



British Virgin Islands

With captives forming a mainstay of its insurance sector, BVI is seeking other options to avoid over-reliance on 831(b)s

by **Gavin Bradshaw**

The British Virgin Islands (BVI) has long been a favourite destination for mid-sized enterprises looking to set up single-parent captives. Captives constitute the majority of insurers in the jurisdiction and a significant pro-

portion are so-called 'mini captives'; companies with a premium threshold of \$1.2m or less, taxed on their investment income only under Schedule 831(b) of the Internal Revenue Code.

The BVI has consequently developed a niche in the formation of

831(b) captives, but that dependency may be about to change. In an effort to increase its competitiveness with both the offshore jurisdictions and the growing domestic US captive market, the BVI Financial Services Commission (FSC) has been hard at work on the new Insurance Act 2008 and Insurance Regulations 2009, both of which took effect on 1 February 2010.

The revised legislation includes a new licensing system for insurers and the revised regulations include new principles-based corporate governance provisions, both of which, it is hoped, will encourage the development of new and more sophisticated types of insurance companies in the domicile.

However, says EC (Ned) Jackson, associate in the corporate department of Conyers Dill & Pearman in the BVI: "The regulator is still reluctant to expand the field of companies it



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BVI CAPTIVE STATISTICS

Number of captives: 344
 Captive premium: \$786m (at 31/08/10)
 Captive AUM: \$4.1bn (at 31/08/10)
 Director of Insurance: Elton Lettsome

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Derek Lloyd, AMS & BVI AIM

the lion's share of captive business in the BVI, there are differing opinions on the longer-term future of the vehicle, according to Derek Lloyd, director of AMS Insurance Management Services (AMS).

Lloyd says the prevailing concern when he took the helm at AMS in 2005 was that the percentage of US-based business was too high, creating a dependency that would leave BVI captive managers vulnerable if circumstances changed.

“Done properly it's still a viable structure,” says Lloyd, who is also chairman of the BVI Association of Insurance Managers (BVI AIM). “Some clients have elected to redomicile to some of the newer US domiciles, probably based on a combination of patriotism, regulation and perception,” he says. “But we have continued to see a volume coming the other way.”

“We'll still be doing 831(b)s,” says Simon Owen, insurance director at Folio Insurance Management. “But the way the insurance legislation has been enhanced we can still go for the bigger picture – larger captives and diversification outside of the US.”

Corporate governance

In common with the Cayman Islands and Bermuda the BVI has sought to see off any negative perceptions from onshore legislators through the revisions to its insurance regulations and legislation, not least through the introduction of the corporate governance rules.

“One of the major short-term benefits of the changes to the legislation has been to get the BVI off the OECD grey list,” says Jackson. Consequently, he says, the captive managers have taken the corporate governance provisions to heart and have built it into



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Jay Adkisson, Riser Adkisson

regulates in an accelerated fashion – it wants to take its time.”

Reliance on the US

Back in mid-2009, the BVI appeared to be losing its way, with companies redomiciling to nearby Anguilla or onshore to Kentucky and Utah – largely 831(b) captive owners deciding to move their vehicles closer to home. While redomestication continues, it

is not necessarily a bad thing for the BVI, says James McConvill, consultant, Corporate & Commercial, for Appleby in BVI.

“The IFC has been trying to create a more diversified market for captives and has been pushing BVI as a captive domicile in Asia and Europe,” he says. “So although there has been a drop-off in 831(b)s, there has been an increase in the larger captives.”

However, with 831(b)s still taking

their compliance programmes.

McConvill has also observed a positive response in terms of helping to maintain the BVI's reputation. "With increased scrutiny of offshore jurisdictions it helps to have that in place," he says. "If there is a continued focus on offshore, including from Europe, we can be sure we are ticking all the boxes and meeting international standards."

Any other business

The BVI has kept up with other leading offshore domiciles in introducing its own version of the protected cell, the segregated portfolio company (SPC), but hasn't really capitalised to any great extent on the new vehicle. "Conyers did the first SPC company in the BVI and, having thought we were at the vanguard of a new movement, that's the only one we've set up," reflects Jackson. "Hopefully everything will evolve with the new legislation. In BVI the funds sector is much larger than the insurance sector. SPCs really lend themselves to fund company investments."

AMS recently set up a captive for a solar energy company that is an SPC, but overall, says Lloyd, the BVI has never seen the same volume of business as Bermuda and Cayman because of the high level of professional

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Ned Jackson, Conyers Dill & Pearman

pared to Bermuda, make standalone captives more attractive in the BVI. "I continue to have concerns about cell captives in any domicile," he continues. "They are good for conglomerates with lots of affiliate companies but they are not completely failsafe and there are also issues with having an exit strategy from cells."

That said, McConvill believes there is still an appetite for the introduction of incorporated cell structure (ICC) legislation. "The BVI is educating people on the different ways SPCs can be used," he says. "But one of the concerns is just how the structure would be treated in jurisdictions that do not have that product at the moment, and therefore it might not be recognised."

"But I still think captives are the primary focus; it's just about diversification into other markets."

The BVI edge

If the BVI is to expand its insurance sector then regulation and reputation seem to be key elements in the development process. Since the departure of Michael Oliver from the insurance director role in October 2008, after five years in the role, the captive regulator at the BVI FSC has kept a relatively low profile.

"Oliver imposed quite a bit of bureaucracy on the BVI and to many of us it seemed like it killed off the jurisdiction," says Jay Adkisson, managing partner of Riser Adkisson in California and a former equity owner in a BVI captive management firm.

Since Oliver's departure there has been a drive in BVI to spruce up the insurance law which, says McConvill, "was getting a little bit old and was not as responsive for contemporary needs".

However, with the draft legislation delayed by the collapse of the global economy, the uncertainty proved damaging to the industry, recalls Lloyd. "At that time, service standards weren't good and turnaround times were poor. We now have definitive legislation and you know what the playing field is, which can only be for the good of the jurisdiction," he says.

And, as both McConvill and Owen point out, speed to market and cost continue to be key advantages, with regulators turning around captive application in two weeks and audit costs more competitive than the larger offshore domiciles.

"A big plus is that the BVI is mid-range in terms of class," says Jackson. "Cost-wise it is still less than Bermuda and probably Cayman, but reputation-wise it is much better than some of the very cheap jurisdictions." ☺

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Simon Owen, Folio Insurance Management

and regulatory fees in those domiciles lends itself more readily for the cell participant looking to mitigate costs.

"In the BVI, such potential captive owners can establish standalone entities just as competitively as they could a cell in another jurisdiction," he says. "There also seems to be quite a difference of opinion within the legal fraternity as to the actual viability of the SPC structure and whether that would actually segregate the assets and liabilities."

Simon Owen agrees that the lower cost of audits and licence fees, com-

A further way that the BVI might be able to diversify its insurance sector is through insurance-linked securities (ILS) and reinsurance companies. Lloyd believes the financial services sector in the domicile is now better positioned to look at both areas, but he says AMS is concentrating on its core business, a sentiment that is echoed by Owen.

"A secondary option we want to look at is ILS structures. There's not only enhanced legislation on the insurance act but also on the securities and investment business act," says Owen.