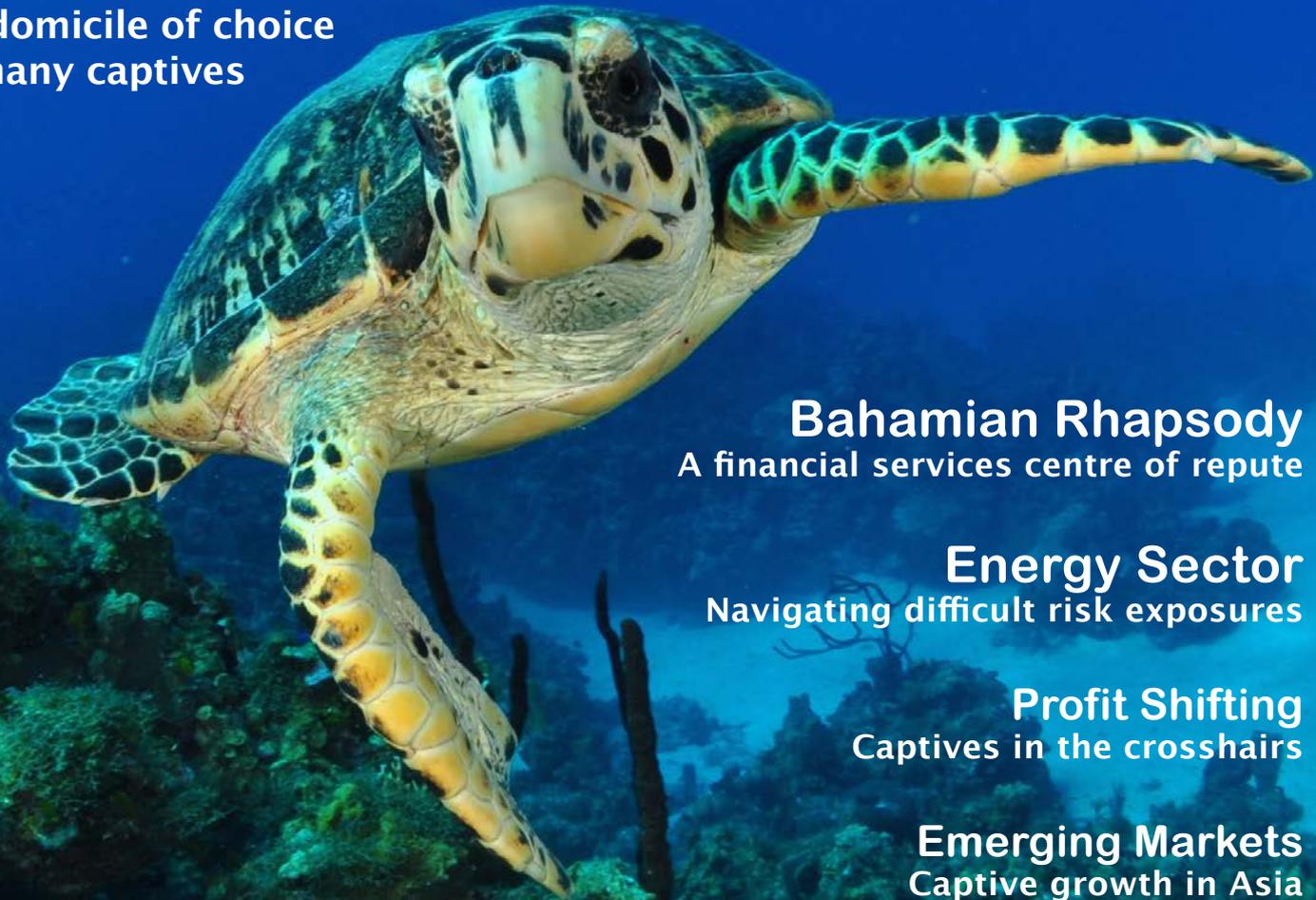


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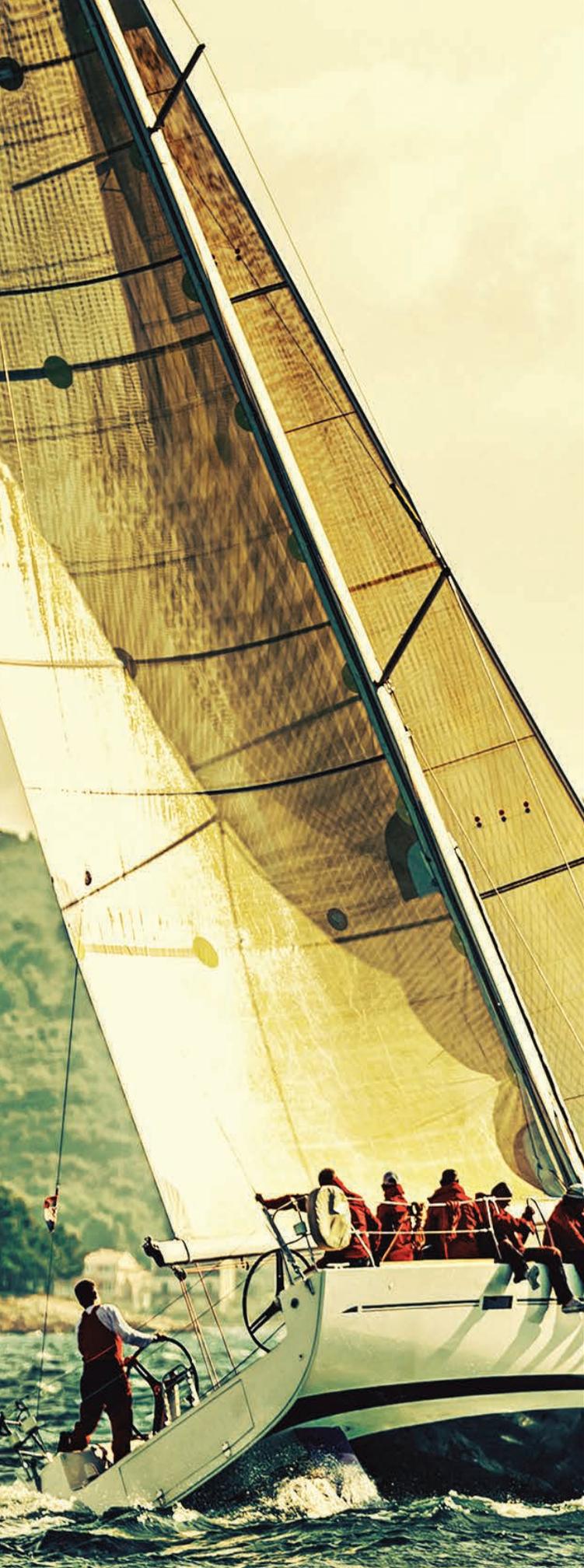
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## UK seeks legal basis for ILS

The UK has begun the process for introducing a new framework insurance-linked securities (ILS).

A government amendment to the Bank of England and Financial Services Bill has been tabled and seeks a power for the UK Treasury to make regulations facilitating and regulating ILS business.

The main focus of the power is the special purpose vehicles (SPVs) used in ILS transactions. If UK Parliament accepts the amendment, treasury ministers will be able to make regulations for any part of ILS activity.

The House of Lords considered the amendment on 11 November, the second day of the committee stage of the bill.

The introduction of the amendment follows the release of a report from Grant Thornton in October that predicted the UK is unlikely to become a centre for housing ILS business without significant regulatory changes.

The report pointed out that in the UK, SPVs and protected cell companies (PCCs)—two structures that are key components to an ILS marketplace—are not currently feasible. Primary legislation would be required to facilitate such a marketplace in the UK.

The report also argued that it would be necessary to design a regulatory process that can set up a new insurance vehicle in a time scale that makes the UK competitive with other domiciles, without compromising the regulatory objectives of the country's financial regulators.

Malcolm Newman, chairman of the International Underwriting Association, commented: "This is very good news for our work in innovation and growth. London is a centre of excellence for global specialty reinsurance and insurance business, and we want to lead the world in terms of new products."

"ILS is very much at the innovative end of the market and we want London to be the next big centre for this business."

As part of the 2015 budget, chancellor George Osborne said that the government would work with the industry and regulators to develop competitive corporate and tax structures to allow ILS to be domiciled in the UK.

## JLT Towner launches sponsored captive cell facility

JLT Towner Insurance Management has licensed Isosceles Insurance Company, a sponsored cell captive, in Connecticut.

Thomas Stokes, CEO of Isosceles in the US and managing principal and US consulting practice leader for JLT Towner, commented: "Isosceles provides small and medium-sized businesses

with efficient and easy access to captive insurance, and can also serve as a single-purpose reinsurance vehicle for organisations of any size."

