

Riencia de Riesgos

y Seguros

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Reinvent yourself or die

The world's biggest sporting event is about to start. I am referring of course to the London Olympic Games 2012. And it is just as well that for a few days, after the hangover from the European Championship has passed, we have a good reason for thinking about different things: effort, personal endeavour, sportsmanship, the Olympic spirit...

Although the very first Olympic Games were held in the city of Olympia in about 776 BCE, it was the sheer enthusiasm of Evangelios Zappas and the tenacity of Baron Pierre de Coubertin that managed to reinvent the Olympic Games of the Modern Era and turn them into a symbol of civilisation. The crucial thing is to reinvent yourself.

And the fact is that, although the economic situation is not exactly upbeat in much of the world, we should take the chance of learning two major lessons from this worldwide downturn: not only how to «tighten our belts» but also how to set up the controls and mechanisms that make sure the same mistakes are not made again in the future. We now need to reinvent our economic model, outdoing the original idea, just as the fathers of the modern Olympic Games did, turning them into a global symbol.

In the first of this issue's three studies (second part of the study published in issue 112) the authors revisit the subject of environmental liability, looking at the legislation passed in some of the countries belonging to the «emerging economies» to tackle the problem of environmental liability and repair the damage caused by various environmental catastrophes.

In the second article the author reflects on the legal nature of underwriting agencies (coverholders), analysing some aspects that are muddled by interpretations of the regulator. The conclusion drawn, after a long and thoroughgoing analysis, is that these agencies have more traits in common with the mediation activity than the insurance activity.

In the third of this issue's studies its author, François Settembrino, member of our Editorial Board and expert in risk management, reminds us that there are fundamental risks we sometimes overlook. To do so he paints a hypothetical picture in which we have only one weapon to wield against future uncertainty: resilience.

In this issue we present the Ranking of the biggest European Non-Life insurance groups in 2011 published by Fundación MAPFRE's Centro de Estudios. On this occasion we see that that 2011 was marked not only by the eurozone sovereign debt crisis but also record losses for natural catastrophes recorded by the world insurance industry.

As always we trust this issue is of interest to you. Take a breather, rest up a while, and don't forget to reinvent the future.

Environmental Liability and *financial guarantees:*

The Portuguese system and the Spanish example for other markets



There can be little doubt that Environmental Liability was born in the United States and, from there, has extended to Europe. Today, it can be said that it is a global matter and many countries, whether in Asia, Latin-America or even Africa, are creating their own regulations on prevention and repair of damages to the environment. In the second part of this article, we take a brief look at some of those countries, including the so-called «emerging economies» that have recently developed legislation in response to environmental liabilities. The European and, particularly, Iberian Peninsula's experience, will definitely play an important part in the design of solutions. The outlook for Spain and Portugal will also be analysed in the context of the EU.

PAULA RIOS

MDS

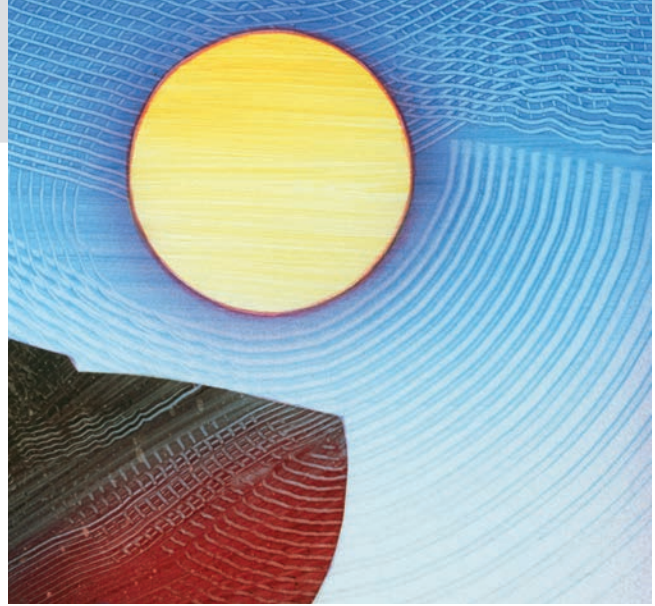
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...
as a reference

ILLUSTRATION STOCK



BRAZIL, COMPREHENSIVE REGULATIONS

Today, Brazil is a market with enormous potential where everything is happening. Regarding the evolution of Environmental Liability in this country, the lawyer, Ivy Cassa, points out that «the Brazilian regulations on this subject are fairly comprehensive and follow international tendencies, as can be seen in the Law on National Policy for the Environment (Law 6938/81), the 1988 Federal Constitution (that included environment on the list of basic rights) and the Environmental Crimes Law (Law 9605/98)».

Moreover, Cassa says that still there is not “any regulation of the Insurance Companies by the *Conselho Nacional e Seguros Privados* (CNSP) or the *Superintendência de Seguros Privados* (SUSEP), nor any obligation to constitute financial guarantees for Environmental Liability. However, since 2003, the Brazilian Congress has been in the process of passing Law Project 2313. Amongst other dispositions, it proposes including in the list of obligatory insurances, Third Party Liability for persons or legal entities that carry out activities that can potentially cause environmental degradation and having to responding for personal or environmental damage in both urban and rural areas».

«So – as the Brazilian lawyer explains – , this insurance would respond for environmental and personal damages caused by radiation or contamination produced by toxic substances or waste. The personal damages cover includes indemnity for death, disability, medical assistance and other complimentary covers and, in the case of environmental damage, would include damage to

natural resources as a result of accidents or aggressive exploitation. The cover excludes fines and bonds for the polluter. Moreover, this insurance constitutes a basic requirement for the concession of permits for operational activities which represent a potential risk for the environment».

Ivy Cassa considers that this is an interesting initiative «from the point of view of the social function of this insurance, but one has to ask oneself – should it be approved – whether the law will be effective or will be just a mechanism without any practical application. Alternatively it may be due to a Brazilian cultural question not compatible with the obligatory nature of this type of insurance or due to the actual difficulties that insurers pose concerning the acceptance of the risk».

Currently, Cassa declares, «in the market, Pollution Cover is almost always an extension of the Liability Policies, although there are already insurers, such as ACE, with new specific products».

In terms of potential market, she adds, «according to SUSEP data, the premiums paid for Environmental Liability insurances (or covers) amounted to R\$ 9 million in 2011 (around 4 million Euros), with a claims experience of R\$ 500,000 (approx. 220,000 Euros). As it can be see, these figures are very modest if one take into account the Brazilian market potential which in 2010 alone was R\$ 125 thousand million (approximately, 55,000 million Euros)».



FOLLOWING THE ECONOMIC PROGRESS AND INTRODUCTION OF LARGE CORPORATE GROUPS IN BRAZIL, THOSE INTERNATIONAL INSURERS WITH EXPERTISE IN THIS MATTER WILL BE ABLE TO DEVELOP PRODUCTS AND GROW IN PREMIUM VOLUME

Taking into account all of the above, it can be concluded that, today, like many other sectors, Brazil is a very attractive market for environmental insurances and, shortly, there will be developments in this field. Following the economic progress and introduction of large corporate groups in Brazil, those international insurers with expertise in this matter will be able to develop products and grow in premium volume.

ARGENTINA, AN IMPORTANT EXAMPLE

Argentina is an important example. This country has an obligatory Environmental Liability insurance regime in force (called Obligatory Environmental Liability (SAO)) following the terms set out in the General Environmental Law. The regulation requires any company that carries out an activity that can cause damage to the natural environment must have a cover that finances the repair and clean-up costs.

Although the law does not establish fines or



penalties, the governmental authorities will not issue environmental certification to companies that do not comply with the requirements and, therefore, they cannot operate legally in the country. But the reality is fairly different since many companies do not have the cover because it is currently a Surety Insurance and very few insurance companies are offering it.

Companies that undertake activities that represent a risk for the environment must be responsible (and guarantee that responsibility) for repairing any damage to land and water resulting from such activities. The SAO only guarantees the immediate compliance with the obligation to repair in favour of the State, since the insurance operates without the need to define liabilities (as it is a Surety Insurance).

In 2008 the National Insurance Superintendence authorised a local company, Prudencia, to issue the first Surety Insurance for a collective incident of Environmental Damage.

However, the system has its problems; one of them being the definition of insurable risk which the Law described initially as «any significant alteration that modifies negatively the environment, its resources, the balance of the ecosystems or collective property and values». However, a subsequent resolution added to the cover, damage to persons and their property, as a result of which it is envisaged that this legal and contractual uncertainty will give rise to unnecessary judicial actions.

Moreover, even though it exists, the availability of cover is very limited since Prudencia is the only company that has been able to get a policy approved and very few companies have adopted this wording. A free development of the environmental insurance market is not possible in this way.

In other Latin-American countries this matter is starting to be developed as there is growing public opinion that is pressuring for an improvement to the quality of the environment.

In general, there is good legislation but it still sparsely applied. In Mexico, for example, we can find Administrative Liability dispositions together with traditional Third Party Liability ones.

AFRICA: THE ANGOLA CASE

In Africa, we can also find a clear example of regulations on these liabilities and the way to cover them. This is the case in Angola. Presidential Decree 194/11, of 7th. July approved the new regulation on liability for environmental damage. Its objective is «to establish liability for the risk and degradation of the environment - based on the principle of ‘the polluter pays’- and the prevention and repair of environmental damage. It is applicable to all activities susceptible to causing environmental damage».

This is a strict liability regime that includes damage to the environment but both to the State and to private individuals. It requires the implementation of prevention and repair measures and establishes not only taking out financial guarantees but also Liability insurance.

The fines that it contemplates can be very high (from US\$ 1,000 to US\$ 100 million).

This law came into effect in July, 2011. Therefore, it is still very recent and its implementation is still pending. By way of comment,

we can say that it contemplates various concepts of the Directive although the definitions are very different. But it is, undoubtedly, a market that we should be aware of, in view of the opportunities to develop business in this business area.

ASIA, A TENDENCY TOWARDS UP-DATING

In Asia, and especially in China, the tendency is to update the environmental legislation and, at the same time, to apply the current regulations.

In China, for example, there has already been a strict liability system in place for several years, but it has not been regulated due to the focus on economic development. There has already been a strict liability system for several years, but it has not been regulated due to the focus on economic development. However, now greater attention is starting to be given to the matter since multinational companies that are setting up there are seeking protection for these risks. The same is happening in several countries in South East Asia.

THE OUTLOOK FOR SPAIN

In the first part of this article we saw that there has been significant development on this subject in the Iberian Peninsula, albeit, in different ways between Spain and Portugal. But both countries have introduced the Directive making financial guarantees obligatory.

From the beginning of the process, the Spanish market concerned itself with the evaluation of environmental damage. Miguel Ángel de la Calle, Technical Director of the PERM (Spanish Environmental Risks Pool), transmits to us the general opinion that these risks «apart from causing serious damage to our already maltreated environment, are characterised by the fact that they can compromise the viability and future of the companies that cause them».





«In order to avoid both circumstances – he goes on –, it is advisable to carry out proper environmental risk management which should start with its analysis. The different analyses are reflected in the Spanish regulations on environmental liability and related to the limit of the financial guarantee as opposed to the prevention of damage, which is what is really useful».

He goes on to say: «This relation and the system contemplated for calculating the limit of the financial guarantee also make it necessary for these analyses to be quantitative, i.e. the probability of each of the possible risk scenarios should be expressed in mathematical terms. In this way, the possibility of analysis of qualitative and semi-quantitative risks (in which only the probability of the more significant scenario or scenarios is calculated) is avoided. This is much simpler and less costly, but equally valid for risk management».

De la Calle concludes that «to make this effective, the best way is to include the analysis of the risks within a more preventive regulation, such

as the one that corresponds to Integrated Environmental Authorisation, where its true purpose, i.e. prevention, can be found, and to take them out of a repairing regulation such as Environmental Liability».

In expressing his evaluation, the Technical Director of the PERM says that «by using the MORA tool, it would suffice to undertake an analysis of the most significant scenario or scenarios which, also, would be those used to fix the limit of the aforementioned financial guarantee. This method would simplify the costly method for fixing the limit of the guarantee which is currently contained in the Environmental Liability regulation».

In times of crisis, such as the present, perhaps thought should be given as to whether some of the processes, whilst 'ideal', may represent an excessive cost and that a more pragmatic approach may be justified.

