncertainty that remain could have a serious impact on the insurance industry and particularly on the run-off market where access to additional capital to cover these claims is an issue".

Another recent initiative in 2009 was the establishment of the Employers' Liability Tracing Office (ELTO), which manages a central electronic database to enable potential Employers' Liability (EL) claimants to trace the insurer of their employer. This has the support of the insurance market, even though ELTO increases the potential for more claims when data submission is expected to become mandatory for EL insurers in 2011.

The majority of UK asbestos liabilities may not be included within our data at present. Alongside other compulsory employers' liability insurance they may provide, as Jason Richards comments, "an opportunity for run-off investors, especially those with large balance sheets and long term expectations". In addition to these, Jason Richards views UK motor insurance as "another opportunity for solutions to its legacy issues."

13 Damages (Asbestos-related conditions) (Scotland) Act 2009

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Opportunities in Europe

Asbestos losses incurred by domestic carriers are not confined to the US and UK markets: all industrialised nations have experienced significant asbestos-related claims. Continental Europe was a particular industrial powerhouse after WWII and asbestos usage there was widespread.

It is not clear if this usage will generate significant insurance losses and liabilities in run-off but a huge amount of discontinued business resides within actively writing insurance carriers in the Continental Europe as well as the UK. The introduction of Solvency II and equivalent regimes around the world, and the restructuring that these regimes may generate, is expected to result in the isolation of legacy business from ongoing lines. Run-off acquirers, investors and service providers eagerly anticipate the flow of opportunities that may then come to the market.

"Although many insurers had anticipated the increase in mesothelioma claims… the high levels of uncertainty that remain could have a serious impact on the insurance industry and particularly on the run-off market where access to additional capital to cover these claims is an issue."
Karen Newbury, KPMG LLP (UK)

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5. Conclusion

The total size of the UK non-life run-off market decreased by approximately 21 percent on the previous year and is now estimated at £29.7 billion of total gross liabilities at the end of 2009.

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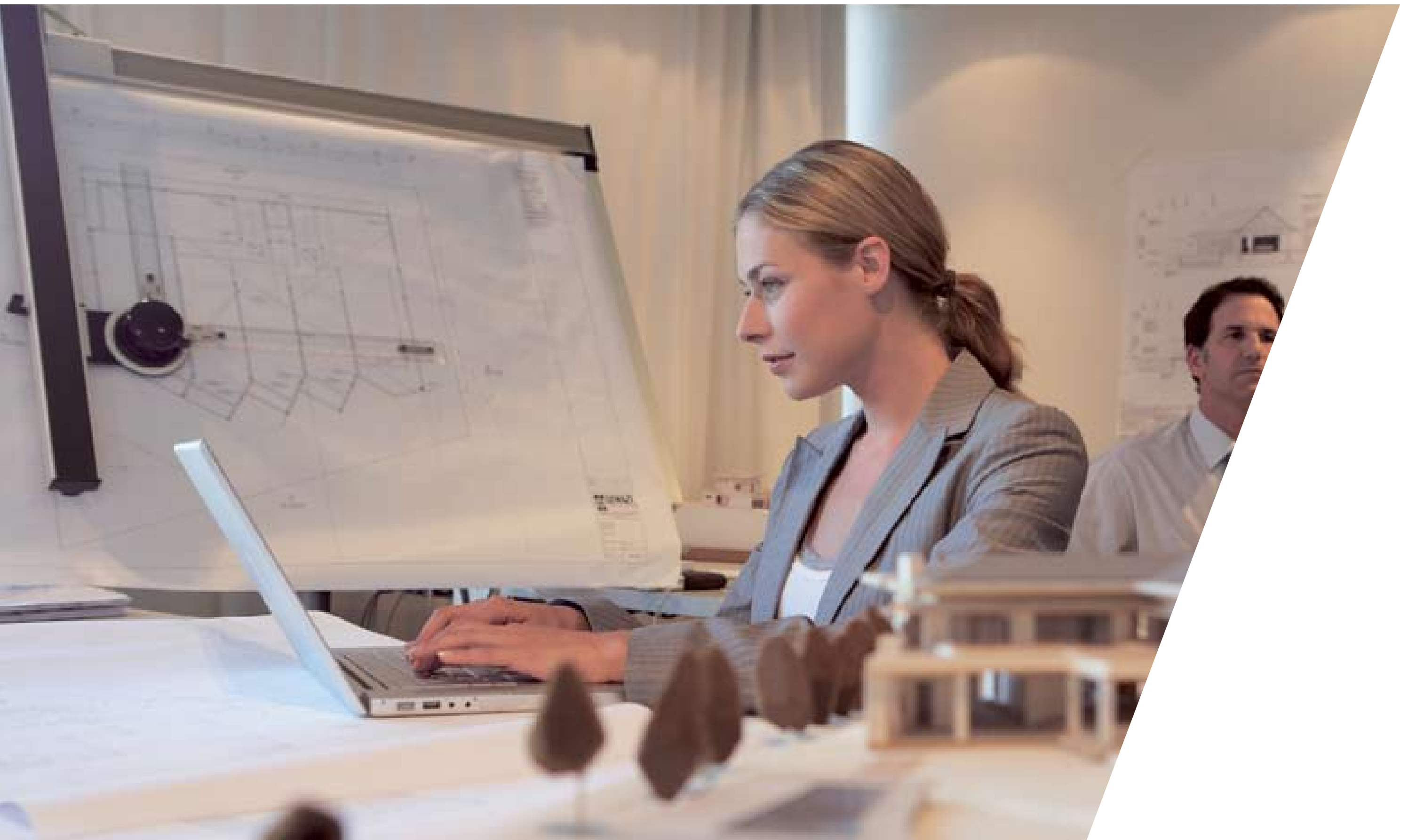
The UK non-life insurance market appears to have weathered the economic crisis and the global recession better than many other sectors. However, at a time when investment income is depressed by low interest rates, companies in run-off are coming under continued pressure to make their businesses more efficient.