"This provides a timely opportunity for some companies as year-end approaches."

JLT Towner CEO and partner Guy Ragosta added: "By licensing Isosceles domestically, we have met a growing demand from clients and other organisations for this type of facility."

"Companies that take advantage of Isosceles can feel confident knowing they will receive the same captive insurance expertise from our company as our clients in more complex structures do."

Isosceles was formed in 1997 in Bermuda.

## A.M. Best takes its rating and makes it Evergreen

A.M. Best has affirmed the financial strength and issuer credit ratings of Evergreen Insurance Company (EICL) in Bermuda.

The affirmed "A (Excellent)" for financial strength and "a" for issuer credit ratings reflect EICL's strong risk-adjusted capitalisation, its contribution to the risk management of the Evergreen Group and a track record of underwriting results.

EICL is a pure captive of the Evergreen Group and is the group's risk management platform.

It underwrites risks in marine, aviation, property, engineering, motor and other liability in relation to group operations.

According to A.M. Best, the ratings also recognise EICL's prudent investment strategy and liquidity position.

Offsetting rating factors include EICL's declining trend in its absolute capitalisation over the past five years.

A.M. Best believes that this is due to dividend payments made to the group exceeding profits it generated despite no dividend payment in 2014.

EICL expects growth in the number of insured vessels and aircrafts for the Evergreen Group, which will require capital support at EICL.

The company's Best's Capital Adequacy Ratio (BCAR) is sensitive to a single catastrophic aviation loss scenario, according to A.M. Best, which could give rise to a substantial credit or dispute risk associated with a potentially large reinsurance recoverable relative to its capital size.

A.M. Best believes that upward rating movement is unlikely in the near term, but a downward rating movement could occur if the declining trend in absolute capitalisation continues.

# CITIN BRIEF



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IMAC chairperson Kieran O'Mahony looks ahead to another excellent Cayman Captive Forum

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The Cayman Islands is among the world's most popular domiciles

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With flexible regulators, robust regulations, local expertise and a strong reputation, the infrastructure needed to support captive growth in Asia is at hand

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Captive insurance can help oil and gas companies to mitigate financial risk

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Using captives for employee benefits delivers major advantages to companies and workers

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## The Bahamas

The Bahamas has seen year-on-year increases in captive formations

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## Gibraltar launches new SPV PCC for ILS

Gibraltar has launched a new category of protected cell company (PCC) tailored for the insurance-linked securities (ILS) sector.

The new category of PCC, which will be known as the SPV PCC, will be regulated under Gibraltar's Insurance Companies (Special Purpose Vehicles) Regulations 2009.

The SPV PCC will only be permitted to establish cells that are 100 percent collateralised.

Albert Isola, Gibraltar's minister of financial services, said: "The launch of SPV PCCs is the next step in our ambition to become the premier ILS jurisdiction within the EU."

"The SPV PCCs will complement Gibraltar's existing standalone insurance SPVs."

In April of this year, Gibraltar completed its first ILS transaction with online lottery provider Lottoland, for €100 million.

The ILS was placed within the EU by means of an issuance vehicle, Euroguard Insurance Company Protected Cell Company, also based in Gibraltar.

Gibraltar's government previously announced its ambitions to establish itself as an ILS jurisdiction within the EU in April of this year.

## Delaware celebrates licensing of thousandth captive

Karen Weldin Stewart, commissioner of Delaware's Department of Insurance, has received recognition after licensing the domicile's thousandth captive insurance company, AWI of Voorhees, New Jersey.

State governor Jack Markell presented Stewart with the proclamation recognising Delaware as the sixth largest domicile globally.

The Department of Insurance's captive bureau currently contributes an annual surplus of tax and fee revenue of more than \$3 million to the Delaware general fund.

Stewart commented: "When I took office in 2009, Delaware was home to only 38 captive insurance companies, I immediately saw the revenue potential for growing our captive insurance business."

She added: "I promptly formed the Bureau of Captive and Financial Insurance Products. Since then the bureau has generated more than \$11 million in revenue."

"In the future, I intend to reach out around the world to new markets for captive insurance and continue to increase the number of captive insurance entities domiciled in Delaware."

AWI's parent company, American Water, is a geographically diverse publicly traded water

and wastewater utility company, located in the US. The new formation received formal recognition as the state's thousandth captive at the Delaware Captive Insurance Association Fall Forum on 12 November.

## Atlas launches Vortex for pooling workers' comp

Atlas Insurance Management has launched its new captive structure, Vortex, a compensation risk exchange.

Vortex Re, a North Carolina reinsurance company, operates the new captive structure, which will allow participating captives to pool their workers' compensation risks in order to achieve risk distribution.

The new captive structure will mean each company buys reinsurance for its own risk from Vortex Re, which in turn shares its assumed risk with the pool participants by buying reinsurance from them.

## R&Q transfers contracts from Dublin captive

R&Q Insurance in Malta has completed the novation of liability contracts from an unnamed captive in Dublin.

Ken Randall, chairman and CEO of R&Q, explained: "We are delighted to complete this novation. This deal continues to show our

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market leading position in providing captive exit solutions using our European consolidator subsidiary in Malta.”

It has been a busy year for R&Q, whose EU run-off consolidator in Malta completed a similar deal with Norwegian captive Aker Insurance.

The total consideration of that transfer, which was the first of its kind for R&Q in Malta, was NOK 22.3 million (\$2.9 million), with transferring current liabilities totalling NOK 14.3 million (\$1.8 million).

The policies transferred provided workers' comp and personal accident cover for Norwegian employees of parent company Aker Group, which specialises in offshore construction and engineering.

Elsewhere in the group, R&Q Investment completed its acquisition of IC Insurance from owners AstraZeneca UK and Imperial Chemicals Industries in September.

**Key motivators driving regulation development in APAC**

Four key motivators are driving the development of solvency requirements and regulatory initiatives that are affecting reinsurers and insurers in the Asia Pacific, according to a Guy Carpenter report.

The motivators include the need to improve resiliency post-catastrophic loss; to increase

oversight in a post-Great Recession world; to follow best practices from the banking and international insurance sectors; and finally, to satisfy domestic political pressures.

According to the report, almost every country in the region has recently enacted or is planning far-reaching changes to solvency and other regulations, making progress on building more robust frameworks.

South Korea, Taiwan and Malaysia have progressed into their second round of risk-based capital (RBC) schemes.

Hong Kong is moving to its first RBC framework, which is anticipated in 2018. Singapore and Japan are among countries considering their own risk and solvency assessment (ORSA) frameworks.

Japan is seeking third-country equivalence status for Solvency II for reinsurance business and China's Insurance Regulatory Commission (CIRC) is instituting sweeping changes through its three-tiered China Risk Orientated Solvency System (C-ROSS) framework, which will affect how reinsurers and insurers conduct business, according to the report.

Mark Shumway, head of strategic advisory for the Asia Pacific at Guy Carpenter, commented: "Many recent updates to regulations in the region have been or will be enacted to bring regulations in line with the International Association of Insurance Supervisors' Insurance Core

Principles, International Financial Reporting Standards and Solvency II."

**BevCap Captive delivers \$1.8 million in dividends**

BevCap Captive Group has paid out just over \$1.8 million in dividends to its founding members and early entry partners.

Founding members Del Papa Distributing and Standard Sales Company started BevCap Captive Group, which is domiciled in Nevada, to allow beer distributors to take control of their workers' compensation, auto liability and general liability insurance.

Lanny Layman of Standard Sales said: "Standard Sales is very happy to be receiving our first dividend as a founding member of this elite group of business owners."

"We look forward to sharing even more savings as a result of better claim management and the sharing of best practices with our fellow distributor members."

Bill Falkenhagen of Del Papa added: "We knew at some point the icing on the cake would be a return of unused premiums through dividends."

"That time has arrived. In reality we are saving money and making money all at the same time.