However, the truth is that the financial guarantees will gradually become obligatory, in accordance with the priority order established according to the activity sector (priority 1, from 1/07/2013 to 30/06/2014; priority 2, from 1/7/2014 to 30/06/2016; and priority 3, from 1/07/2016 to 30/06/2019).

Moreover, something very significant in this respect has been the change in the Organic Law of the Criminal Code which introduces, for the first time in Spain, the possibility of attributing criminal liability to companies and this is particularly relevant for crimes against the environment.

In any event and whilst, in reality, the guarantees are not yet obligatory, market awareness has given rise to sustainable growth in the premiums of the Environmental Liability insurance portfolio



WHILST THE GUARANTEES ARE NOT YET OBLIGATORY, SPANISH MARKET AWARENESS HAS GIVEN RISE TO SUSTAINABLE GROWTH IN THE PREMIUMS OF THE ENVIRONMENTAL LIABILITY INSURANCE PORTFOLIO

(in respect of the PERM, this accumulated increase has been in excess of 50%).

THE FUTURE IN PORTUGAL

With regard to the development of the application of Law Decree 147/2008 dated 29th. July and the subsequent publication of the *Technical Guidelines for the Evaluation of Environmental Damage and Imminent Threat of Environmental Damage*, in Portugal they are awaiting the publication of the *Guide for the Constitution of the Financial Guarantees*.

This guide will include a methodology for risk evaluation for the purpose of constituting the financial guarantee, the fixing of minimum amounts for these guarantees and, moreover, the proposals for exemption of constituting financial guarantees for those activities that are considered to be of low risk.

In this respect, the authorities intend to establish two levels of complexity of activity. The C1 level (low risk) will be exempt from constituting financial guarantees, whilst the C2 level will be obligatory. This proposal is being evaluated by the Environmental Ministry.

WITHIN THE EU

The European Commission has issued a report on the efficiency of the Directive and the availability of financial guarantees covering the liabilities established therein. In the report, the EC recognises the limited practical experience on the implementation of the Directive, which makes it difficult to reach firm conclusions on the efficacy in

respect of the repair of environmental damage.

With a view to reducing these limitations, the Commission is going to carry out a series of initiatives throughout 2012 established in the *Stakeholder and Practitioner on the Implementation of the ELD* workshop, held in November, 2011. The actions programmed for this year are as follows:

- 1.- The launch of an explicatory leaflet on the Directive.
- 2.- To make available information to the member states for undertaking training initiatives on the Directive.
- 3.- To take advantage of the ties between the Directive and other legal dispositions, such as the Directive on Habitats and Framework Directive on Water.
- 4.- The evaluation of additional aspects related to risk evaluation and determining risk levels on industry in the EU or those activities with most risk.
- 5.- To undertake an exhaustive study on the possibility of creating a Fund, or similar instrument, to affront the financial security / financial guarantees of European companies and industries in the context of the Directive.

According to news from the European Cement Association (CEMBUREAU), the EC could re-examine the option of an obligatory financial guarantee before the next revision of the Directive, which is expected for 2014.

This matter is of particular relevance following the accident that occurred on 4th. October, 2010 in Hungary at MAL, the aluminium production company (see part 1 of the report). It became apparent very quickly that the company had very



THE EUROPEAN COMMISSION PROPOSED A MODIFICATION IN THE DEFINITION OF DAMAGE TO WATER IN ORDER TO ELIMINATE THE «GAP» IN THE LIABILITY FOR DAMAGE CAUSED TO SEA WATERS BY OIL AND GAS OFFSHORE OPERATIONS

limited insurance coverage which was inadequate in the context on the liabilities established under the Directive. The cost of the claim will be dozens of millions of Euros.

This accident provoked a lot of pressure at the heart of the EU and member states for them to oblige their industries to obtain financial guarantees with adequate cover for their environmental risks and liabilities.

But, apart from the environmental policies of the member states and the way of implementing them through the Directive, above all, companies must be alert and have technically adequate information available on their potential environmental liabilities and acquire the most suitable financial guarantee for their needs.

EXTENSION OF THE DIRECTIVE

With regard to an extension of the Directive, Valerie Fogleman, a specialist in Environmental Law and Consultant with Stevens & Bolton LLP, maintains that «with the next development, the definition of damage to water will be extended to include any damage that significantly affects sea waters. On the 27th. October, the European Commission proposed this modification to eliminate the «gap» in the liability for damage caused to sea waters by oil and gas offshore operations. Maritime conventions do not cover this

damage since they are applicable to vessels and not operations of this kind».

Similarly, for Fogleman, «the Commission may propose other alterations to the Directive but it probably will not do so until 30th. April, 2014, when it has issued its report on the application and implementation of the Directive».

However, this development may cause problems in the developing market of environmental insurance. On the 27th. October, 2011, the CEA (*Comité Européen des Assurances*) announced that it defended that «the extension of the European Directive on EL could have negative effects, that is to say, damaging consequences for the insurance market, as a consequence of the extension of its scope in respect of sea waters» .

In its announcement, this institution stated that Environmental Liability insurers will have to re-evaluate their policies in the light of this extension, since offshore liability risks are covered by highly specialised insurers under energy and marine policies and, generally, they are not offered by insurers that write Environmental Liability. They are different markets. What is more, it is the opinion of the CEA, «that they would be better dealt with by the international, and not just European, market».

The truth is, and the CEA makes it very clear that, for a market that is still under development in Europe, and which practically did not exist a few year ago, or was just emerging (limited to what the pools were offering), the expected extension could cause difficulties.

FINAL CONCLUSIONS

From everything that has been commented on, we can conclude that the EL Directive is a very complex regulation, the implementation of which is being carried out slowly and gradually (in fact, like its creation or negotiation). All of the agents involved recognise that whilst there is already some





practical experience in this field, all the parties involved, the authorities and financial sector, particularly insurers, require more experience.

The experience acquired to date in Europe on this matter is already an important asset (for example, the application of the Directive to the accident in Hungary) for supporting the development of Environmental Liability solutions that are suitable for the reality and specific nature of emerging economies.

The EL Directive is characterised by its transversal nature, since it is articulated through different legal regulations and varying areas of knowledge. So, to achieve an effective implementation of the Directive, it is essential to adopt a multidisciplinary approach that incorporates legal, financial and technical aspects with an overall vision and focus on the evaluation of the exposure of a company to Environmental Liability.

Risk analysis must be seen by companies as a tool for making available useful information on the activity and its level of exposure to Environmental Liability. In this way, the available information will also be useful for supporting the decision on the financial guarantee or the package of financial guarantee options most suitable for a company or industry.

Although insurance is the option with the most advantages for an Environmental Liability system, it

does not cover all risks or situations, so the combination of different instruments enables a wider range of covers for these responsibilities. To this effect, it is necessary to guarantee a flexible and open market that will promote the development and design of innovative solutions in respect of products and extensions of cover.

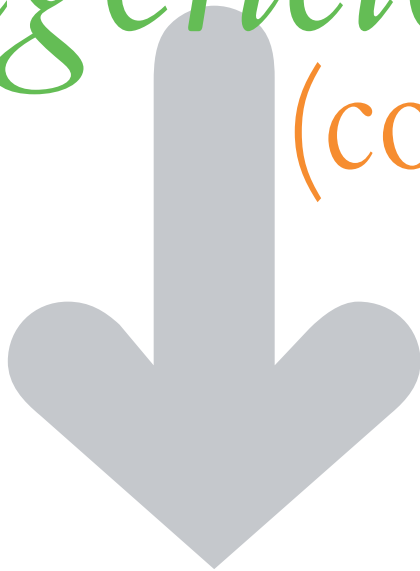
To take out EL insurance is much more than transferring part of one's responsibilities: it is obtaining support in moments of crisis and having access to expert services. This is essential for matters of prevention and other aspects, particularly in the event of damage to the biodiversity. Those companies which, apart from writing risks, also offer prior analysis of these threats or damage evaluation in the event of a claim, will, undoubtedly be providing their clients with a complete service and, in fact, to society as a whole.

The role of insurers has been, is and will be recognised as a response to those environmental risks that require knowledge, experience and technology. And, moreover, these requirements are made available to those companies through preventative activity, not only when there has been damage but also in the event of a threat.

This support can be corroborated by the operator of a company that suffered the first known EL claim in Portugal which occurred just a month after the law that implemented the Directive had come into force. Almost two tons of fuel was spilled into the Tagus River and the company was not even in the Appendix III list and, therefore, the cover had been taken out voluntarily. This was a great relief for the operators who, otherwise, would have had to pay over 1 million Euros out of their own pockets.

There can be no doubt that, as the insurance industry, we can be sure of the importance of our role in this matter and of our contribution to securing a better future in respect of the protection of our environment, wherever it is, in any part of the world. ■

Making sense of *underwriting* agencies (coverholders)



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Not so long ago underwriting agencies were a *rara avis*, most of them associated with Lloyd's syndicates and used for covering risks that were not *a priori* attractive for local insurers, either because they were very high-risk or involved a complicated management or underwriting operation.

Before the latest amendment of the Private Insurance Organisation and Supervision Law (LOSSP in Spanish initials) there was a spate of applications for registration in the Insurance and Pension Funds Board (*Dirección General de Seguros y Fondos de Pensiones*: DGSyFP); small wonder in view of the market situation and also the consequences of the new regulation, currently in force.



**THE CURRENT
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But before going further into this matter, we need first to explain what is meant by underwriting agency (hereinafter UA), what they are for, how they work; this will shed some light, hopefully, on the regulation that is about to come into force.

UAs stem from English-speaking law and make full sense within Lloyd's idiosyncratic structure¹.

Lloyd's is one of the oldest but, at the same time, least conventional of insurers². Its *modus operandi* is for its members, grouped in syndicates, to accept insurance of a given risk and back up the underwritten operation with capital.

Each syndicate has a given number of members, who in turn define their own strategy, which may or may not concur with Lloyd's own. In other words the syndicate members have sovereignty over their own capital.

The syndicates are counselled by managing agents, who make the necessary technical analysis to serve as the basis of the syndicate members' decision to accept or reject the transaction.

A situation could arise in which a broker seeks to place certain risks among various managing agents. The managing agent usually operates for the syndicate and the broker for the policyholder. Given that the managing agent underwrites risks on the syndicate's behalf, these agents might often delegate the risk underwriting function to other «subagents», called coverholders.

Coverholders are in effect proxies of the syndicate's managing agent. They can therefore accept the contracting of certain insurance policies in the name of their represented party. But this *coverholder* will be entitled not only to underwrite risks but also

to collect premiums and settle claims. The limits of his or her representational powers will be only those laid down in the agency contract signed between the coverholder and the managing agent.

These coverholders are known under Spanish law as *agencias de suscripción de riesgos* (underwriting agencies).

The current Spanish Law on the Mediation of Private Insurance and Reinsurance (*Ley de Mediación en Seguros y Reaseguros Privados: LMSRP*) regulated the UAs (coverholders) very briefly in its third additional provision.

Even though the text set out ostensibly to regulate the insurance mediation activity, the law, rather surprisingly, forthrightly stated that the activity of the underwriting agencies was not to be considered as mediation³.

This legal situation has clashed with the opinion of the agents themselves and some legal theorists, who have indeed understood the UA's work to be, effectively, mediation⁴.

¹ Though not solely, because there is also, for example, the Institute of London Underwriters, which mainly integrates insurers based outside the UK.

² Founded in the 17th by Edward Lloyd, who ran a cafeteria with this name at the time.

³ Much the same goes for the «auxiliary advisor» figure laid down in article 8 of the LMSRP.

⁴ Rego López, A.; «Las modificaciones en el régimen de los mediadores de seguros introducidas por la Ley de Economía Sostenible», in *Revista Española de Seguros*, Nº 148, October 2011. Pp. 785-798.



CUTLER

ILLUSTRATION STOCK

THE PROBLEM OF ASCERTAINING EXACTLY WHAT IS TO BE UNDERSTOOD BY AN UA STEMS FROM THE INTERPRETATIONS GIVEN BY THE SPANISH REGULATOR TOWARDS INSURERS WITH A PARENT COMPANY, SUBSIDIARY OR BRANCH IN SPAIN

We ourselves believe that the work of the UAs does constitute mediation insofar as the whole set of activities carried out by an insurer can be defined as such.

It should not be forgotten here that the LMSRP provides for the possibility of insurance companies carrying out mercantile insurance distribution work, a task that is regulated within the mediation law⁵.

The fact is that in any agency contract the empowerment given by the insurance company to the underwriter may entitle it to carry out many other tasks than just capturing business and/or offering products.