Capital tied-up in (or net worth of) UK run-off companies has reduced as some companies have accessed this capital through dividend extraction, capital reduction, scheme of arrangement or other exit solutions. Of course, more can still be done; the work which many companies are doing to prepare for Solvency II is likely to increase the scrutiny on trapped capital and may lead to sales of portfolios or other solutions to access this trapped capital.

Activity in the run-off acquisition market has slowed. This may be a reflection of reduced availability of finance and/or a dampening of sellers' expectations with regard to the likely proceeds of a sale.

Further consolidation in the run-off services sector and a diversification into providing services to the live market are both expected to materialise, as service providers continue to adapt to the changing demands of the marketplace.



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Chronicle of run-off events

2009

Transactions

JAN
- R&Q acquires Quest
- Enstar acquires Constellation Reinsurance
- Wurttembergische sells Deutsche Versicherungs Ruck to Augur Capital

APR
- City General scheme effective
- ISG acquires Paladin Reinsurance Corp
- ISG acquires Syndicate and Corporate Management Services

MAY
- Charles Taylor Consulting acquires Axiom

JUN
- Deutsche Ruck scheme becomes effective
- Equitas / Berkshire Hathaway Part VII transfer scheme sanctioned
- Catalina Holdings acquires Alea UK
- R&Q acquires Woolworth Insurance (Guernsey) Ltd

Other events

JAN
- Winter storm Klaus (largest insured loss in 2009)

FEB
- South Eastern Australian bush fires

MAR
- Exchange Insurance Company Limited enters Administration in the UK

MAY
- Solvency II Framework Directive approved
- Swiss Re Part VII VAT opinion handed down by Advocate General

JUN
- Deadline for notification of intention to use Internal Model for Solvency II
- The Damages (Asbestos-related Conditions) (Scotland) Act 2009 becomes effective

2010

Transactions

JAN
- R&Q acquires JMD Specialist Insurance Services

FEB
- Enstar and Allianz Global Corp & Specialty AG (UK) 100% quota share agreement

MAR
- Minster scheme effective
- Enstar completes acquisition of British Engine Insurance Ltd

APR
- EAUA Pools scheme meeting
- R&Q acquires La Licorne
- Berkshire Hathaway completes acquisition of Scottish Lion

MAY
- Mitsui Sumitomo Part VII transfer scheme sanctioned
- DARAG acquires HVAG

JUN
- Compre acquires London & Leith Insurance Company

Other events

JAN
- Asbestos working party announces UK asbestos liabilities estimates
- Scottish Lion appeal overturns initial ruling
- Judge rejects challenges in Scottish Pleural Plaque judicial review

FEB
- Government announces compensation for pleural plaque sufferers
- Chilean earthquake

MAR
- Quinn Insurance Ltd (Ireland) ceases underwriting in the UK

APR
- ABI annouces establishment of ELTO
- Iceland volcanic ash cloud
- BP Deepwater Horizon oil spill

MAY
- FirstCity Insurance Group Limited in Administration

JUN
- WTC respiratory suits settlement reached

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JUL	AUG	SEP	OCT	NOV	DEC
The Meadows scheme sanctioned		Tawa Group acquires PRO Group	Scottish Eagle Part VII transfer scheme sanctioned Cardrow Part VII transfer scheme sanctioned Enstar completes acquisition of Copenhagen Re Mariner Re (Bermuda) scheme becomes effective	Trimark Pool schemes become effective R&Q acquires Goldstreet Insurance	Arran Part VII transfer scheme sanctioned R&Q completes acquisition of Carvill legacy portfolio AXA Liabilities Managers acquires BF Ruck Armour Re acquires PMA Captial Insurance Company ISG acquires Shared Services Insurance Group
Scottish Lion hearing prompts delay of scheme			ECJ upholds Advocate General opinion in Swiss Re Part VII VAT case Principle Insurance Company Ltd enters solvent run-off	Equitas vs R&Q ruling	ESG Reinsurance Ireland Ltd & Accent Europe Insurance Company Ltd enter Administration in Ireland ESG Reinsurance (Bermuda) Ltd enters Provisional Liquidation in Bermuda

JUL	AUG	SEP	OCT	NOV	DEC
Camomile scheme sanctioned	R&Q acquires AM Associates Insurance Services Limited Tawa acquires Island Capital Catalina Holdings (Bermuda) Ltd acquires Western General Insurance Ltd	Novae Part VII transfer scheme sanctioned R&Q acquires RSL from Marsh	EAUA Pools sanction hearing		
Berkshire Hathaway agrees reinsurance of CNA asbestos liabilities Scottish Lion judgement on disclosure of valuations for voting	GTE Reinsurance commutation plan approved (Rhode Island)	Pakistan flooding Hurricane Igor	QIS 5 submission deadline for solo entities		

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