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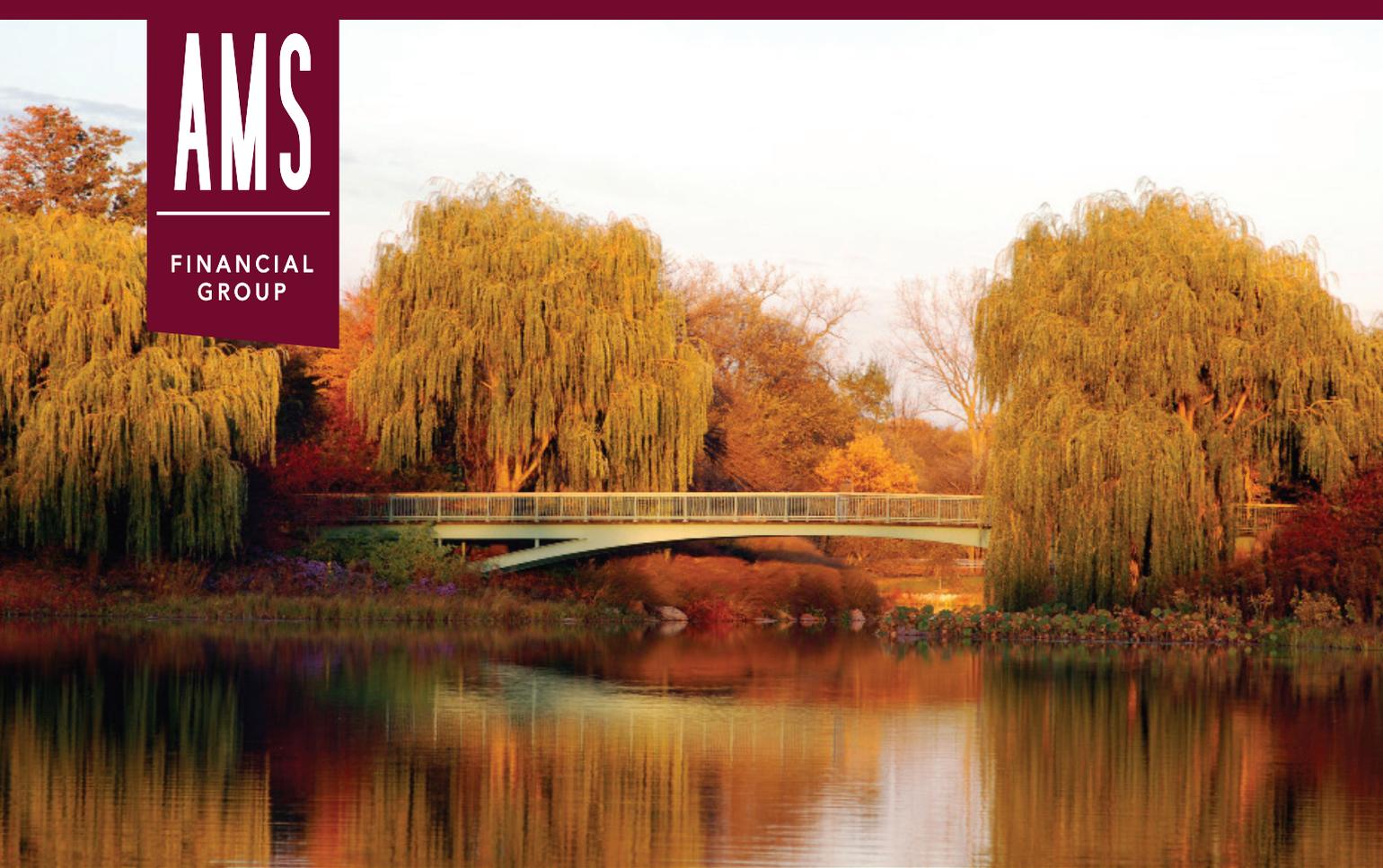
\*as of 12/31/14



The logo for AMS Financial Group, featuring the letters 'AMS' in a large, white, serif font on a dark red background. Below the letters, the words 'FINANCIAL GROUP' are written in a smaller, white, sans-serif font, separated by a thin white horizontal line.

# AMS

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A scenic photograph of a park. In the foreground, a calm lake reflects the surrounding trees and a bridge. A white pedestrian bridge with a metal railing spans across the lake. Large, mature weeping willow trees with long, drooping branches are prominent on both sides of the bridge. The background shows more trees with autumn foliage in shades of orange and yellow under a soft, overcast sky.

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And the best part is, we get to do it with some of the finest beer people in the industry.”

BevCap was founded in March 2008 and currently has 25 members.

Falkenhagen said Del Papa’s initial expectations with BevCap were about saving money. “As it turned out, we have more flexibility and control in our coverages and more involvement in our safety programmes.”

“The added benefit is a significant improvement in our safety and loss control performance.”

Layman said: “Standard Sales did not really know what to expect upon joining the BevCap. But we certainly liked the idea of joining with other ‘like-minded’ fellow beer distributors all hoping to do whatever we possibly could to collectively lower our costs while also having the ability to design our coverages to better meet our company’s needs.”

### Oil prices hit Saudi captive

Standard & Poor’s has revised its credit and insurer financial strength ratings on the Bermuda-domiciled captive insurer Stellar Insurance to “A+” from “AA-”. The outlook remains negative.

Stellar Insurance, a core subsidiary of the wholly-government owned Saudi Arabian

Oil, had its ratings lowered after the rating agency dropped the foreign and local currency sovereign credit ratings on Saudi Arabia to “A+” from “AA-” in October.

The change in the sovereign ratings reflects the sharp drop in the Brent oil price, which has widened the government’s fiscal deficit, according to Standard & Poor’s.

Standard & Poor’s continues to view Stellar as a core wholly owned indirect subsidiary of the government-owned Saudi Arabian Oil.

“Stellar forms an integral part of Saudi Aramco’s financial risk management strategy, and is fully integrated into Saudi Aramco’s operations.”

### BNY Mellon gets Turkish mandate

BNY Mellon has been appointed trustee, paying agent, account bank and custodian for a \$100 million Turkish catastrophe bond transaction designed to protect insurers against the risks of potential earthquakes.

The bonds were issued by Bosphorus, a Bermuda-based special purpose reinsurer that was created by the Turkish Catastrophe Insurance Pool (TCIP), the originator of the transaction.

Eureko Sigorta is the institution administrator of the bonds and will act on behalf of TCIP to provide administrative services.

Can Akin Caglar, CEO of Eureko Sigorta and board member of TCIP, commented: “TCIP is pleased with how the capital markets received the Turkey earthquake cat bond issuance. We, as TCIP, are proud to be the sponsor of such a successful transaction.”

Suha Cele, executive board member of Eureko Sigorta, added: “Our previous bond Bosphorus 1 Re was the first cat bond covering Turkish perils and a real success story. We are delighted to see that this second bond was also well received by the capital markets.”

BNY Mellon believes the global cat bond market will continue to grow and that over the last 10 years the amount of cat bonds outstanding has increased from about \$6 billion to \$23 billion.

Paul Traynor, head of insurance services for Europe, the Middle East and Africa at BNY Mellon, said: “TCIP’s innovative use of the capital markets illustrates the continuing growth of the insurance-linked securities market.”

### Aon expands its model coverage for Asia floods

Aon Benfield’s Impact Forecasting has developed catastrophe models for Malaysia and Jakarta floods to help insurers and reinsurers better underwrite and manage their exposures in Asia.

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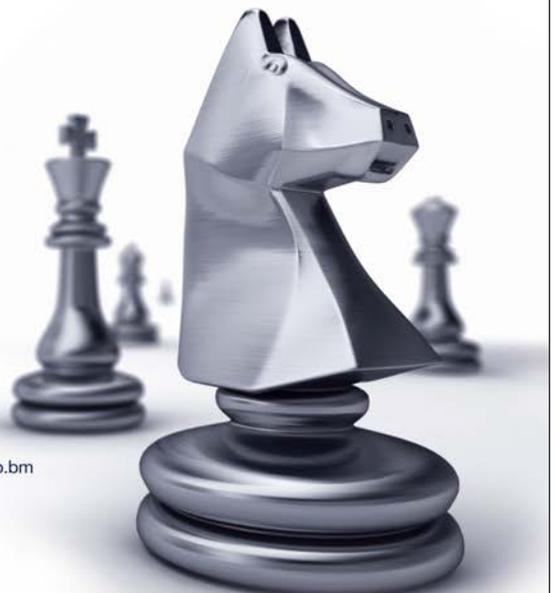
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The new models were launched at the Singapore International Reinsurance Conference.

On average, Malaysia experiences a major flood once every three years though major insurance losses have been less frequent. Due to increased exposure concentrations and evolving urban environments, these historical events are poor indicators of future loss potential.

According to Impact Forecasting, large accumulations from high value commercial and industrial properties in the floor plains. The data from the field studies was used as the basis for the new model.

In Asian mega cities, it is a challenge to accurately assess insured flood risk due to large concentrations of risk. Jakarta demonstrated the need for a flood model to fully understand possibly financial implications.

Impact Forecasting worked with the Jakarta City government to take into account land subsidence and recent mitigation works when developing the probabilistic tool.

Both models have the ability to analyse portfolios with residential, commercial and industrial estate lines of business and are available on the elements loss calculation platform.

This enables insurers to achieve more accurate results by customising the components based on loss history, according to Impact Forecasting.

Adityam Krovvidi, head of Impact Forecasting in Asia, said: "Ever since the Thai floods of 2011, the reinsurance and insurance industry has been keen to grasp the implications of this peril throughout the Asia region."