But the problem of ascertaining exactly what is to be understood by a UA, and how far-reaching its work is, stems from the interpretations given by the Spanish Regulator, perhaps with an over-protectionist zeal, towards insurers with a parent company, subsidiary or branch in Spain.

Witness the answer given to the Query «Lloyd's on underwriting agencies» dated 5 July 2007, which entitled section 2 as «Relation between the underwriting agency and other mediators», when Additional Provision 3.1 of Ley 26/2006 states that «(...) *it cannot be construed that they constitute private insurance or reinsurance mediation activities as defined in article 2.1 hereof*».

We also find that the *Dirección General* excludes the possibility of an underwriting agency underwriting risks for more than one insurer, «(...) *since its activities will be understood to have been carried out directly for said insurance company*»⁶.

And this despite the fact that the former regulation expressly stated the following:

«the activities carried out by underwriting agencies on behalf of and in representation of the insurance or reinsurance companies (...)»,

In other words it spoke in the plural, and not by oversight but rather by express decision of the legislator. Note that the current regulation uses the plural anew as a reflection of the influence of community law.

But the fact is that the Spanish law contradicts itself in accepting the underwriting of risks for different insurers in the Lloyd's framework, on the grounds that it is considered in fact to be a single insurance company⁷.

The Regulator has forgotten here the general legal principle whereby what is not expressly forbidden in private law is *ipso facto* permitted; this differs clearly from public law where government authorities are entitled to carry out only that which they are expressly empowered to do so, the rest being prohibited.

Bringing these clarifications to bear on UAs and how they are understood by our Regulator, where do they fit in the legal scheme?

The current regulation of these UAs comes from point eight of additional provision 14 of the Sustainable Economy Law 2/2011 (*Ley de Economía Sostenible*), revoking additional provision 3 of the *Ley de*

⁵ Article 2.2 of Ley 26/2006.

⁶ Answer to the query «On the regulation of underwriting agencies», dated 30 November 2007; Answer to the query «Organic configuration of underwriting agencies», 6 February 2007.

⁷ Cf. Answer «Query Lloyd's on underwriting agencies» dated 5 July 2007.



Mediación en Seguros, and creating articles 86 bis and 86 ter of Royal Legislative Decree 6/2004, their regulation then being inserted in Section IV of Title III, *On the activity of foreign insurance companies in Spain*.

THEIR INSERTION PRECISELY HERE IS NO COINCIDENCE

Firstly because it is understood that the activity of UAs is not mediation and is regulated in the overarching insurance-company law, the *Ley de Ordenación y Supervisión de Seguros Privados*.

Why are the UAs regulated in Title III, *On the activity of foreign insurance companies in Spain*?

Because the DGSyFP has always understood that underwriting agencies made sense insofar as they accepted risks in the name of foreign insurers, it never having

been fully accepted or accounted for that an insurer with a parent company, subsidiary or branch in Spain should grant sufficient powers to an agent for underwriting risks directly on an insurer's account or settle claims.

Our viewpoint is that regulation cannot be formulated and implemented looking solely inwards at our own market, especially when the markets of our competitors grant powers and permit transactions that place our own national operators at a disadvantage.

A very similar case occurred with legal expenses insurance in Germany. In Germany this line could be marketed only by specialist insurers so the foreign multi-line insurers traded under the Community principle of freedom to provide services and competed with the national specialists but not with the national multi-lines, generating a clear competitive disadvantage. In the FRG it was understood that insurers' interests were better protected thus, which was not in fact the case, judging from the Solvency II Directive, whereas in fact Germany's own industry was being harmed. This is exactly what is now occurring with UAs in Spain.

It should be added here that everything bound up with the freedom to provide services and freedom of establishment is laid down as a fundamental right in the Treaty Establishing the European Community⁸, seeking smooth interaction of the various economic operators throughout the Union.

Nonetheless a UA does not in fact constitute the establishment of an insurer in

A UA DOES NOT CONSTITUTE THE ESTABLISHMENT OF AN INSURER IN ANOTHER COUNTRY SINCE IT IS NOT A BRANCH OR SUBSIDIARY THEREOF BUT RATHER AN INDEPENDENT LEGAL PERSON IN ITS OWN RIGHT

⁸ Articles 52 to 58 of the Treaty.

**SPAIN'S CURRENT
SYSTEM RULES
OUT THE
POSSIBILITY OF A
UA
UNDERWRITING
RISKS OF AN
INSURER
OUTSIDE THE
EUROPEAN
ECONOMIC AREA**

another country since it is not a branch or subsidiary thereof but rather an independent legal person in its own right; indeed the significant shareholding rule of insurance companies is applied thereto⁹; we therefore do not understand its placing within the LOSSP, especially in view of the fact that this rule is not applied to the insurers' branches.

Similar but with a subtle difference is the Portuguese legislation, where any agency, office or any other representational premise of an insurance company is considered to be a branch¹⁰. In other words, UAs would indeed be included insofar as they are «any other form of representation»; this situation therefore differs from the wording of the Spanish law.

Furthermore, Spain's current system rules out the possibility of a UA underwriting risks of an insurer outside the European Economic Area¹¹, thereby removing from its trawl US, Canadian, Japanese, Brazilian, Indian insurers, etc. This can only be harmful to any dynamic economy, as Spain's strives to be, and might even be construed as a limitation of the freedom to conduct business¹².

In fact, a UA underwrites risks on behalf of an insurer, whether or not it can manage claims. It is not its representative in Spain nor a subsidiary of said insurance company.

But to understand a UA properly and hence be able to regulate them with any consistency we first need to ascertain exactly what their legal nature is.

To do so we have to start by clarifying what an agency contract is, since this underpins the whole existence of UAs.

The agency contract is one of the so-called atypical contracts¹³. Under such a contract an agent undertakes to provide business operations in a constant manner in exchange for a remuneration¹⁴.

The agent is independent of the person for whom it mediates, with no more bond than the agreed remuneration, so it is not liable for the risks of said operations. In other words, it is not a branch or office of the entrepreneur on whose account it promotes the activity.

⁹ Articles 22, 22 bis, 22 ter paragraph two of LOSSP.

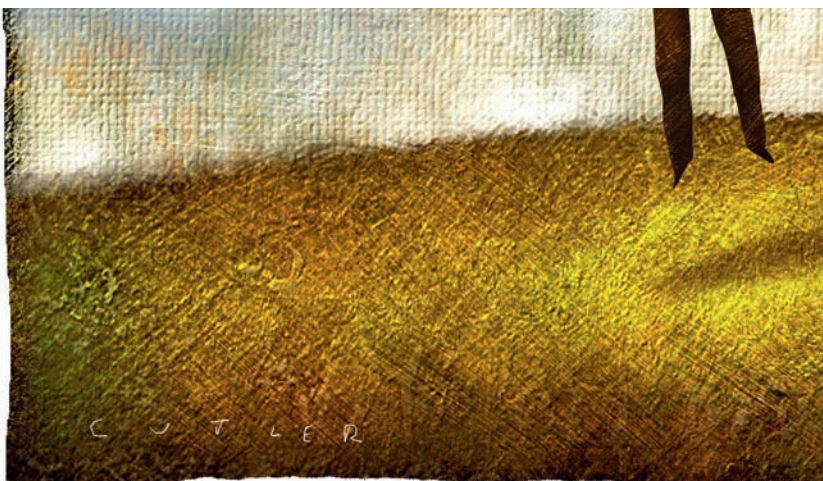
¹⁰ Blanco Morales, P. and Carbonell, J., «Actividad en régimen de establecimiento y libre prestación de servicios», in *Estudios y comentarios sobre la Ley de Ordenación y Supervisión de Seguros Privados*, Editorial MAPFRE, Madrid, 1997. Page 296.

¹¹ Article 86 bis 1 of LOSSP.

¹² Article 38 EC.

¹³ Chuliá Vicent, E. and Beltrán Alande, T.; *Aspectos Jurídicos de los contratos atípicos II*, Bosch Editor, Barcelona, 1992.

¹⁴ Article 1 Of the Agency Contract Law 12/92 (*Ley sobre el Contrato de Agencia*).





policies and these bind the insurer, a situation which also obtains in the case of insurance brokers, which have no relationship of hierarchical dependency with the insurer, as the UAs do.

Nonetheless the UAs might come to manage claims, whenever the empowering company has delegated this function on them. This situation is prohibited for insurance brokers in Spain and not in other comparable countries.^{18 19}

An agent can indeed manage claims but does not take on the risk on behalf of another, the insurer, but rather, as

**MOST OF THE UA
REGISTERED IN THE
DGS DERIVE FROM
BROKERS WHO
WERE DRIVEN TO
BECOME A UA BY
THE NATURAL
MARKET
EVOLUTION**

As regards the underwriting of risks this is understood to be the set of activities geared towards the acceptance of a risk by an insurer, according to some pre-established terms and conditions¹⁵.

An underwriting agency is thus the institutional arrangement whereby an underwriter accepts risks on behalf of an insurer. But the mere acceptance by the underwriter already binds it to the insurer, even though it is not an organic part thereof, all in due accordance with the empowerment granted.

A priori it could be likened to the work of the mediator; in fact most of the UAs registered in the DGS derive from brokers who were driven to become UAs by the natural market evolution.

Nonetheless, it should be noted here that for some time underwriting agencies have not been subsumed under insurance mediation in Spain¹⁶; this situation is similar in other comparable countries¹⁷.

It is true that mediators may issue

¹⁵ Castelo Matrán, J. y otros; *Diccionario MAPFRE de Seguros*, Madrid, Edición 2008.

¹⁶ On the types of insurance agents that existed in Spain, see Garrigues, J.; *El contrato de Seguro Terrestre*, Imprenta Aguirre, Madrid, 1982, Second Edition. Pages 59 ff.

¹⁷ Eg. the Portuguese case, article 8 of Decreto-Lei 144/2006. Along the same lines as the Spanish case in Portugal the UAs are regulated within the insurance law with the proviso that "(...) any permanent presence (...)" that is carried out "(...)" through a simple office run by the personnel of the firm itself or an independent person but empowered to act permanently on behalf of the company as an agency would". Article 1 c of Decreto-Lei 94-B/98.

¹⁸ García, C.; *Críticas al modelo español de mediación en la gestión de siniestros*, [web 2010]. <http://www.interiura.com/es/news-0006-002> [Query 11-2010].

¹⁹ Articles 31 and 32 Ley 26/2006.

THE UA CAN UNDERWRITE RISKS ONLY ON BEHALF OF INSURERS NOT BASED IN SPAIN, BEING BOUND TO PRESENT A PROGRAMME OF ACTIVITIES

representative of the insurer, acts directly as said company.

WHAT ARE THE DIFFERENCES?

In Spain, at the moment, UAs can underwrite risks only on behalf of insurers not based in Spain, -but in the EEA²⁰- being bound to present a programme of activities.

Although they can also work only for re(insurers) authorised to trade in Spain, agents are not bound to present a programme of activities or ask the Regulator for authorisation, since the responsibility for notifying the entry in the Registry of Mediators falls on the insurance company or companies for which the agent is working²¹.

Another important difference that stems

from the current wording is that the UAs can only be legal persons whereas the agents and brokers can also be natural persons²².

If we are going to analyse what the insuring activity is, we understand that they are the rightful activities of an insurance company, ranging from marketing and sale of policies, the management of the premiums received to, as the case may be, the operations deriving from claims.

WHAT IS THE DIFFERENCE FROM THE UAs?

Simply that the UA underwrites a risk on behalf of another; it does not stand security itself for the risk since the party that takes on these capital-based consequences is the insurer directly.

It should be pointed out here that the future Insurance Supervision Act (*Ley de Supervisión de Seguros*) is to be worded in



²⁰ Article 86 bis 1 of *RD Legislativo 6/2004*.

²¹ Articles 13 and 21 of the *Ley de Mediación en Seguros*.

²² Briefly, we might add that there are other differences like the regime of significant shareholdings, the eligibility of the management staff, etc., but we have centred on those we believe to be most important. See Morillas Jarillo, M^a J., «Ley de Economía Sostenible y mercado de seguros y planes y fondos de pensiones», in *Diario La Ley*, N^o 7615, Sección Tribuna, Year XXXII, April 2011.

identical fashion insofar as UAs are concerned²³.

