



Tim Faries of Appleby tells *Captive Review* what makes Bermuda an attractive location for captives and how it meets the industry's standards

Bermuda's reputation as a captive domicile is well-known and respected, having been involved in the industry for over 50 years. The reasons why the island makes for such a successful and attractive jurisdiction are endless. *Captive Review* caught up with Tim Faries to find out why and how Bermuda has become such a success.

Captive Review (CR): How have recent regulations affected managers' decisions to domicile in Bermuda?

Tim Faries (TF): There are two recent regulatory developments globally that we think will make Bermuda a more attractive domicile for captive owners. First, in January 2014, Bermuda became the first offshore jurisdiction to be granted 'conditional qualified jurisdiction' status by the National Association of Insurance Commissioners (NAIC). The second is the recent tax blacklist promulgated by Colombia which included a number of Bermuda's competitive jurisdictions, but not Bermuda itself. This is a very favourable development which we expect to allow the already plentiful numbers of captives being formed here from Colombia to continue growing in the coming months and years.



Written by
Tim Faries

Tim Faries is a partner and Bermuda group head, corporate and commercial at Appleby. He is also the sector leader for insurance & reinsurance and leads a team of lawyers who specialise in all manner of non-contentious corporate insurance work, including life and general insurance and reinsurance, mutual insurance and structured risk financing. Tim was recently recognised in *Captive Review's* 2013 Power 50 list.

CR: What are some of the benefits of choosing an offshore jurisdiction such as Bermuda?

TF: We are the largest and have the strongest reputation as a captive domicile and with that comes strength in infrastructure. We have custom legislation and regulations which

were designed for captives when they were initially drafted in the late 1970s. They have been refined and modified since and obviously expanded to include the burgeoning reinsurance market and other insurance markets that have developed in Bermuda since the dawn of the captive era.

A second benefit is that we are the only captive domicile that comes with essentially a robust reinsurance market. We have a one-stop shop approach that you cannot get in any other domicile because they just do not have the reinsurance market that we have here. We have intelligent reinsurers who really understand the captive owner's needs and a choice in the market here that captive owners will not get anywhere else.

A third benefit is the innovation which has been a hallmark of the industry since the early days. The captive concept was arguably born here in the 1960s and that spirit of innova-

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tion and creativity when it comes to finding risk solutions for organisations has remained throughout the five decades since. For example, segregated accounts, which have proliferated throughout the captive industry, were generated in Bermuda in the 1980s.

Fourth, the regulatory environment at present is responsive, proactive and well-regarded globally. It is well-known that Bermuda is seeking Solvency II equivalency for its commercial reinsurance market and has approached it in a way that respects and safeguards the specific interests of captive owners so that they are not unduly burdened by unnecessary regulations. The idea of bifurcated equivalency is one which appears to have been met with favour by the European regulators so we have the best of both worlds in that the captives will have appropriate levels of oversight, supervision and regulation for them and the commercial class will have the enhanced regulation that is in keeping with international standards.

Lastly, we are a tax-efficient jurisdiction, which has some benefits and uses in certain circumstances as well.

CR: How is Bermuda responding to the global push for transparency?

TF: We are a small jurisdiction but we take every opportunity we can with whatever platform we are given to ensure that we have a profile in the international community on issues that matter to us, and transparency is one of those issues. If you look back at the history of Bermuda as an international business domicile, things that are in vogue today in the world of transparency such as know-your-client (KYC), were concepts that we introduced even before it was fashionable to do so. We are leaders in tax transparency and co-chair in a working group within the Financial Action Task Force. The Department of State in the US has classed Bermuda in its lowest risk category for money laundering due to our very robust anti-money laundering regime. We have had all those things in place right from the beginning because we wanted Bermuda to be viewed as a jurisdiction of quality not quantity, which has helped us as the world has moved into this ethos of compliance and transparency.

CR: In what ways does Bermuda provide a robust yet accessible regulatory framework?

TF: It is important in the world of financial regulation, in particular insurance and reinsurance, that regulators are seen to be robust and proactive. What differentiates us from

other jurisdictions is the market's accessibility to the regulators and their sensitivity to the needs of the marketplace. We customised our legislation in the Insurance Act 1978 for captive business, and it became a model for other jurisdictions to emulate. To my knowledge, Bermuda is the only domicile to have a regulatory regime which appropriately differentiates the captive insurance and reinsurance regulation from the commercial third-party reinsurance regulation. Over the last several months, as we have been gearing up for an enhanced return for captive classes, a key objective of the regulators was to ensure that it was met with the approval of the industry

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and was not considered to be an unnecessary burden. It went through an extensive period of consultation to allow the industry to give feedback on the enhanced return regime before it goes live.

CR: How do Appleby's services and solutions benefit captives in Bermuda?

TF: Our captive client base, products and services are very important to us, particularly to our Bermuda practice. On the legal side, we have 12 insurance lawyers which is numerically the largest group focused on the insurance industry and captives are far and above the largest subset within our insurance practice in terms of the types of clients that we provide services for. We provide licensing and regulatory establishment services and advice to guide them through the process and working with the captive manager in the formulation of their business. With prospective clients we help them with their choice of domicile, then once the captive is established we help with things like financing letters of credit, contract issues, potential changes to the business plan and segregated account structures. If there are disputes with captives and other parties such as fronting insurers, we have a strong litigation practice which would respond to that, and we also assist on occasions where captives are being bought and sold. Finally, at the end of the captive's useful life we assist in

the dissolution of the entity and closing down the licence. So we provide a cradle to the grave service on the legal side.

Second, we have a service company called Appleby Services (Bermuda) Ltd, which provides corporate administration, directors, secretarial and resident representative services to its clients. Insurance companies, captives in particular, represent a significant proportion of our client base. We work collaboratively with captive managers in providing the administration needs of their captives throughout their lives, including liaising with the regulators, convening the necessary board and shareholder meetings, dealing with bank-

ing issues and the general registered office type services that companies and captives need on a regular basis throughout the year.

Lastly, Appleby Management (Bermuda) Ltd is a licensed captive manager which provides some captive management services through that entity and also other financial and accounting services for captives.

CR: What are your predictions for the jurisdiction over the next year?

TF: I am really excited about 2014. The recent regulations and changes in the US stand us in good stead to see a decent number of new licences emerge. 2013 was a very good year for the jurisdiction; we had 91 new insurance licences issued, which is not a record but is certainly higher than what we have seen in any year since the financial crisis in 2008. Of those 91, roughly 25% were captives. I'm expecting to see more activity from what would be viewed as non-traditional markets from Latin America and we have got a little bit of interest in Asia that we are hoping to see come to fruition as well. So, as the captive concept spreads globally into new emerging regions, Bermuda, given its 50+ year history as a leading captive domicile, its depth of resources and infrastructure, its reinsurance resources, and its accessible regulatory regime, stands in very good stead to continue to have a leading position in the captive industry in the future. 