"Now, coupled with other factors such as increased urbanisation and detariffication in Malaysia, we have addressed these challenges with models that can fulfill regulatory and rating agency requirements—in addition to the more traditional use of driving accurate reinsurance purchase."

Brad Weir, head of Aon Benfield Analytics for Asia, added: "Malaysia's costliest economic loss of \$580 million came from the December 2014 flood while an event in January 2013 left Jakarta with economic damages around \$3.4 billion. Having a robust solution to understand and remove the uncertainty of its potential is crucial in supporting risk management decisions."

### Colombian energy captive is affirmed

Fitch has affirmed the insurer and national insurer financial strength ratings of the pure captive of Colombian energy company Ecopetrol.

Bermuda-based Black Gold Re's ratings were affirmed at "BBB+" and "AAA(col)".

The captive is the sole captive reinsurer of Ecopetrol and only reinsures Grupo Ecopetrol risks.

The main purpose of Black Gold Re is to optimise the cost of risk transfer, provide value-added services, and position itself as the captive of all subsidiaries of Grupo Ecopetrol, according to Fitch.

As of September 2015, the captive had earnings amounting \$90.4 million, attributable to the positive internal generation of resources it has had since its inception, which in turn represents savings and benefits produced for Grupo Ecopetrol.

Black Gold Re's capital has doubled in the last five years (\$180 million as of September 2015), mainly due to an internal generation of resources and a conservative policy of maintaining retained earnings.

Fitch expects the captive to strengthen its capital structure in order to provide optimal insurance alternatives in times of stress and tough market conditions.

### Guernsey retains 'AA+' credit rating

Standard & Poor's (S&P) has confirmed that Guernsey's credit rating remains at "AA+", the highest rating the jurisdiction can achieve.

According to S&P, Guernsey has a wealthy and open economy generally strong institutional environment, and robust fiscal position based on a prudent fiscal framework and sizeable government assets.



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S&P cites the robust fiscal position, with liquid assets amounting to 112 percent of GDP, as supporting the position.”

**Court decision exposes PCC risk, says Fitch**

A recent court decision has highlighted the presence of multiple sources of credit risk in protected cell structures, according to a Fitch Ratings report.

The report focuses on a recent decision in the federal court case, Pac Re 5-AT v AmTrust North America.

Pacific Re is a protected cell company (PCC) domiciled in Montana. Its cell, Pac Re 5-AT, was the subject of a captive reinsurance agreement with AmTrust North America.

According to Fitch, disputes arising from the reinsurance agreement were supposed to be settled by arbitration.

When AmTrust sent a demand for arbitration, it named Pacific Re and the cell as parties.

They subsequently filed for declaratory judgement in US district court demanding that Pac Re 5-AT’s name be dropped from the dispute.

The US district court ruled that Pac Re 5-AT is not a separate legal entity from Pacific Re and

so could not be sued individually. Pacific Re was to remain the sole party in the arbitration.

According to Fitch, the failure of a protected cell’s PCC could cause disruption or financial pressure for the protected cells in the PCC.

If this is the case, the prospective cell sponsors should consider the creditworthiness of the PCC when forming a protected cell.

**JLT and VCIA praise Liability Risk Retention Act expansion**

JLT Towner Insurance Management and the Vermont Captive Insurance Association have praised the proposed expansion of the Liability Risk Retention Act to allow certain risk retention groups (RRGs) to insure policyholders’ property risk.

The US Nonprofit Property Protection Act, which was introduced by Representatives Dennis Ross and Ed Perlmutter, will broadly expand the scope of the Liability Risk Retention Act, allowing many RRGs to offer all lines of commercial insurance.

JLT Towner Insurance Management partner Len Crouse commented: “This bill gives the industry a foot in the door.”

“All of our RRG clients have property exposure, so eventual passage of this bill would be a positive development for them.”

In a statement issued to VCIA members, president Richard Smith explained: “The bill is a more limited extension to the LRRRA in an attempt to move the property addition forward without raising opposition, which has stymied these efforts in the past.”

“Specially, the measure would allow RRGs to write property coverages for policyholders that are non-profit organisations with tax-exempt status or educational institutions and educational-related institutions that are non-profit or government entities.”

He added: “While VCIA continues to back the addition of property coverage for all RRGs, we think this is a necessary first step to move the issue forward.”

The bill would apply to RRGs serving non-profit and educational organisations that have been in existence for at least 10 years and maintain capital and surplus of at least \$10 million. It would also allow property coverage up to any individual policyholder’s total insured value of \$50 million.

JLT Towner Insurance Management senior account manager Dustin Partlow added: “Our hope is that this bill is only the start, and legislators will strengthen the law and add other eligible insurance coverages each year.”

The Independent Insurance Agents & Brokers of America (IIABA) has publically opposed

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the proposed expansion, with Charles Symington, senior vice president of external and federal government affairs, arguing that new bill is a classic case of a solution in search of a problem.

Jen McPhillips, assistant vice president of federal government affairs at the IIABA, added: "Today, there is no marketplace need for this broad expansion which will needlessly leave consumers exposed without the protection of the state guaranty fund system, an important safety net."

### Isle of Man consolidates its regulators

The Isle of Man has combined the functions of the Insurance and Pensions Authority (IPA) and the Financial Supervision Commission (FSC) under a single a regulator.

The Isle of Man's Financial Services Authority took on the roles of the IPA and the FSC from 1 November.

The chief executive for the newly combined regulatory authority, Karen Badgerow, was appointed on 5 August and took up her position on 1 November.

The Isle of Man's parliament approved the treasury's appointment of the board of the new authority last month.

The merger of the IPA and FSC has been coordinated by a steering committee comprising members of the existing IPA and FSC boards in order to achieve a successful handover to the new organisation.

### A.M. Best backs J.P. Morgan captive

A.M. Best has affirmed the financial strength and issuer credit ratings of Vermont-domiciled Park Assurance Company.

The "A (Excellent)" and "a" ratings reflect Park Assurance's excellent risk adjusted capitalisation, operating performance, liquidity position, sophisticated risk management strategy and practices, conservative investment strategy, its management team and its role as a single parent captive of US bank J.P. Morgan.

A.M. Best believes that partially offsetting these positive rating factors are Park Assurance's large gross underwriting risk appetite and the potential credit risk associated with its extensive use of reinsurance, which management utilises to mitigate these one-off risks.

Park Assurance provides J.P. Morgan with global property coverages, including terrorism workers' compensation, auto liability and general liability.

According to A.M. Best, Park Assurance's ratings and outlook are not likely to be upgraded

within the next 12 to 24 months as its operating performance and capital position is not expected to change.

### Willis launches new accounting platform for clients

Willis Group has launched Willis Accounting, a new global electronic accounting platform designed to speed up cash flow and settle claims more quickly on behalf of clients.

Willis Accounting replaces traditional paper and email delivery statements with automatic electronic messaging through an online portal.

The new platform will speed up premium transactions and claim settlements with carriers and clients.

Willis will supply the online portal to around 1,100 carrier partners worldwide. Clients of Willis as well as underwriters will benefit from the new electronic system with enhanced cash-flow, reduced risk through guaranteed data delivery and quicker claims settlement.

David Shalders, operations and technology director for Willis Group, commented: "As we continue to implement operational improvements across Willis we are squarely focused on delivering better service for our clients and carriers."

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# Conference calling

## IMAC's Kieran O'Mahony looks ahead to this year's Cayman Captive Forum

BECKY BUTCHER REPORTS

### How many attendees are you expecting to this year's Cayman Captive Forum?

I am not into the numbers game, as numbers may not be reflective of a successful conference per se, but for what it is worth, the number of registered attendees is ahead of last year, as of 31 October.

### What can delegates expect?

They can expect another excellent conference with a great and relevant agenda. The speakers are from all aspects of our industry and have first-hand, as well as hands-on, experience of what they are talking about.

### What sessions are you particularly looking forward to?

I would say that all sessions have great appeal. I am personally interested in the pre-forum tutorials on the Cayman Islands as a domicile and portfolio insurance companies (PICs). As for the main show, 'Generational Kinetics', the keynote speaker, Jason Dorsey, will no doubt be very interesting for all of us who left university 20-plus years ago.

'Hospital/Physician Captive 50/50' and 'Consolidation of Healthcare Systems', which will be running in the afternoon of 2 December, are both very topical indeed. As a reinsurance underwriter by training and profession, 'Captive Reinsurance: Choosing the Correct Reinsurance Partner and Understanding Reinsurance Issues' is close to my heart and the session regarding equipment maintenance insurance, the last session on 2 December, is something that a lot of captives are exploring right now.