The bill as currently drafted lays down specifically in Section 4 of Title II of Chapter II on *Access to the activity in Spain of insurance and reinsurance companies of other EU states. Underwriting agencies*, and the control thereof will be ruled in a similar way to the (re)insurance companies dealt with in Chapter I of Title IV.

Given this characterisation of the underwriting agencies, are we dealing here with a mediator *sui generis* or a particular type of insurance company?

In our opinion it would fit more neatly into the concept of mediation, since, at the end of the day, it does not take on as its own the risks it accepts, and for this work of capturing premiums it receives a remuneration, not from the policyholder – as a broker might do – but only from the company for which it underwrites the risks.

The main difference in Spain from brokers is that the UAs can manage claims, so in our opinion Spain's law wished to avoid any confusion whatsoever with the policyholders²⁴. Note, however, that agents can in fact manage claims on behalf of the insurers.

Although it is true that, before the *Ley de Mediación* there was a large legal loophole, where the UA could be a limited company or even a natural person, the current framework seems to have swung too far the other way, placing great stress on the control exerted by the Regulator²⁵, since the same regime is now applied to the UAs as to the insurers. This smacks of overkill, since UAs do not assume as theirs the underwritten risks.

We believe this to be because the law

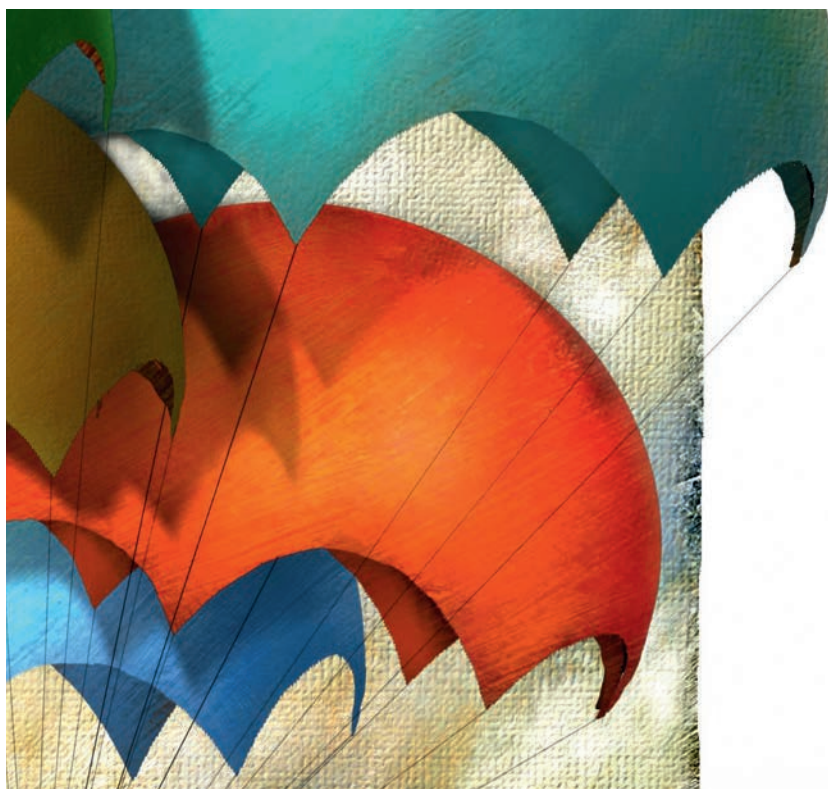
was drawn up without a full and proper understanding of the true legal nature of UAs. In our opinion, in light of all the above, this nature chimes in more with the mediation activity than the insurance activity strictly speaking. |

²³ Project N° 121/000142.

²⁴ STSJ (Judgment of the Higher Court of Justice) of Madrid, 2050/2009, Sala Contencioso Administrativa, Sección 8ª, 19 November.

²⁵ Sánchez Calero, F.; «Consideraciones generales en torno a la Ley de Ordenación y Supervisión de los Seguros Privados», *Diario La Ley*, Sección Doctrina, Ref. D-35, Vol 1, 1996.

BEFORE THE LEY DE MEDIACIÓN THERE WAS A LARGE LEGAL LOOPHOLE, BUT THE CURRENT FRAMEWORK SEEMS TO HAVE SWUNG TOO FAR THE OTHER WAY, PLACING GREAT STRESS ON THE CONTROL EXERTED BY THE REGULATOR



Risk Management

It goes well beyond the remit of this paper to run yet again through all the problems faced nowadays by users. Quite enough has been said about these in the more technical reviews and forums. Moreover it is the unknown and therefore untalked-about problems and attacks that pose most perils. The aim here is to philosophise about the fundamental risks that we risk forgetting.

FRANÇOIS SETTEMBRINO
Risk Manager FERMA

Breakdowns

It takes only a large-scale power failure to sew panic among users. Witness Canada, still shaken long afterwards by the famous rupture of many powerlines under the sheer weight of snow and ice. During this current winter entire regions of France and Europe have suffered the same fate. Even outside the harsh conditions of winter, a grid overload might trip a cascade of security devices and cut off power to vast areas, as happened some time ago in New York. Not everyone has a standby generator and the failure of a single part of the grid

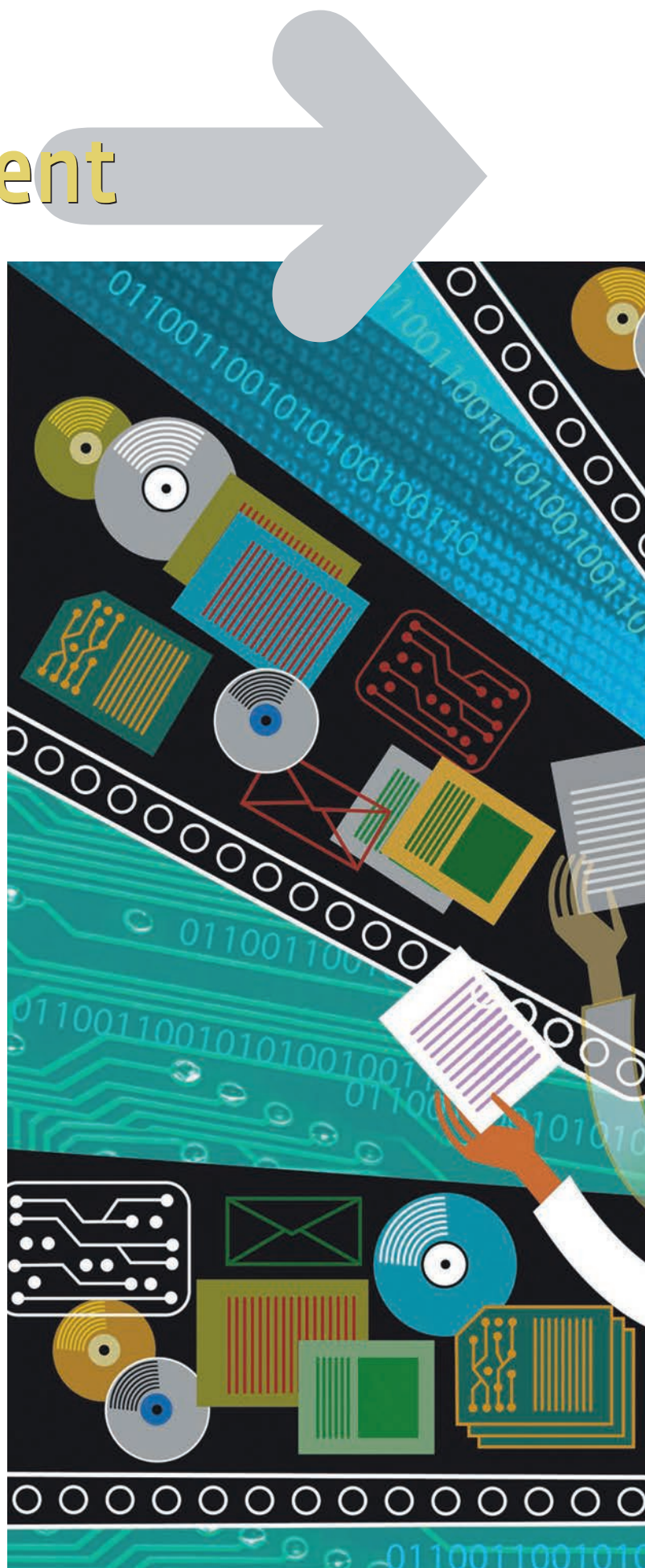


ILLUSTRATION STOCK

Electronic *Risks*

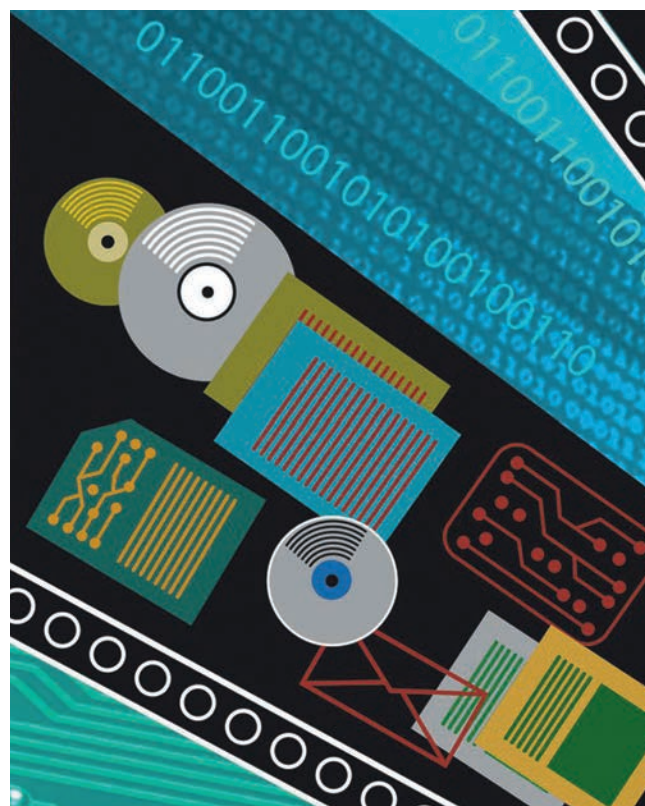


might affect the whole caboodle, unleashing a chain of damaging consequences that leave no one unscathed. But there are two other sorts of breakdowns that are particularly dangerous.

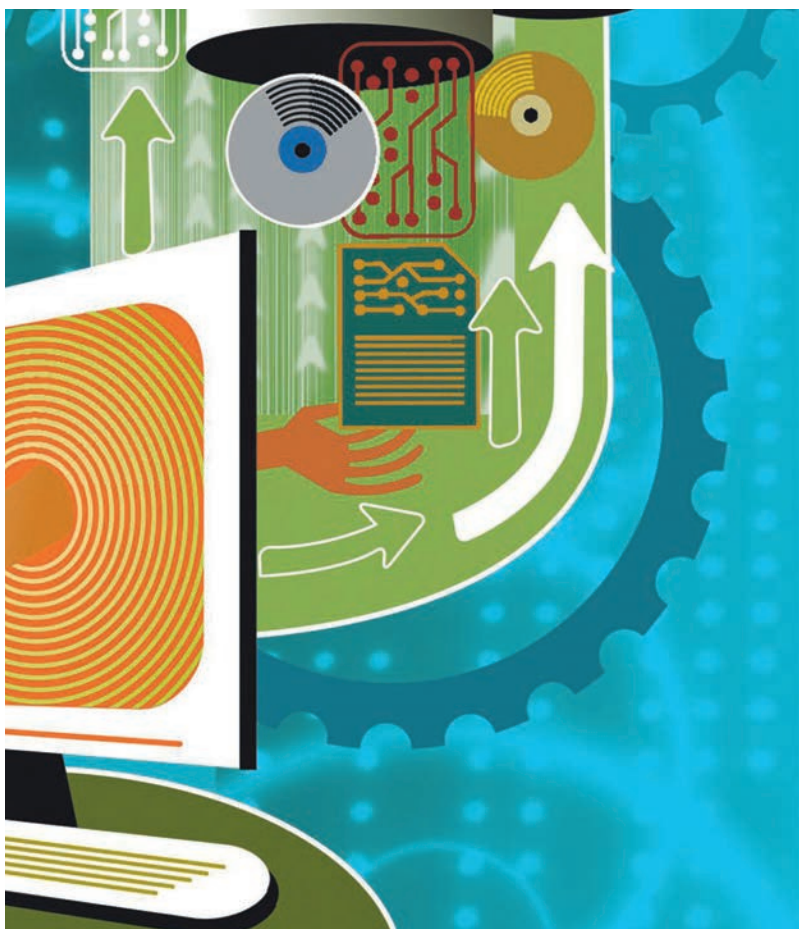
One is initiated by the will of man for political reasons; this concerns the shutdown of the information networks. During the turmoil in Tunisia and Egypt certain states, like China, pulled the plug on these news stories and even balked the flow and exchange of ideas between their own internauts. The burning issues of the day seemed to hot to handle and they wished at all costs to head off any domino effect. Public upheavals, especially involving the young on the streets, could speak too clearly of their hopes of liberty. In a totalitarian regime this just won't do.

