

BERMUDA SET TO CONTINUE AS CAPTIVES' CHOICE

by Matthew Carr

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While few would dare slight Bermuda's beautiful beaches or personable populace, some competing jurisdictions have called into question whether Bermuda's world-leading position as captive domicile of choice will continue. The answer, of course, is an emphatic 'yes'.

Bermuda-based expertise, recent regulatory changes and Bermuda (re)insurance market developments among other factors, all suggest that Bermuda's dominance as a captive domicile of choice will continue into the foreseeable future.

Captives, for those who may not know, are insurance companies established to cover the risks of a related company or companies. For example, this newspaper's owner, The Bermuda Press (Holdings) Ltd may seek to cover risks relating to defamation, for example, through its own insurance company rather than using another local or overseas insurance company. It may choose to do so if the costs of set up, regulatory environment and running costs are favourable relative to the cost of insuring through existing carriers – or it may do so for a variety of other reasons. In reality, captive structures range in complexity from as simple as the above example to those that are far more complicated.

This summer's Bermuda Captive Conference was testament to Bermuda's leading position within the global captive market. As noted in the recently published Bermuda Business Development Agency press release following the conference, Bermuda is home to nearly 800 captive insurance companies, supporting primarily Fortune 500 corporations in the US, and generating more than \$48bn in annual gross written premiums.

Bermuda is also diverse in that it plays host to a growing number of captives from Latin America and Asia and other regions around the globe.

Bermuda's regulatory landscape is a strong selling point. The Bermuda Monetary Authority (**BMA**), the body regulating captives and commercial insurers, has shown incredible market sensitivity as it gained equivalence under Solvency II (for more information on Solvency II equivalence, see The Royal Gazette article 'Bermuda's Solvency II equivalence advantage' 10 December 2015) such that Bermuda now has a two-pronged or 'bifurcated equivalence' regulatory regime. As such, only commercial insurers are required to adhere to the modified, and arguably more onerous, regulatory requirements related to Solvency II, while captives (entities licensed as Class 1, 2, 3, A, and B Insurers under the Insurance Act 1978, as amended) are not.

As such, Bermuda-licensed captives are not facing additional costs related to set up and on-going compliance – an important factor for many captives.

Some offshore jurisdictions opted not to undertake the hard work involved with gaining Solvency II equivalence. However, Bermuda's industry leaders and regulators worked tirelessly to re-shape the regulatory regime for insurers. The result is a regulatory environment that protects captives from the imposition of additional regulation while enabling commercial insurers to compete on an even footing in the European market.

Another important factor in Bermuda's ability to attract and retain top-quality captives has been developments in the alternative risk space. By way of example, Bermuda captives have benefitted from the evolution of insurance-linked securities (**ILS**), whereby captives can gain access to investors not typically associated with (re)insurance. This has the potential to offer captives an alternative option to traditional reinsurance, where the captive may be able to secure coverage at more competitive rates, or on more favourable terms.

As Bermuda currently holds a massive two-thirds of global ILS volume, the island is well-situated to work with captives to develop alternative risk structures.

Bermuda also offers an advantage of being a highly rated environment with which rating agencies are very familiar. Obtaining a rating at the captive level may reduce the amount of capital that a fronting carrier must carry, or provide other benefits and as such can reduce costs.

Bermuda's rated captives are among the highest rated in the world. By way of example, more than 80 per cent of AM Best's Bermuda-rated captives are highly rated, having a rating of A- or better. Bermuda service providers are also well-versed in terms of preparing for and obtaining ratings making the process efficient on all levels.

In addition to the attractive features cited above, Bermuda's world-renowned reinsurance market offers an enormous array of options for captives looking to cede risk.

While those beaching in Bermuda's summer heat may feel lethargic, Bermuda's captive market remains anything but. Developments in the regulatory space demonstrate Bermuda's continued effort to provide both commercial insurers and captives with a well-respected and hospitable environment from which to launch and grow. Bermuda's formidable reinsurance market, innovative ILS market and rating environment, provide world-leading options for Bermuda captives to grow from strength to strength.

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