### Were this year's sessions based on attendee's feedback from 2014?

We conduct a post-event survey each year, which solicits a significant quantum of responses from attendees. This is systematic of the forum being 'the clients' forum'. We use that data and qualitative feedback to help shape the following year's forum.

### Cyber risk features in a couple of sessions. Do you think cyber risk will continue to grow rapidly? How should captives go about coping with such a big risk?

Cyber, along with employee benefits, continues to be a hot topic that gets discussed at captive board meetings. Currently, rate increases of 25 percent-plus are common with up to 45 percent being 'not unheard of'.

A number of captive owners have already or are exploring the classical captive approach, putting the retention into the captive and pushing the traditional risk transfer market to a higher attachment level on their cyber programme, while simultaneously seeking to buy more limits.

### Captive taxation also appears regularly. Have there been any recent updates?

Taxation continues to be an important subject matter at the Cayman Captive Forum, with Foreign Account Tax Compliance Act/ Organisation for Economic Co-operation and Development common reporting standards and their implications for captives currently being some of the most recent topical matters.

### What will IMAC be working on in 2016 in terms of captives?

Continuing to raise awareness of the brand 'Cayman Clearly Better Business' and expanding the geographical footprint of our reach to Central and South America, as well as Canada, will be ongoing themes.

### What else will IMAC be doing?

Now that we have put the PICs in place, we are moving to the next rung on the innovation ladder and the executive committee of the Insurance Managers Association of Cayman is exploring a number of initiatives to keep Cayman at the forefront of the captive industry. These are currently at the whitepaper phase so I expect that our various committees will be given some marching orders over the coming weeks to progress further in 2016. **CIT**



**Kieran O'Mahony**  
Chairperson  
Insurance Managers Association of Cayman

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# Cayman rising

*The Cayman Islands is among the world's most popular domiciles*



## BECKY BUTCHER REPORTS

The Cayman Islands is having another successful year in captive insurance, with the Cayman Islands Monetary Authority (CIMA) revealing that—as of 30 September 2015—there were 711 international reinsurers and insurers, including captives, domiciled. Some 679 of these were Class B insurers, 31 were Class C and one was Class D. Since the start of 2015, CIMA has licensed 15 international reinsurers and insurers.

Mark Kay, senior account manager at Atlas Insurance Management, which manages a large number of captives across different offshore and onshore domiciles, says that many of its larger and more complex captive clients are domiciled in Cayman, including large groups and multinational companies. Atlas currently has 11 licensed captives in Cayman, with three new ones in the pipeline. It has recently overseen the licensing of a large medical stop-loss programme and plans to utilise the segregated portfolio company (SPC) structure. Kay also says that Atlas is considering taking advantage of the new portfolio insurance company (PIC) structure, too.

### Charismatic Cayman

With CIMA licensing a healthy number of captives each year and local players remaining busy, what is it that attracts companies and international insurers to domicile in Cayman? According to Ruwan Jayasekera, deputy head of insurance supervision at CIMA, one of the reasons Cayman is an attractive place to domicile is its engagement in the vigorous international cooperation regimes, complemented by robust anti-money laundering and countering

of terrorist financing programmes. He also suggests that another reason is CIMA's active representation in various international insurance standard setting bodies, including the International Association of Insurance Supervisors (IAIS), Group of International Insurance Centre Supervisors (GIICS) and the Caribbean Association of Insurance Regulators (CAIR).

Jayasekera believes that companies and international insurers are also attracted to Cayman because the domicile is focused on the importance of the financial services industry to its economy, and they are impressed by the commitment from successive governments to provide the necessary policy and legislation to facilitate orderly development of the industry.

Cayman's location is another advantage as it is within such close proximity to the US. This means that there is a ready availability of service from different airlines flying into Grand Cayman from the US, Canada and the UK, meaning an easy commute to the offshore domicile and global business opportunities. If companies and insurers are going to domicile their captive, they also want to ensure that the currency in which they domicile is stable, says Jayasekera, who believes that Cayman is popular because of its stable currency pegged to the US dollar.

He adds: "There are also a large number of top-quality service providers for fund administration, insurance and company management and fiduciary services, both independently owned and members of well-known international groups". This allows companies and insurers to be reassured by

the presence of top-end service providers, giving them confidence to domicile in Cayman.

Cayman's culture of consultation and cooperation between government agencies, including CIMA, and the industry is also an attractive feature. According to Jayasekera: "The industry, CIMA and government working groups are frequently used to address sectors requiring attention".

### A healthy state of affairs

An area in which Cayman has long been strong is healthcare. Kay says: "The origin and growth of healthcare captives in Cayman is well documented: from the founding days of CRICO and its affiliation with Harvard Medical School to the present day market leader in healthcare captives."

Cayman has been involved in the healthcare sector since mid-1970s and the medical malpractice insurance crisis in the US. The domicile capitalised quickly, introducing early captive legislation that favoured the healthcare sector. To this day, Kay says: "Cayman maintains its standing as the jurisdiction of choice."

Jayasekera believes that several factors have led to the success of Cayman achieving this status. These include the high levels of expertise and experience in service areas such as insurance management, legal accounting and banking.

He adds that a robust, flexible and competitive regulatory regime, which is in compliance with internationally accepted

best practices, has also led to Cayman's success in the healthcare sector.

CIMA's position as "a responsive, pragmatic and accessible regulator" has also contributed to Cayman's success, says Jayasekera. A regulatory framework of Cayman's calibre allows for "innovation and opportunity for healthcare sector organisations, large or small, to put their captive structures to more non-traditional or sophisticated use".

Les Boughner, chairman of Advantage's business insurance division, believes it is interesting to look at how some domiciles gravitate towards certain businesses. He says: "Cayman has done that for healthcare. Very early on they took the time to understand the US healthcare industry and their need for a captive solution. They recognised that even non-profit healthcare providers were better suited in an offshore jurisdiction.

By developing this expertise and understanding US healthcare providers were attracted to the receptivity of the Cayman regulators. Cayman has, by far, been very supportive of US healthcare."

Given Cayman's current popularity, is there room for captive insurance to grow in the domicile? Jayasekera believes that the emergence of new captive insurance domiciles and captive structures being put to more sophisticated use by their owners

show that the captive concept is still gaining global recognition.

He suggests that a captive's ability to provide coverage for new and difficult-to-place risks in the commercial market, flexibility and the control that the captive structure offers for insurance programmes, risk management and cost efficiency are widely recognised. He says: "Cayman's own experience with regard to new formations also supports our predictions that the captive insurance sector is there to grow."

Boughner reveals that Advantage has seen an increase in the use of its cell captive facility. Advantage has two rent-a-captive facilities that provide both an onshore and offshore option. In the Cayman Islands, Advantage Property and Casualty SPC can create protected cells that can directly write or act as reinsurers depending on the client's needs.

For both companies, Advantage provides all of the back-office administrative support including policy design, accounting, corporate activities and regulatory reporting. Clients can provide their own capital to their cells or rent capital from Advantage.

Boughner explains that the relevant Cayman legislation, which came into effect in 2013, streamlined the process for cell captives, and he believes "everybody's comfortable with it". In early 2015, CIMA updated the PIC law,

enhancing the risk management options available to insurance participants in Cayman. Jayasekera explains that a PIC, which is an incorporated company within an SPC structure, offers several benefits, including the ability to transact with other PICs and standalone reinsurance and insurance companies, the ability to have a different board of directors to that of its controlling SPC, and recognition as a separate legal entity.

In addition, CIMA is also currently in the final stages of development of a regulatory framework to review internal capital models (ICMs). Jayasekera explains: "ICMs allow reinsurers and insurers to better integrate the processes of risk and capital management within in the company." CIMA has also introduced new, and updated existing, rules on outsourcing arrangements, risk management, market conduct and money laundering.

Cayman's international insurance sector has also seen increased interest from hedge funds seeking opportunities to participate in insurance profitability through the formation of the structures commonly referred to as 'Hedge Fund Re' vehicles.

Looking forward into 2016, Jayasekera revealed that a new licence subcategory, a Class B(vi) insurer licence, to encourage small to medium open-market reinsurance and insurance companies to form their companies in Cayman. **CIT**

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# Asia's stars align

With flexible regulators, robust regulations, local expertise and a strong reputation, the infrastructure needed to support captive growth in Asia is at hand, says Tracy Stopford of Willis in Hong Kong

## BECKY BUTCHER REPORTS

### How is Asia's captive insurance industry expanding?

The emerging captive industry in Asia is expanding due to a variety of factors—it is as if the stars are aligning. The insurance market in China is growing in size and sophistication at a very fast pace, and riding the coat tails of the traditional insurance industry, captive growth will follow. Additionally, brokers such as Willis and reinsurers see the benefits of adopting the utilisation of captives and can appreciate the value added for their clients and by doing so, they set themselves apart from the competition as they can promote such comprehensive offerings to potential clients. As we already know, the Chinese Insurance Regulatory Committee (CIRC) has announced that it would like China to be an international domicile of choice for captives, which is a bold statement and should open the doors for not only onshore Chinese companies that are looking towards the captive option, but also multinationals with concentrated risk in Asia that may find China an appealing domicile for their captive.