There is another source of even more worrying, and unforeseeable, breakdown. The sun is currently showing signs of weakness; in 1610 Galileo was the first to observe sunspots, with a cyclical trend of eleven years. For five years the number of spots grows, then five years of decline and a year of recovery before the cycle starts again. Two hiccoughs in this trend occurred in the C17th and C19th, heralding each time a significant cooling of the climate. The cycle that should have begun in 2008 did not actually start, and then only timidly, until 2010, two years behind schedule. As the number of sunspots falls, so does their temperature... The intensity of the magnetic field, the source of the spots, has also weakened sharply. As well as this anomaly the solar wind is issuing fewer and fewer particles because it has become slower, less dense and, above all, cooler. To

complicate matters even further, the distribution pattern has also changed. All this points to anomalies in the magnetic field of our sun. At the same time – yet another source of bemusement – its light spectrum is totally different from the expected pattern, with overly low levels of UV and a sharp increase in visible light. What might be the consequences of all these solar anomalies on our climate? That remains to be seen. *Prima facie* the scientists are pessimistic, most expecting some sort of climatic disturbance. Others there are who are already fearing a sudden upturn, too intense and brutal, of the sunspots and their activity. The magnetic storm is already known to us; we suffered one a few years ago. Telephone communications were broken, radio transmissions interrupted,



THE CONSEQUENCES OF A NEW MAGNETIC STORM OF GREAT INTENSITY WOULD BE MUCH MORE DRAMATIC, BECAUSE ELECTRONIC MACHINES, PRESENT EVERYWHERE TODAY, HAS NOT A VIABLE FAILSAFE AGAINST SUCH A PHENOMENON



sowing widespread disorder and nuisance. If the pundits are right this time, the consequences of a new magnetic storm of great intensity would be much more dramatic. Electronics is with us everywhere today, not only in the world of computers or internet but also in the workings of all devices of any complexity, ranging from aircraft and cars down to household appliances. None of these machines has a viable failsafe against a serious magnetic storm. The effects of this breakdown would therefore be dire and entire populations might be wiped out; no more transport, no more nourishment, no more healthcare. . . these are only some possible outcomes among many. And there doesn't seem to be any answer in store...

Solar activity has resumed, with a burst of magnetic storms around 15 February 2011. These

electromagnetic storms were so strong that they engendered some beautiful aurora borealis. The moot point now is whether these eruptions are going to continue and grow in strength. In this case radio transmissions could be affected, even putting some satellites at risk and confining astronauts inside their spacecraft, any sortie posing grave danger of irradiation. If the storms increase in intensity, then without any doubt the sophisticated electronic systems underpinning our daily lives might be in peril. The trouble is that there is no past experience to go on. Since an increase in solar activity until 2014 now seems to be on the cards, we will just have to wait and see what happens...

The protection of private life

As the electronic revolution fences us in more and more, new legislation is brought out to protect private life. What can one say about it? In general the intentions are good but the application and enforcement often smacks of utopia. All the electronic cards stuffing up our wallets are means of spying on us; the merest benefit card offered by a shopping chain lets them know what we buy and when and where we buy it. Phone cards, GSM to the fore, allow others to keep a permanent track of our movements, finding out where we are and who we are corresponding with.

Any surveillance manoeuvre has to be done in due accordance with the law. But customer lists, and above all their purchasing habits, are so alluring that some leaks are knowingly organised and sold off at a good price. Unbeknown to them, citizens



themselves are opening the door to abuse, failing to take due note of the use to be made of the information concerning them or set a limit on this use. Maybe the horse has already bolted by now; anyone who is involved in the Facebook network accepts *ex officio* the US regulation, much more lenient than ours. Any Facebook transaction can be stored *ad infinitum*, and the access to this information might allow many uses thereof unbeknown to the author. Certain arrangements might perhaps cut down the risks but not remove them completely. The sale of articles fitted with a new non falsifiable (for the moment) identification chip will suffice on its own to keep track of the buyers, wherever they are, because the life of the bought object will be permanently recorded, guaranteeing a fissureless monitoring. The only hope would be that the glut of information generated by all these networks will make it hard and hazardous to use it. But when they zero in on a certain target, no fears are unfounded. And the worst thing of all is that the victim is blithely unaware of all this, until it is too late.

The intrinsic risks

Any IT system has a strict dependence on the ways and means that have been used to build it up. The power of today's materials is increasing at breakneck speed. The source lines of code underpinning the manufacture of the programmes have become too complex and the IT crew's brains can no longer keep up with it... According to Kevin Sullivan, of Software Engineering Institute, the systems that have now been built stray beyond the realms of theoretical knowledge. The simple script of today's software sprawls over millions of source lines of code. Unforeseen interaction between all these components is becoming harder and harder to master, with a few bugs thrown in for good measure, or sometimes a lot. To bring several systems into relation with each other and at the same time anticipate future reactions from this combination, which, by definition, can only be speculated in theory because the junction does not actually exist yet, is even more perilous. In fact, the common future of the systems should be fleshed out and this task seems for the moment to be completely impossible. There are no construction rules, and without them nothing thoroughgoing can be built up. Efforts have been made to come up with a mathematical answer but without success.

Conclusion

Risk Management theory never stops telling us that the future is always uncertain. Make predictions as we will, they are only fruit of more or less intelligent cogitation but always a shot in the dark. Examples of unforeseen phenomena that no one had

allowed for are legion; witness the fall of the Berlin wall, to take only one of the best examples. Conversely the banking catastrophe was not unforeseen because it forms an integral part of the system, inherent thereto, but the wise guys out for a quick buck refused to take it on board.

All the phenomena cited below partake of unverifiable hypotheses but according to certain indices they all have a good dose of probability. But probability never means certainty and often leaves us powerless. In the face of future events with unforeseeable consequences the only weapon we dispose of is «resilience». This resilience still then needs to be implemented ... as we'll see below:

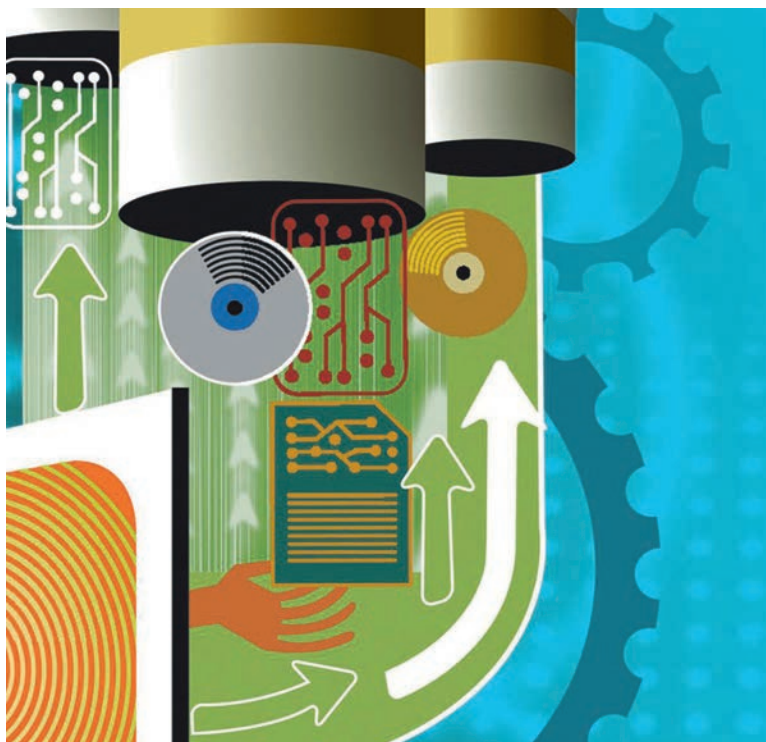
- An ice age could be countered only by laying on better means of heating, the question being who would have access thereto. Food problems would raise their head; by the time new means were found, part of the world's population would have died of hunger. Fauna and flora

would have to adapt or perish. It soon becomes clear that the resilience is already feeble.

But there is worse... breakdowns, or rather the pulling of plugs by political decision, could be countered only by setting up parallel networks functioning behind the back of the decision makers. This would seem to be a pipedream on a large scale, so it has to be admitted that the margins of resilience are weak or non-existent. As for solar based breakdowns, resilience does not even come into the picture and the consequences could be so grave that they don't even bare thinking about.

- The protection of today's private life is probably utopian because the sheer mass of information scattered all around us would seem to be indomitable. For that to change, it would take a real revolution but since all political regimes of whatever colour condone this situation, none of them wants to tackle it in any depth.

- Any collapse of IT systems could be fended off only if the brains of the programmers and analysts succeed in mastering the complexities that they themselves have given birth to. But the human brain being so limited, the only practical solution left, for each problem to be avoided, is to set up several redundant systems. This is the method that has been chosen by aircraft manufacturers and it is easy to understand why, since it is not possible to determine a priori if any system is completely free of bugs. But this might be only putting back the problem because the implementation of several systems multiplies the presence of bugs and hence the chance of serial bugs, rendering impossible the very junction sought. **!**



European Non-Life insurance groups'

RANKING

2011

CENTRO DE ESTUDIOS
FUNDACIÓN MAPFRE

For the eighth straight year FUNDACIÓN MAPFRE presents its report «European Non-Life Insurance Groups' Ranking», this time for 2011. It is based on the premium volume that each group achieved in 2011 in this line of business in all of the countries in which they operate. The data come from yearly reports published by the companies themselves. The study also provides information on the groups' combined ratios, comments on the year's highlights and a table with the results posted by each group in Non-Life branches.

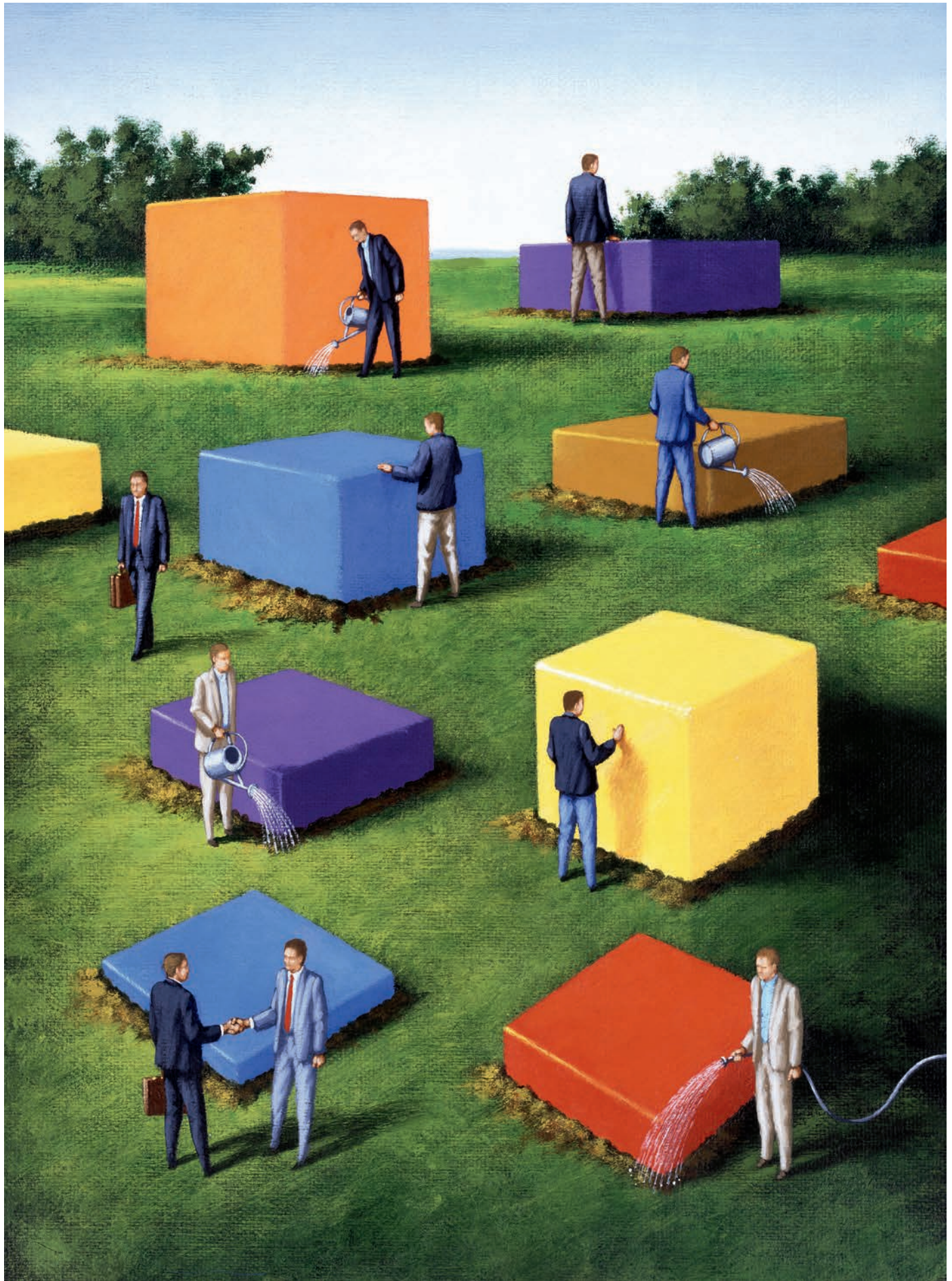


ILLUSTRATION STOCK

EUROPE'S LARGEST NON-LIFE GROUPS IN 2011

Ranking by gross premium volume

Nº	GROUP	COUNTRY	NON-LIFE PREMIUMS		%▲	COMBINED RATIO ¹ %		RANKING 2010
			2010	2011		2010	2011	
1	ALLIANZ	GERMANY	43.895	44.772	2,0	97,2	97,8	1
2	AXA ²	FRANCE	28.877	30.003	3,9	99,5	97,9	2
3	ZURICH	SWITZERLAND	25.080	24.729	-1,4	97,9	98,8	3
4	GENERALI	ITALY	22.090	22.765	3,1	98,8	96,5	4
5	ACHMEA ³	NETHERLANDS	16.281	16.219	-0,4	95,7	96,1	5
6	MAPFRE	SPAIN	12.768	14.473	13,4	95,8	96,9	6
7	ERGO	GERMANY	11.982	12.402	3,5	97,0	98,3	8
8	AVIVA ²	UNITED KINGDOM	10.761	11.195	4,0	97,1	96,8	7
9	GROUPAMA	FRANCE	10.756	11.108	3,3	104,9	97,4	9
10	RSA	UNITED KINGDOM	9.876	10.485	6,2	96,4	94,9	10

Total first 5	136.222	138.488	1,7
Total all 10	192.366	198.150	3,0

Source: FUNDACIÓN MAPFRE with data from consolidated financial reports (under NIIF criteria).

¹ The Combined Ratio is one provided by each company in its earnings report. In those cases where the Non-Life ratio and the Health ratio are given separately, we have used the Non-Life ratio.

² Data from 2010 reformulated because of discontinuous operations.

³ New name of Eureka.

METHODOLOGY

1. The ranking was prepared using gross premium volumes (direct insurance plus accepted reinsurance) in Non-Life branches.

It should be noted that the ranking does not include Health insurance premiums that are assigned to the Life branch, but it does feature those which are classified as part of Non-Life or explicitly differentiated.

2. Due to application of IFRS8, some groups have varied the operating segments about which they provide separate information, causing difficulty in

obtaining some of the figures analyzed in earlier editions of this ranking. However, whenever possible, the criterion used in previous years has been retained. In the case of Groupama, which has stopped publishing information on the Life and Non-Life segments, premiums from the Property-Casualty segment have been added to those of Health insurance.

3. Groups whose main line of business is reinsurance are not included in the ranking. We have maintained the criterion of including accepted

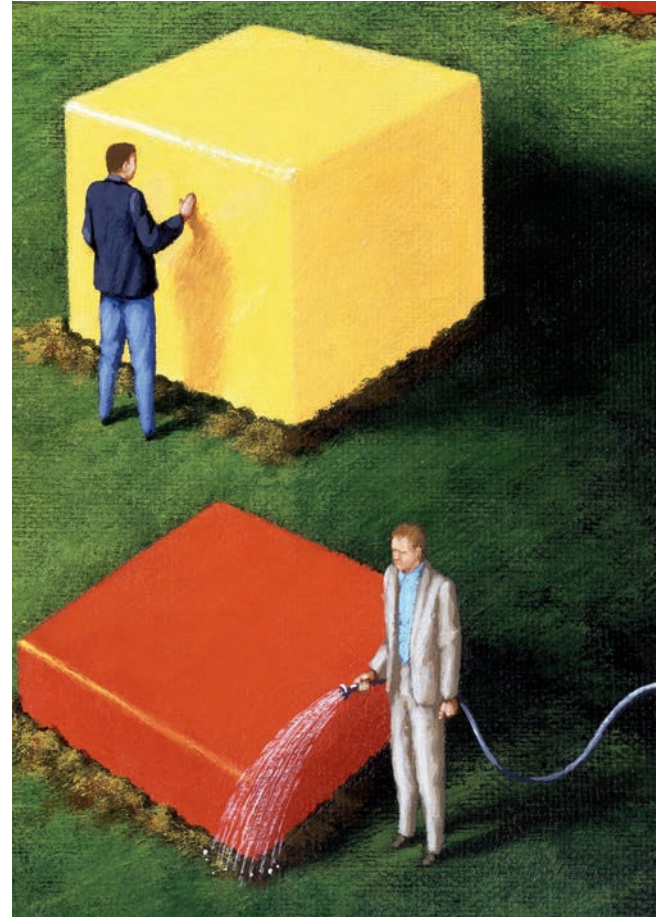
reinsurance premiums from groups that have reinsurance units but do not rely on them as their main line of business.

4. The earnings figures refer to the Non-Life sector, before taxes and minority interests.
5. The report uses the term «operating result» to refer to earnings from insurance activities, including revenue from investments linked to this line of business. Losses or gains from other investments are included under the heading «non-operating result».
6. The information on solvency levels refers to all of the operations carried out by each group. The figure refers to the number of times the group has met the mandatory solvency requirement.
7. For comparative purposes, we have updated revenue and earnings figures for 2010 that were published by the groups in their annual reports for 2011.
8. Average exchange rate used²:

EURO/1 UNIT	2010	2011
Pound sterling (GBP)	1,169	1,148
Dollar (USD)	0,758	0,715

¹In general, in those cases in which Health insurance generates mathematical provisions, this branch is classified as part of Life.

²Direct quote.



GENERAL COMMENTS

The year 2011 was marked by the sovereign debt crisis in the Euro zone, deleveraging in the banking sector as a result of higher solvency level requirements, and needs for fiscal consolidation in developed economies. These struggled and stood in contrast to the dynamism of emerging economies.

The world's insurance industry suffered record losses from natural disasters in 2011, paying out approximately \$110,000 million³. Most insured damage stemmed from the earthquakes in Japan and New Zealand, followed by flooding in Thailand and

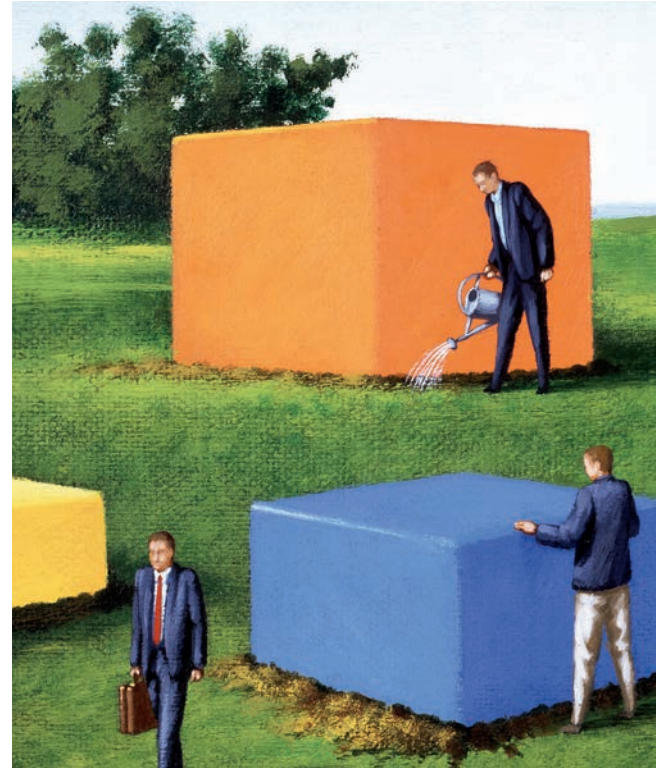
THE WORLD'S INSURANCE INDUSTRY SUFFERED RECORD LOSSES FROM NATURAL DISASTERS IN 2011, PAYING OUT APPROXIMATELY \$110.000 MILLION

an unprecedentedly bad tornado season in the United States. In Asia, insured damage surpassed \$49,000 million.

The most expensive natural disaster for the insurance sector in Europe was flooding in Denmark in July, which caused an estimate \$800 million in damage. Winter storms also caused additional damage in the north of Europe and along the Mediterranean coast.

In 2011, premiums issued and accepted by the 10 largest European insurance groups in the Non-Life sector totaled 198,150 million euros, an increase of 3.0% from the previous year. The Allianz group continued to lead the rankings with revenue of 44,772 million euros. It is followed by AXA, Zurich, Generali, Achmea (formerly Eureko) and MAPFRE, whose positions have not changed. In 2011 the Aviva group reduced its stake in Delta Lloyd and stopped consolidating the earnings of that company into its financial statements. So premium volume of the continuous operations of Aviva was lower than that of the previous year. However, this drop is not reflected in the table because data from 2010 were restated. As a result of this, the German group Ergo rose one spot in the ranking to seventh. Groupama and RSA remained in eighth and ninth place, respectively.

Besides what we stated earlier about Aviva, just one group, Achmea, saw premium revenue drop as measured in local currency. The fall was caused by the sale of Avéro Belgium in January 2011. Zurich saw a premium increase of 4.6% in US dollars, the



currency in which it presents its earnings, although in euros it fell 1.4%. MAPFRE posted the biggest increase, at 13.4%, thanks to the strength of international direct insurance and reinsurance. It was followed by RSA, with growth of 6.2% in euros (8.1% in local currency), thanks to trade accords reached in 2010 and a rise in rates of policy renewals.

In general terms, revenue growth was due both to higher volume (number of policies) and higher rates. Continuing with a strategy to improve their margins, which began in 2010, most insurers raised their average premium in 2011 without damaging their client portfolio.

In most cases the engine was the strength of emerging markets in the Asian-Pacific region and

IN 2011, PREMIUMS ISSUED AND ACCEPTED BY THE 10 LARGEST EUROPEAN INSURANCE GROUPS IN THE NON-LIFE SECTOR TOTALED 198,150 MILLION EUROS, AN INCREASE OF 3,0% FROM THE PREVIOUS YEAR

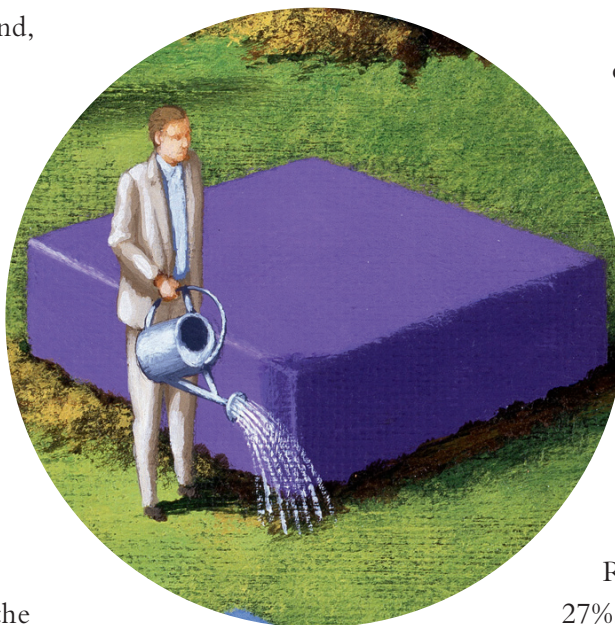
GROUP	% CLAIMS RATIO		% EXPENSE RATIO		% COMBINED RATIO	
	2010	2011	2010	2011	2010	2011
RSA	68,0	66,3	28,4	28,6	96,4	94,9
ACHMEA	68,1	68,3	27,6	27,8	95,7	96,1
GENERALI	71,3	69,0	27,5	27,6	98,8	96,5
AVIVA ¹	65,0	64,4	32,1	32,4	97,1	96,8
MAPFRE	70,6	69,2	25,2	27,7	95,8	96,9
GROUPAMA	75,3	67,8	29,6	29,6	104,9	97,4
ALLIANZ	69,1	69,9	28,1	27,9	97,2	97,8
AXA	71,7	70,9	27,8	27,0	99,5	97,9
ERGO	62,5	62,9	34,5	35,4	97,0	98,3
ZURICH	71,1	71,9	26,8	26,9	97,9	98,8

Source: FUNDACIÓN MAPFRE with data from yearly reports.
Note: in ascending order by combined ratio of 2011.