Another factor contributing to growth is the overall trend of not only the large China state-owned enterprises (SOEs) but also the small- and medium-sized enterprises (SMEs) starting to develop their risk management and retention strategies and hence looking to a captive solution. Lastly, we are seeing interest in Asian-owned captives domiciled in the more traditional offshore jurisdictions asking if it makes sense to re-domicile to Asia, given the fact that there are flexible regulators, robust regulations and local expertise readily available.

### Is there anything that Asia offers that other domiciles may lack?

Absolutely. A measurable difference is the fact the Hong Kong and Singapore serve as Asia's two main international financial centres (IFC). The International Monetary Fund (IMF) defines IFCs as "large international full-service centres with advanced settlement and payments systems, supporting large domestic economies, with deep and liquid markets where both the sources and uses of funds are diverse, and where legal and regulatory frameworks are adequate to safeguard the integrity of principal-agent relationships and supervisory functions". With this said, Hong

Kong and Singapore are rated with the third and fourth strongest reputations, respectively, as IFCs, according to the Global Financial Centres Ratings, GFCI17, of March 2015. With the expert financial infrastructure to support and sustain captive growth, Asia has quite an advantage.

### What is holding Asia back in terms of growth?

In China, most large organisations are SOEs, which can cause friction between the various parties, but strategically, all are striving towards the same objectives. In the short term, the state-owned insurance companies may be at odds with the large state-owned industrial conglomerates, but all parties will soon realise the mutual and national benefits and a captive will not just be seen as 'stealing' market premium.

The decision to create a captive should not be taken lightly. Insurance is unlikely to be the core business of the company making the decision, so a whole new vocabulary, set of procedures and systems will be required. Education and a willingness to work closely with regulators will likely be necessary. However, we see the organisations at the forefront of captive development treading cautiously.

### Is education the key strategy to stimulate growth in Asia? If not, what is?

No matter the industry or perceived extent of knowledge in a market, education always plays a vital role. In China, where alternative risk concepts, including captive insurance, are gaining ground, it is imperative that the industry and regulators be front and centre with the availability of resources and support.

### How are current market conditions holding captive formations back?

With rates soft in the commercial insurance market, the logical assumption is that an Asian corporation wouldn't need to form a captive insurer. But as we know, captive utilisation is not all about price. As Asian corporations become more aware of risk management and risk financing techniques, and aim to seek better control of data for decision-making, captives become an obvious solution. This is not to mention the necessity to have in place

vigorous governance and structure around their risk programmes in preparation for the implementation of solvency regulations, which alone can be a very strong contributing factor to form a captive.

### What makes Asia an appealing destination for captives to domicile in?

A key factor that may be appealing to domiciling in Asia is the availability of China's Free Trade Zones (FTZ). The Shanghai FTZ was inaugurated in September 2013 with the purpose of increasing China's competitiveness in the global economy and to encourage international business. The CIRC has supported the development of the FTZ by encouraging the development of innovative insurance products and services, as well as helping Shanghai to develop an insurance sector expert infrastructure.

Currently, there has been interest shown from SMEs in Shanghai to domicile their captives in the FTZ. In fact, since the Shanghai FTZ was formed, at least 12 more FTZs were approved in 2014, opening the door to millions of SMEs to investigate potential captives 'locally'.

### What is the current situation of Asia's regulatory environment? And is China still focused on implementing its own Solvency II regulation by January 2016?

All regulators are actively promoting captive insurance companies. We see a degree of cooperation between them. In order to attract business they recognise the need to develop and implement 'Gold Standard' regulatory frameworks and have been driving towards the implementation of risk-based capital across the insurance company sector, including captive insurers. China has decided to implement China Risk Oriented Solvency System (C-ROSS) beginning 1 January 2016, which has its origins in Solvency II.

The speed of implementation demonstrates the importance of the local regulator to this subject in the pursuit of developing a resilient insurance sector. Recently, the Hong Kong Legislative Council passed the Insurance Companies (Amendment) Bill, which paves the way for the establishment of an Independent Insurance Authority (IIA) to replace the existing office of the Commissioner

of Insurance/Insurance Authority (OCI). The objective of the new IIA is prudential regulation—to ensure that insurers are financially sound—and conduct regulation—to ensure that insurers and insurance intermediaries conduct themselves honestly, fairly and professionally. The implementation of the new regulatory framework will take a phased approach, with transitional periods in respect of certain provisions.

In line with the International Association of Insurance Supervisors's insurance core principles, the OCI has also proposed to introduce a risk-based capital framework, which is also similar to Solvency II. The Asia regulatory environment is very dynamic and the regulators are eager to build a solid framework and governance to attract and maintain captive insurance companies.

### What does Asia need to do to achieve equivalence with Europe?

We do not see Asia moving to a pure Solvency II-equivalence environment. The captive sector remains in its infancy but is rapidly developing. The local regulators are in a privileged position in that they can take the best practices of jurisdictions from across the world to develop their own framework with the aim of being best in class. I see this as a moving feast and expect further developments in the months and years to come, particularly as the formation activity in the region accelerates.

### How important is it for Asia's smaller domiciles, such as Labuan, to reach internationally recognised standards?

I believe it will be important in order to compete not only with the existing markets but also rapidly growing domiciles in Asia. The 'Gold Standard' is very important to organisations when selecting the right domicile for their captive. The smaller domiciles will need to maintain their competitiveness overall. One of the ways we see these smaller domiciles differentiating themselves is to have 'niche' markets they cater to.

As an example, in the US, Utah licensed 106 new captives last year, more than any other domicile in the US, and the majority of those were 831(b) micro captives. Utah has created a niche market for those SMEs that want a captive as well as a great place to do business.

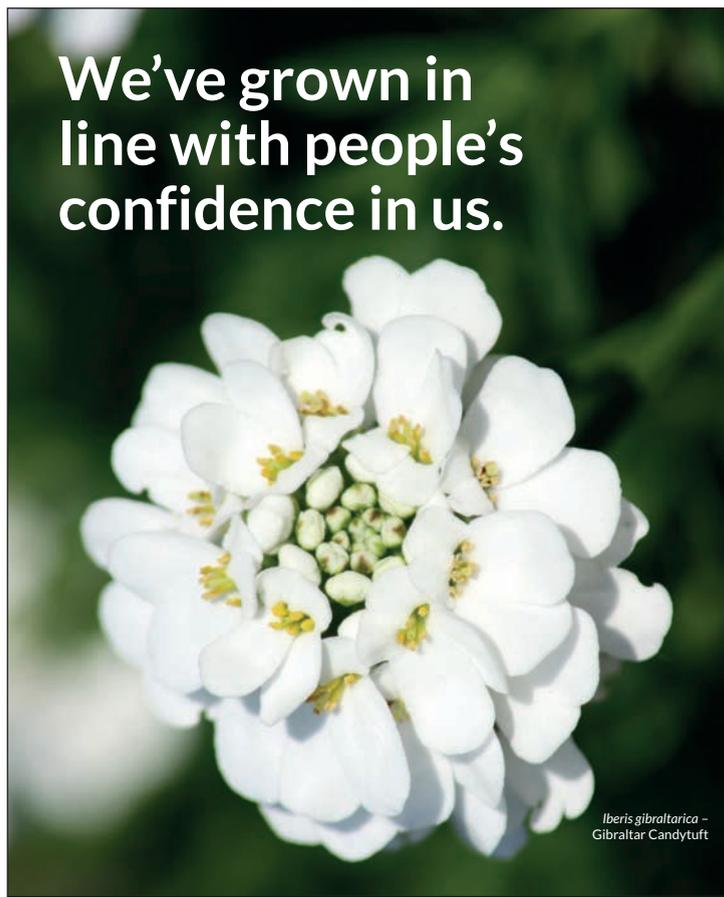
### Are there any emerging trends in Asia's captive insurance industry? And what do you see happening in the foreseeable future?