¹ Continuing operations.

Latin America. On the other hand, the declines in premiums in developed markets were due to more restrictive underwriting policies, but also to lower levels of economic activities in some markets.

The combined ratio worsened in five of the 10 groups due mainly to a rise in claims –as a result of major catastrophic events and bad weather– and, to a lesser extent, to higher expenditure. Despite the fact that in 2011 the world’s insurers endured record losses from natural disasters, most of the groups that make up this ranking saw the higher catastrophic claims rate offset by a less non-catastrophic one. The increase in the underwriting result was also influenced by pricing and underwriting policies that were implemented.



The combined earnings of nine of the 10 groups that make up part of this ranking⁴ were 12,815 million euros in 2011, a decline of 2.4% compared to 2010. Four groups saw their earnings decline from the previous year, due mainly to the worsening of the combined ratio and the impact of the situation in financial markets on their non-operating results.

RSA posted the biggest rise at 27%, thanks to an improvement in its technical and financial results.

³Source: Sigma 2/2012.

⁴The Ergo segmentation does not allow for calculation of results in Non-Life branches.

Millions of euros

NON-LIFE RESULTS* 2010-2011			
GROUP	2010	2011	% VAR. 2011/12
ALLIANZ	4.320	4.017	-7,0
AXA	2.699	2.702	0,1
ZURICH	2.024	1.822	-10,0
MAPFRE	1.238	1.182	-4,5
GENERALI	889	955	7,4
AVIVA**	643	699	8,8
ACHMEA	663	701	5,7
RSA**	554	704	27,0
GROUPAMA***	96	33	-65,6
TOTAL	13.126	12.815	-2,4

Source: FUNDACIÓN MAPFRE with data from yearly reports.

*Profit/loss before tax and minority interests.

**Profit before tax from continuing operations.

***Property-Casualty segment result.

COMMENTS BY GROUP

ACHMEA

As part of a strategy to reduce legal complexity, in late 2011, two holdings merged –Achmea and Eureko– taking the name Achmea because it is well-known in Holland so as to stress their cooperative roots.

Gross premiums underwritten in the Non-Life sector fell 4.3% in 2011, due mainly to the sale of Avéro Belgium in January 2011. Profit before tax fell 26 million euros compared to the previous year because of a rise in long-term Disability claims. Expenses also rose slightly, in part due to a reduction in net earned premiums.

In the Health line, premiums rose 1% to 12,400 million euros, as a result of an increase in rates to cover the rising cost of health care, and because of an increase in the number of policy-holders, which offset somewhat a decrease in contributions from



the government. Business in Europe increased 5% as revenue hit 363 million euros. This reflected higher sales in Russia, Slovakia and Turkey.

Premiums and results in millions of euros

ACHMEA			
MAIN INDICATORS	2010	2011	VARIAT.
Premiums	16.281	16.219	-0,4%
Health	12.289	12.400	0,9%
Non-Life	3.992	3.819	-4,3%
Combined ratio (%)	95,7	96,1	0,4 p.p.
Claims ratio (%)	68,1	68,3	0,2 p.p.
Expense ratio (%)	27,6	27,8	0,2 p.p.
Profit	663	701	5,7
Health	262	326	24,4
Non-Life	401	375	-6,5

Note: p.p. = percentage points.

The before-tax result totaled 326 million euros, with a significant increase of 24.4%, due mainly to the acquisition of the company De Friesland Zorgverzekeraar, which generated negative goodwill that was transferred to the income statement.

ALLIANZ

The Allianz group reported 44,772 million euros in 2011 in the Property & Casualty segment, a rise of 2.0% from the previous year. The growth

Premiums and results in millions of euros

ALLIANZ			
MAIN INDICATORS	2010	2011	VARIAT.
Premiums	43.895	44.772	2,0%
Combined ratio (%)	97,2	97,8	0,6 p.p.
Claims ratio (%)	69,1	69,9	0,8 p.p.
Expense ratio (%)	28,1	27,9	-0,2 p.p.
Profit	4.320	4.017	-7,0%
Operating	4.304	4.196	- 2,5%
Non-operating	16	-179	-

Note: p.p. = percentage points.

stems mainly from a rise in premiums and, to a lesser extent, higher rates. Crop insurance in the United States accounted for approximately half of the growth. But premium volume also grew in most markets, especially in South America, the United Kingdom and Australia, as did the global corporate business. The rise was offset partially by a decline in the reinsurance line.

The operating result was 4,196 million euros, 108 million less than in the previous year. This can be attributed to a fall in the underwriting result, due mainly to significantly higher losses from natural disasters. These losses were compensated for in part by a rise in rates, favorable run-off and lower expenses. So the combined ratio rose six-tenths of a point to 97.8%. The financial operating result went up because of better yield from investments.

The European sovereign debt crisis and declines on stock markets had a negative impact on the non-operating result.



AVIVA

In May 2011, Aviva reduced its stake in Delta Lloyd to 42.7% of its share capital (41.9% as of 31 December, 2011), so it no longer had a majority of the voting rights. As a result of this, the group stopped consolidating the results of Delta Lloyd in its financial statements. Until that transaction, Delta Lloyd's results, and those of previous years, have been classified as discontinuous operations. Therefore, the data from 2010 have been restated.

The group's Non-Life premiums totaled 11,195 million euros in 2011, up 4.0% compared to

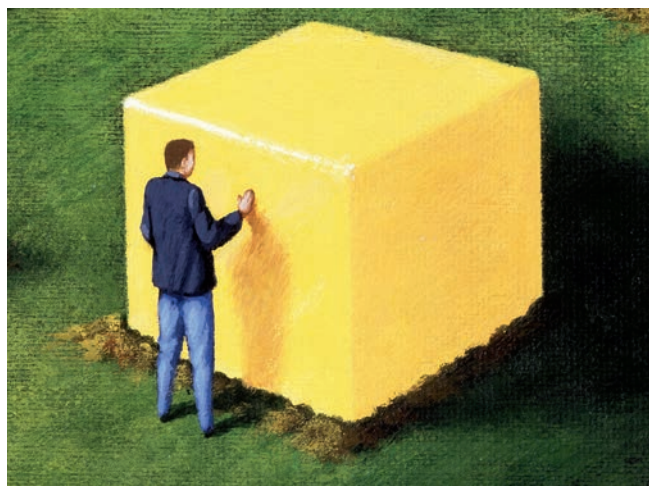


Premiums and results in millions of euros

AVIVA			
MAIN INDICATORS	2010	2011	VARIAT.
Premiums (€)	10.761	11.195	4,0%
Premiums (£)	9.205	9.750	5,9%
Combined ratio (%)	97,1	96,8	-0,3 p.p.
Claims ratio (%)	65,0	64,4	0,6 p.p.
Expense ratio (%)	32,1	32,4	0,3 p.p.
Profit (€)	643	699	8,8%
Result (£)	550	609	10,7%

Note: p.p. = percentage points.

IN GENERAL TERMS, REVENUE GROWTH OF THE LARGEST EUROPEAN ASSURANCE GROUPS WAS DUE BOTH TO HIGHER VOLUME (NUMBER OF POLICIES) AND HIGHER RATES



the previous year (5.9% in local currency). The increase was fueled by an increase in business volume and higher rates. In the United Kingdom, its largest market, net premiums rose 8% in local currency while in Europe the increases were 5% and 6%, respectively.

The underwriting result improved thanks to a rise in business volumes and milder weather in Europe. As a result of this, the combined ratio of continuous operations stood at 96.8%, three-tenths of a point lower than in 2010. The continuous operating result of General and Health insurance climbed to 609 million pounds sterling, an increase of 10.7% from the previous year.

AXA

In May, AXA announced the sale of its Life and Non-Life businesses in Canada to Intact Financial Corporation. This process was completed in September. The operations affected by this transaction have been treated as discontinuous operations and the results from 2010 have been restated.



Increased premium volume in Property-Casualty insurance was due mainly to a rise in rates. Revenue rose significantly in Turkey and Mexico, as did the Direct insurance line. Personal Automobile insurance, which accounts for 36% of Property-Casualty, grew in every market except for Spain.

Revenue from International Insurance grew 2%, thanks to a strong performance by AXA Corporate Solutions, and, specifically, Maritime and Aviation insurance, offset partially by Third-Party Liability.

The combined ratio from Property-Casualty insurance improved 1.6 percentage points as a result of a fall in claims and expenses. The improvement in the claims ratio was driven by two opposing factors: on one hand, a fall of 2.1 points in the current year loss ratio thanks to higher rates and a lower burden from natural disasters, and on the other hand, an increase of 1.5 points in payouts and reserves from run-off.

The net result from International Insurance declined because of a worsening of the combined ratio of AXA Corporate Solutions, which stood at 97.9%, up a point from the previous year.

Premiums and results in millions of euros

AXA			
MAIN INDICATORS	2010	2011	VARIAT.
Premiums	28.877	30.003	3,9%
Property-Casualty	26.141	27.212	4,1%
International Insurance	2.736	2.791	2,0%
Combined ratio (%)	99,5	97,9	-1,6 p.p.
Claims ratio (%)	71,7	70,9	-0,8 p.p.
Expense ratio (%)	27,8	27,0	-0,8 p.p.
Profit	2.699	2.702	0,1
Property-Casualty	2.222	2.288	3,0
International Insurance	477	414	-13,2

Note: p.p. = percentage points.

THE COMBINED EARNINGS OF NINE OF THE 10 GROUPS THAT MAKE UP PART OF THIS RANKING WERE 12,815 MILLION EUROS IN 2011, A DECLINE OF 2,4% COMPARED TO 2010

ERGO

Premium from Non-Life branches rose 3.5% in 2011 to 12,402 million euros, with growth that was similar in the local market and in the international business line. As for the latter, worth noting are the improvement of operations in Poland and the sale of its Portuguese unit. In terms of the evolution of the various operational segments of the group, we note the following:

- The Health line rose 3.4% in premium volume, with a 3.1% increase in Germany, its

Premiums and results in millions of euros

ERGO			
MAIN INDICATORS	2010	2011	VARIAT.
Premiums	11.982	12.402	3,5%
Health	5.778	5.975	3,4%
Property-Casualty Germany	3.008	3.087	2,6%
International	2.378	2.428	2,1%
Travel insurance	427	485	13,7%
Direct insurance	391	427	9,1%
Combined ratio P&C(%)	97,0	98,3	1,3 p.p.
Claims ratio (%)	62,5	62,9	0,4 p.p.
Expense ratio (%)	34,5	35,4	0,9 p.p.

Note: p.p. = percentage points.

main market, thanks to good results from new production. In early 2011, Germany did away with a rule that had mandated a three-year waiting period for people who want to switch to private health care. The rule change boosted growth. In late 2011 ERGO sold its stakes in the international health insurance business line of Munich Health Holding, another company that belongs to Munich Re.

■ Premium revenue from Property & Casualty in Germany rose 2.6%. For yet another year, the engine behind the growth was Commercial and Industrial Risk. The rest of the company's branches also expanded, except for Accident insurance.

■ Premium volume from Travel insurance posted a healthy 13.7% jump.

■ Direct Insurance went up 9.1%, mainly because of Health insurance.

Premiums from Non-Life insurance in International business rose 2.1% thanks to strong operations in Poland.



GENERALI

Premium volume from Non-Life insurance at the Generali group rose 3.1% in 2011 thanks to growth in all of its markets. Growth in Automobile insurance was due mainly to a rise in the average premium, especially in Italy, France and Germany, its three main markets. In the rest of the branches, the increase was fueled by business in France, Central and Eastern Europe and Latin America.

Premiums and results in millions of euros

GENERALI			
MAIN INDICATORS	2010	2011	VARIAT.
Premiums	22.090	22.765	3,1%
Combined ratio (%)	98,8	96,5	-2,3 p.p.
Claims ratio (%)	71,3	69,0	-2,3 p.p.
Expense ratio (%)	27,5	27,6	0,2 p.p.
Profit	889	955	7,4%
Operating	1.128	1.561	38,4%
Non-operating	-239	-606	153,8%

Note: p.p. = percentage points.

In Italy the engine driving growth was Automobile insurance, while Commercial and Industrial insurance fell because of the country's economic situation, a strict underwriting policy, and a fall in group Health insurance policies. In France and Germany, gross premiums did well in both Automobile insurance and other branches, highlighted by personal lines of insurance. Automobile premiums fell in Central and Eastern Europe due to stiff competition, which stood in contrast to 12% growth in the rest of the branches. In the rest of Europe premium volume posted overall growth.

Other markets' contribution to growth was positive, especially in Latin America, where the company posted a big rise of 31.1%. Of particular note were the markets in Argentina and Mexico.

Growth in the operating result was the strongest in the past three years, with a rise of 38.4%, thanks to a significant recovery in technical margins. The improvement in the underwriting result stemmed on one hand from the positive effects of pricing and underwriting policies that were implemented and, on the other hand, a lighter burden from natural disasters, which cost the group approximately 177 million euros (as opposed to 383 million in 2010). As a result of these effects, the combined ratio improved 2.3 points and stood at 96.5%.

The non-operating result was -606 million euros. It was affected by a worsening of the

investment result due to extreme volatility in financial markets. For this reason, the Non-Life result in 2011 was 7.4% higher than in the previous year.

GROUPAMA

Non-Life premiums rose 3.3% in 2011 to 11,108 million euros. In the Property and Casualty segment the main sources of growth were Personal lines of insurance, especially Automobile and Homeowner's insurance. In international business the driving force came from the markets in Southeastern Europe (Italy, Greece and Turkey).

Premiums and results in millions of euros

GROUPAMA			
MAIN INDICATORS	2010	2011	VARIAT.
Premiums	10.756	11.108	3,3%
Property-Casualty	8.755	9.097	3,7%
Health	1.981	2.011	1,5%
Combined ratio (%)	104,9	97,4	-7,5 p.p.
Claims ratio (%)	75,3	67,8	-7,5 p.p.
Expense ratio (%)	29,6	29,6	-0,0 p.p.
Property-Casualty result	96	33	-65,6%

Note: p.p. = percentage points.

Growth from the Health sector in France was due to the combination of an expansion of the portfolio and a rise in rates. Revenue from the branch also grew in the international business line.

Profit before tax in Property and Casualty decreased significantly as a result of bad financial results, as the underwriting result improved considerably thanks to a fall in the claims ratio.

In France, the claims ratio improved significantly, after the effects that winter storm Xynthia had on earnings the previous year, and came in at 67.7%, a drop of 9.7 points. The expense ratio remained stable. In international business the underwriting result also improved, with a drop of





3.8 points in the combined ratio because of a lower claims ratio.

MAPFRE

At the MAPFRE group, premium volume in 2011 rose 13.4%, thanks to expansion in direct international insurance and reinsurance. In Spain, premiums dipped 0.6%. One highlight was growth in direct insurance in Latin America, with Non-Life premium volume of 5,412 million euros and an increase of 34.4% over 2010. This was driven by a rise in business in Brazil, which has consolidated joint activities with Banco do Brasil since May.

The claims ratio improved 1.4 points thanks to lower non-catastrophic claims. This allowed for absorbing the estimated effect of the disasters in Japan, New Zealand and Thailand (1.8 percentage points) and weather-related claims in Asia, Oceania and the United States (1.4 percentage points).

But the expense ratio rose 2.5 points because of a larger contribution from international business and



growth in business handled by brokers and new sales channels. As a result of all this, the combined ratio rose 1.1 points and stood at 96.9%.

Despite taking in more financial revenue, the fall in the underwriting result caused the Non-Life result to decline 4.5%.

Premiums and results in millions of euros

MAPFRE			
MAIN INDICATORS	2010	2011	VARIAT.
Premiums	12.768	14.473	13,4%
Combined ratio (%)	95,8	96,9	1,1 p.p.
Claims ratio (%)	70,6	69,2	-1,4 p.p.
Expense ratio (%)	25,2	27,7	2,5 p.p.
Profit	1.238	1.182	4,5%

Note: p.p. = percentage points.

RSA

Gross premium volume at RSA rose to 9,131 million pounds sterling in 2011, up 8.1% from the previous year, thanks to trade agreements reached in 2010 and a rise in rates for policy renewals. The volume (number) of policies declined slightly, with drops in personal Automobile insurance in the UK and in Regional Mid-Market business. This performance was offset by growth in emerging markets, Canada and Specialty lines. The overall drop by volume (number of policies) was offset by a favorable exchange rate.

The RSA group also achieved a significant improvement in profitability, with strong contributions from all regions. The underwriting result rose 58% to 375 million pounds sterling, with a combined ratio of 94.9%, which makes for an improvement of 1.5 points.

PREMIUM VOLUME FROM NON-LIFE INSURANCE AT THE GENERALI GROUP ROSE 3.1% IN 2011 THANKS TO GROWTH IN ALL OF ITS MARKETS

Premiums and results in millions of euros

RSA			
MAIN INDICATORS	2010	2011	VARIAT.
Premiums (€)	9.876	10.485	6,2%
Premiums (£)	8.448	9.131	8,1%
Combined ratio (%)	96,4	94,9	-1,5 p.p.
Claims ratio (%)	68,0	66,3	-1,7 p.p.
Expense ratio (%)	28,4	28,6	0,2 p.p.
Profit (€)	554	704	27,0%
Profit (£)	474	613	29,3%

Note: p.p. = percentage points.

Major losses represented around 7 points on the claims ratio, and were 55 million pounds more than the previous year, even though 2010 included losses stemming from the earthquake in Chile. Bad weather represented 2.4 points of the claims ratio, and while it improved with respect to that of 2010 it was worse than expected, especially in the second half of the year because of flooding in Denmark, Ireland and Thailand.

The investment result improved 19%. But the section known as «other movements» soared 72% due to a rise in depreciations and the costs of Solvency II. As a result of all this, before-tax profits were 613 million pounds sterling (704 million euros), up 29.3% from the previous year.

ZURICH

Non-Life premiums at the Zurich group totaled 24,729 million euros in 2011, a drop of 1.4% compared to the previous year. In US dollars, the



currency in which the group presents its earnings, premiums rose 4.6%. Growth in local currency was driven by international markets, mainly Latin America and the Asia-Pacific region, and by certain insurance lines in North America and Europe. The average premium rose more than 3%, with no loss in the number of customers. It increased slightly when compared to 2010.

The combined ratio stood at 98.8%, a worsening of 0.9 percentage point compared to the previous year. The underlying claims ratio continued to improve thanks to the application of a more restrictive underwriting policy in some lines, and partially offset losses stemming from the exceptional frequency and intensity of natural disasters in 2011, as losses totaled \$1,000 million. This figure includes floods in Australia, earthquakes in New Zealand, the earthquake and tsunami that ensued in Japan, Hurricane Irene in the United States and flooding in Thailand, as well as other weather-related events in all regions. The expense ratio was stable, rising just one-tenth of a point.

Premiums and results in millions of euros

ZURICH			
MAIN INDICATORS	2010	2011	VARIAT.
Premiums (€)	25.080	24.729	-1,4%
Premiums (USD)	33.066	34.572	4,6%
Combined ratio (%)	97,9	98,8	0,9 p.p.
Claims ratio (%)	71,1	71,9	0,8 p.p.
Expense ratio (%)	26,8	26,9	0,1 p.p.
Profit (€)	2.024	1.822	-10,0%
Profit (USD)	2.668	2.547	-4,5%
Operating profit (€)	2.023	1.620	-19,9%
Operating profit (USD)	2.667	2.265	-15,1%

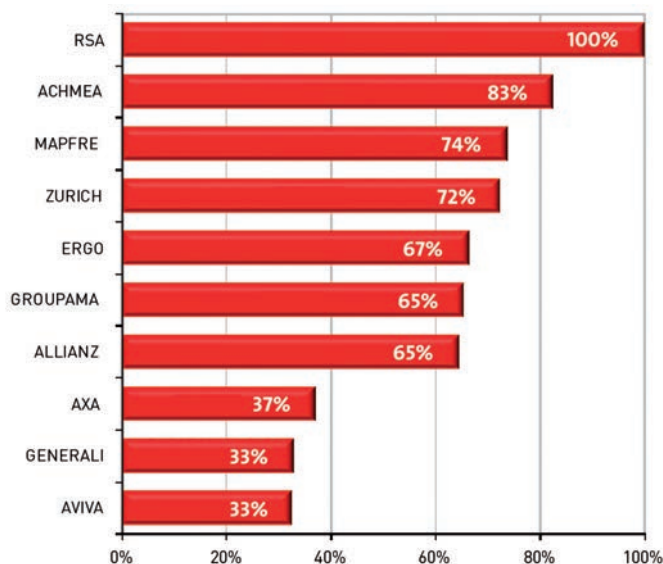
Note: p.p. = percentage points.

AT THE MAPFRE GROUP, PREMIUM VOLUME IN 2011 ROSE 13.4% THANKS TO EXPANSION IN DIRECT INTERNATIONAL INSURANCE AND REINSURANCE

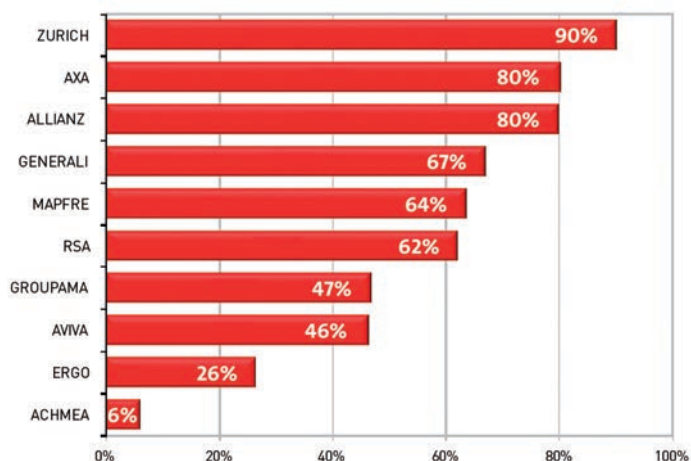
The worsening of the underwriting result, along with a drop in investment revenue, made for drop in the operating result of -15.1% in dollars. An improved result from investments not included in the operating result partially offset this decline and allowed for a net result of 2,547 million dollars, 4.5% less than in 2010.

ANNEX 1. PERCENTAGE OF NON-LIFE INSURANCE

Non-life business as a percentage of total premiums



Percentage of Non-Life business abroad



ANNEX 2. SOLVENCY

To complement the figures on Non-Life lines, we have added information on solvency levels. It is important to note:

- ERGO does not publish the solvency ratio of the group because, as it is part of the Munich Re group, it is the latter which must present such data at the group level. For this reason, this figure is given for all the companies in the ranking except ERGO.
- The information refers to the level of solvency for all the operations carried out by each group.
- The information is not homogeneous because the specific way of determining mandatory capital depends on the laws in each country.

The figures provided show the number of times the group has attained the mandatory solvency capital. In 2011, the European insurance groups that are part of this study were still well capitalized. Four of them increased their solvency level and in the other five the ratio fell, but they still maintained adequate levels. |

EUROPE'S LARGEST NON-LIFE GROUPS IN 2011

Solvency level

GROUP	2010	2011
MAPFRE	2,86	2,87
ZURICH	2,32	2,42
ACHMEA	2,20	2,04
RSA	2,30	2,00
AXA	1,82	1,88
ALLIANZ	1,73	1,79
AVIVA	1,60	1,30
GENERALI	1,32	1,17
GROUPAMA	1,30	1,07

responds to the sense of social responsibility which is a basic principle behind MAPFRE's business activities. It was founded in 1975.



The Insurance Sciences Institute of FUNDACIÓN MAPFRE was created to promote educational and research activities concerned with the world of insurance and risk management.

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ENGLISH APPENDIX