The overall trend has to be the explosive interest within mainland China, for captives. As we all know, the top 100 companies of the Fortune 500 are in China and only a handful of them have captives. Initially, the interest was coming from these mega SOEs, but it is now percolating

down the corporate food chain. It will not be long before approximately 43 million Chinese SMEs start developing their risk management and retention strategies and so begin looking to a captive solution. Additionally, we are seeing interest in Asian-owned captives domiciled in the more traditional offshore jurisdictions asking whether it makes sense to re-domicile to Asia, given the fact that there are flexible regulators, robust regulations, local expertise, and with Hong Kong being rated as having the third strongest reputation as an IFC, the infrastructure needed to support captive growth is at hand. **CIT**



**Tracy Stopford**  
Managing director, Hong Kong captive practice  
Willis



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In 2013, captive insurers achieved total gross premium income of nearly £350m. Three are PCCs managing over 30 cell companies. One insurance manager has created 50 cells with its PCC being the largest in the EU providing solutions for cell captives and fronting cells.

In April 2015 Gibraltar completed its first ILS transaction, this was a €100 million transaction using a Gibraltar PCC.

Gibraltar's vibrant insurance sector has over 50 insurance companies currently writing new business and in 2013 collectively these companies wrote £3.6bn of gross premium income – with Gibraltar motor insurers accounting for circa 16% of the UK market.

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# South Pacific specifics.

Education is the key to continued growth in the South Pacific, says Dean Spense of Captive Insurance Solutions New Zealand

## BECKY BUTCHER REPORTS

### How is the South Pacific captive insurance industry expanding?

With a lack of incentive from both the reserve banks and Australasian brokers, there's limited knowledge on captives. Captive Insurance Solutions New Zealand (CISNZ) is focusing exclusively in this space because the potential for expansion is unlimited. As part of that, CISNZ is involved in an education process, and we are enjoying the benefit of our activities.

### What is holding the South Pacific back in terms of growth?

I think it's because there is no government incentive to promote the growth of captives and in the absence of any enthusiasm from that quarter, brokers are more than happy to continue receiving generous brokerage income from their clients.

### Is education the key strategy to stimulate growth in the South Pacific market?

Yes. Education is precisely the key to continuing growth. Given that the respective reserve banks of New Zealand and Australia

do not encourage captives to be domiciled locally, we are placed in a situation whereby any prospective captive client must be assured that the domicile we use provides them with legislation that is robust.

### How are current market conditions holding captive formations back?

We have seen a softening of the traditional market over the past few years and as a result, some prospective clients find it difficult to understand the benefits of a captive. Once we have completed a full feasibility analysis, we are then able to provide compelling reasons for our client to consider this form of alternative insurance arrangement. As we all know, however, it is merely a matter of time before the cycle changes and rates start to increase. When this change occurs, and it will, we will be placed in a position whereby a larger number of Australasian companies decide to consider this alternative risk transfer mechanism.

### What makes the South Pacific an appealing location for captives to domicile in?

As indicated, Australia and New Zealand do not promote themselves as domiciles for captives

due to legislation, capital and solvency margin requirements. Our focus is on utilising a domicile that can assist our clients.

Both Vanuatu and the Cook Islands have enabling legislation and offer the ability to create a captive entity in these domiciles.

Whilst these are small island locations, we can effectively utilise their legislation while retaining New Zealand and Australian banking facilities. **CIT**



**Dean Spense**  
CEO  
Captive Insurance Solutions NZ



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# The proof is in the future

The restrictions written into RRG reform are important to future expansions of the LRRRA, says Dustin Partlow of JLT Towner Insurance Management

## BECKY BUTCHER REPORTS

### What will the new US Nonprofit Protection Act achieve?

The new US Nonprofit Protection Act will achieve the first amendment to the Liability Risk Retention Act of 1986 since the act's original passage. For almost 30 years the act has gone without any adaptations and, as such, many believe an amendment is long overdue. The insurance industry and the risk retention group (RRG) industry have seen significant changes over the last 30 years, as one would imagine. As such, I think it is important to see that the federal law is being adapted over time to meet the needs of the industry and the consumer.

For a number of years, industry representatives have been trying to expand the coverages that RRGs are authorised to write to include commercial property coverage, among others. These attempts have failed. The most recent attempt is much more restrictive in terms of the RRGs that would be allowed to write these new lines of coverage. We think that these restrictions are very important. These other lines of coverage, such as property coverage, come with some significant inherent risks and are not appropriate for all RRGs. The current restrictions regarding surplus levels and operating history as contained in the act are very important to not only protect the consumer, but to also protect the RRG industry as a whole.

Essentially, many industry representatives believed it was best to have the Nonprofit Protection Act be very restrictive to try and minimise opposition and have a greater chance of getting the bill passed. Then the hope is that the scope of the bill can be expanded as its success plays out over time.

### How will RRGs benefit from the expansion of the Liability Risk Retention Act?

The Nonprofit Protection Act in its current form is very restrictive and only applies to RRGs serving non-profit organisations, educational institutions and governmental entities. In addition, RRG needs to have 10 years of operating history, have capital and surplus of at least \$10 million, and is limited to providing coverage for up to \$50 million of total insured value for any one member. Given these restrictions, the number of RRGs that will be able to benefit from the expansion is quite minimal. However, we think the RRGs that will

be able to take advantage of the revisions are those RRGs that, in general, are the best fit to write coverages such as commercial property coverage that, in general, are short-tailed, low frequency, high severity and generally less predictive. In general, these coverages only make sense for those well-established and well-capitalised RRGs.

There is a reason these coverages were restricted in the original act because in general, these are not a great fit for RRGs. However, that does not mean these coverages cannot be written successfully by RRGs, it just means to do so, proper restrictions need to be in place. In addition to the restrictions outlined, it is also going to be important for regulators of RRG jurisdictions in the US to set proper guidelines and to properly oversee these RRGs that will be able to write these expanded lines of coverage.

In general, the real benefit just comes in the fact that the act will be amended for the first time since 1986 and the hope is that this is just the start and that Congress will continue to adapt the law to the ever-changing needs of the insurance industry. Which, hopefully over time, will mean that more RRGs will have the opportunity to write these expanded lines of coverage where the facts and circumstances make sense.

### How will the bill boost the RRG market?

Initially, the boost to the RRG market will be minimal. There will be a limited number of active RRGs that will be able to take advantage of this amendment. Given the restrictions regarding having 10 years of operating history, this bill will likely not spur any new RRG formations. However, if over time the restrictions are reduced or additional coverages are permitted, and the hope is that this is the first step in that direction, this would likely lead more groups to consider an RRG, which will likely lead to a boost in the RRG market.

### The IIABA has recently opposed the bill as the association believes it will potentially harm consumers. What do you make of this argument?

In general, we believe this argument does have some merit. There are some inherent risks with writing certain lines of coverage, such as commercial property coverage. We think it would be bad for the industry if there were not proper restrictions put in place regarding the RRGs that could write these new lines of

coverage. However, we feel that the bill in its current form has the proper restrictions in place to prevent harm to consumers. As long as the RRG has the necessary capital and surplus in place and these new lines of coverage are properly regulated by the RRG's state of domicile, we feel the potential harm to the consumer is mitigated.

### RRGs were criticised for being less capitalised than traditional insurers, and not being subject to important consumer protections such as mandatory participation in state guaranty funds. Do you agree with these criticisms? If so, why?

In general, no we do not agree with these criticisms. If you look at the track record for RRGs in general they have fared better than commercial insurers in terms insolvencies. Yes, they are generally less capitalised, however, in general, the RRG's pool of insureds is also much more restrictive. Additionally, we believe that if RRGs were subject to participation in state guaranty funds, there is the potential that it may actually have a harmful effect on RRGs. By requiring mandatory participation in the state guaranty funds, it may lead to RRGs taking additional risks solely based on the fact that they know they have the protection in place should the RRG go insolvent.

So, although it may provide some additional protection to consumers, it may also lead to additional negligence by some RRGs that may lead to an increase in the number of RRG insolvencies, which would be harmful to both the RRG industry and the consumer. **CIT**



**Dustin Partlow**  
Senior account manager  
JLT Towner Insurance Management (USA)

# Cleared to commence insuring

Captive insurance can help oil and gas companies to mitigate financial risk. Lance McNeel of Capstone Associated Services explains

## BECKY BUTCHER REPORTS

### What can captives do for oil and gas companies?

Oil and gas companies have difficult risk exposures throughout their operations, and captives can provide tailored risk financing solutions. Captive insurance companies exist to insure the risks of their affiliated companies, providing for specific risk protections that may not be available or may be cost prohibitive in the conventional market.

### The oil and gas sector has been hit hard by the price of oil. Would a captive help to mitigate this financial risk?

The price of oil is dependent upon a number of factors, including market demand, the ability to develop oil resources domestically, socio-political conflict, and so on. In general, normal market fluctuations that occur in most markets are not considered insurable risks.

However, price fluctuations that are the result of fortuitous events such as natural disasters, trade disputes, wars and terrorism can be insurable in a dual trigger policy.

The price of oil has repercussions on businesses that support oil and gas, such as businesses that develop valve equipment, nitrogen supply and pressure pumping equipment. Uninsured or under-insured oil and gas companies may feel compelled to terminate contracts with vendors if there is a decrease in demand.

Additionally, business benefits such as the ability for the captive to provide secured loans back to the operating company could help businesses combat temporary cash flow shortages that could put the operations in peril, such as the inability to make payroll or the inability to purchase equipment.

Coverage for loss of a major customer is a type of specialised coverage that can be written under a captive insurance company.

Others include loss of a major supplier, regulatory changes, loss of services, and expense reimbursement. Insurance coverages cannot prevent certain losses from occurring, but they can effectively counteract the financial and operational blowback of business interruption or extra expenses from a given event.

### How can oil and gas companies use captives to protect themselves against environmental claims?

In general, environmental costs are difficult to predict with certainty and given the exclusionary nature of current-day environmental insurance coverages in the commercial market, it is difficult for many business owners to hone in on a policy that will meet all of their coverage needs.

If there has been an objective, in-depth feasibility study conducted on the premises of a business, and risks or premium levels have been determined, coverages written through a captive can cover these exposures, as they are tailored to the unique needs of the associated company.

This feasibility study as the first step in designing captive coverages is critical to controlling losses by reducing the effects of a serious environmental claim and providing risk financing.

A well-designed captive will include an on-site assessment of risks, an environmental risk analysis, and consequently, insurance coverages that directly address the pollution or environmental risks that exist within the business.

If wastes are mishandled, a pollution incident could occur resulting in significant damage, injuries, cleanup costs, and fines.

Preempting these risks with the right safety protocols, and securing funding for possible losses through a captive are direct and proactive approaches to protecting against environmental claims.

### What about small-to-middle market oil and gas companies? Can they benefit more from forming a captive?

Yes. More than 20,000 small and mid-sized closely held firms that operate under the 'oil and gas' umbrella are all looking for ways to mitigate the loss in revenue due to the volatile market. Risk affects every sector of the industry and coverages written through captives provide for tailored policies that may not be available in the conventional market.

Oil field services, equipment rental companies, gas and electric or utilities,

pipelines, ship yards, water and sewer services can be affected by a wide array of difficult risks. Coverage written through a captive ensures that funds will be available for losses resulting from risks that have been identified and insured through well-designed manuscript policies.

The big publicly traded energy service companies such as Baker Hughes, Halliburton and Schlumberger have laid off more than 20,000 workers in the wake of the industry slowdown.

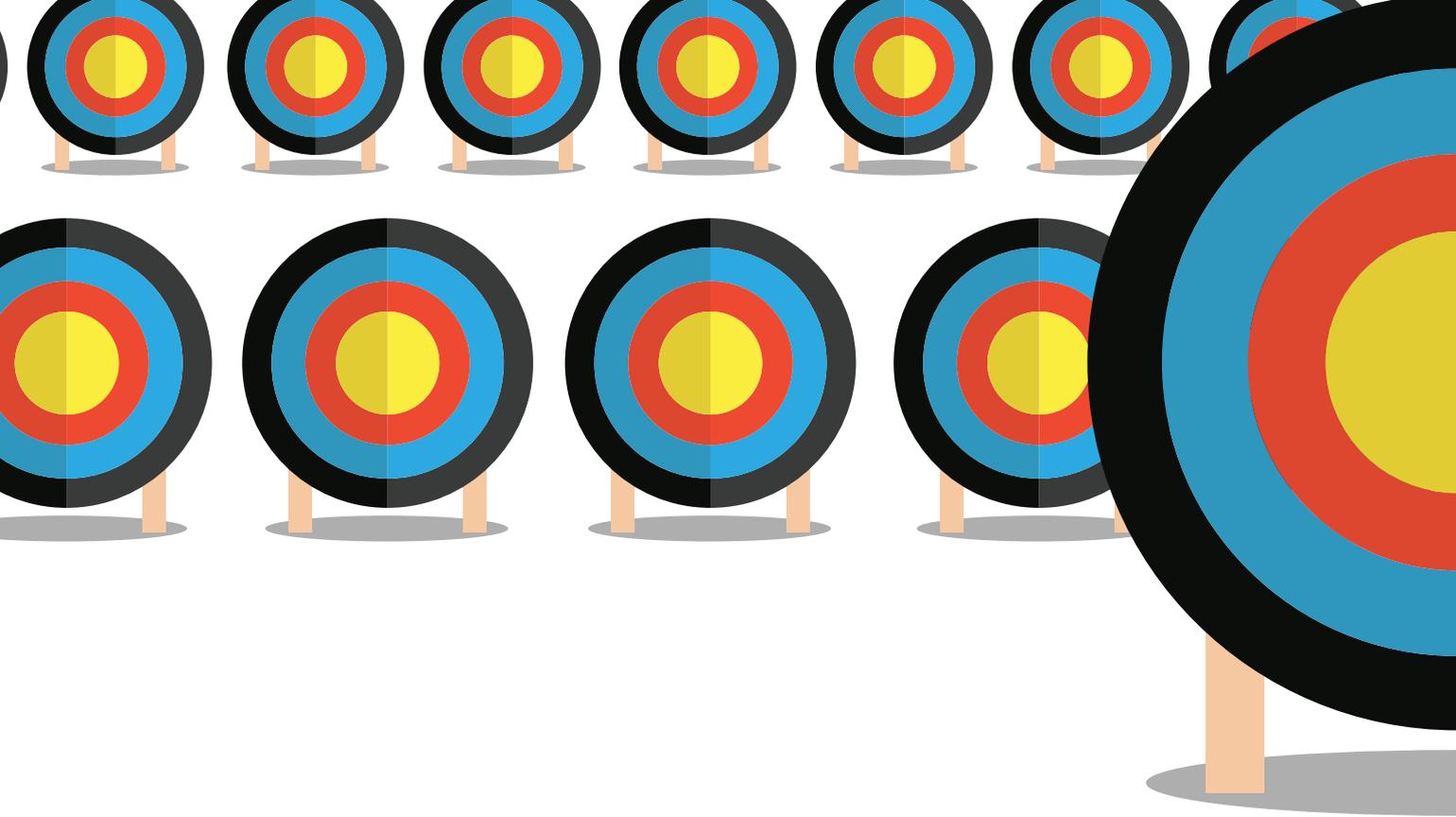
This doesn't address the fallout experienced by middle market companies supporting the industry. Siemens has cut 13,000 jobs and more than 1,100 drillings rig projects have been stalled. State legislators in North Dakota project that oil and gas tax revenues will drop more than \$4 billion over the next two years because of sagging crude prices.

With a captive insurance arrangement, these companies have the potential to bounce back more quickly, limit (or even completely avoid) layoffs, restructuring, and provide a level of asset protection. Even under favourable loss conditions, captive insurers can potentially leverage secured lending activity to reinvest in the business.

Captives are a powerful risk management tool for the middle market oil and gas organisations, proven by their ability to stifle the rippling effect of political risks and violence in the critical oil-rich countries of the Middle East. **CIT**



**Lance McNeel**  
Vice president of business development  
Capstone Associated Services



# Profit shifting crackdown: captives in the crosshairs

**A new international framework is targeting tax avoidance—and it has implications for captive insurers. Jenny Coletta of Ernst & Young explains**

In recent years, tax authorities around the world have been increasingly scrutinising captive insurance arrangements, focusing on questions relating to commercial purpose, pricing and substance. In what is likely to further exacerbate this trend, final reports on actions addressed in the Base Erosion and Profit Shifting (BEPS) project were released in October by the Organisation for Economic Cooperation and Development (OECD). This was the conclusion of a two-year project mandated by G20 finance ministers in response to concerns over the tax affairs of multinational groups. Overall these actions will result in fundamental changes to international tax regimes. While some of these changes have yet to be fully concluded or implemented in OECD member states, others have an immediate effect and may significantly impact captive insurers.

The final reports make it clear that the OECD regards captives as a potential source of profit shifting, with numerous references to captives made in a negative context throughout the documents. This raises concerns for groups with captive insurance arrangements as there is likely to be a further increase in scrutiny from global tax authorities as they implement and enforce the OECD BEPS actions.

With this in mind, what can groups with captive insurers do to prepare for the changing tax landscape? The following immediate key actions are strongly recommended:

- Review, and where necessary remediate, operating models to ensure new substance requirements are met and that risk of creating a deemed taxable presence outside the captive location is mitigated.
- Assess the capital or other commercial benefits arising from the arrangements for the insured, captive and the group as a whole.
- Review transfer pricing approaches and update or revise where appropriate.

## **Aligning transfer pricing outcomes with value creation**

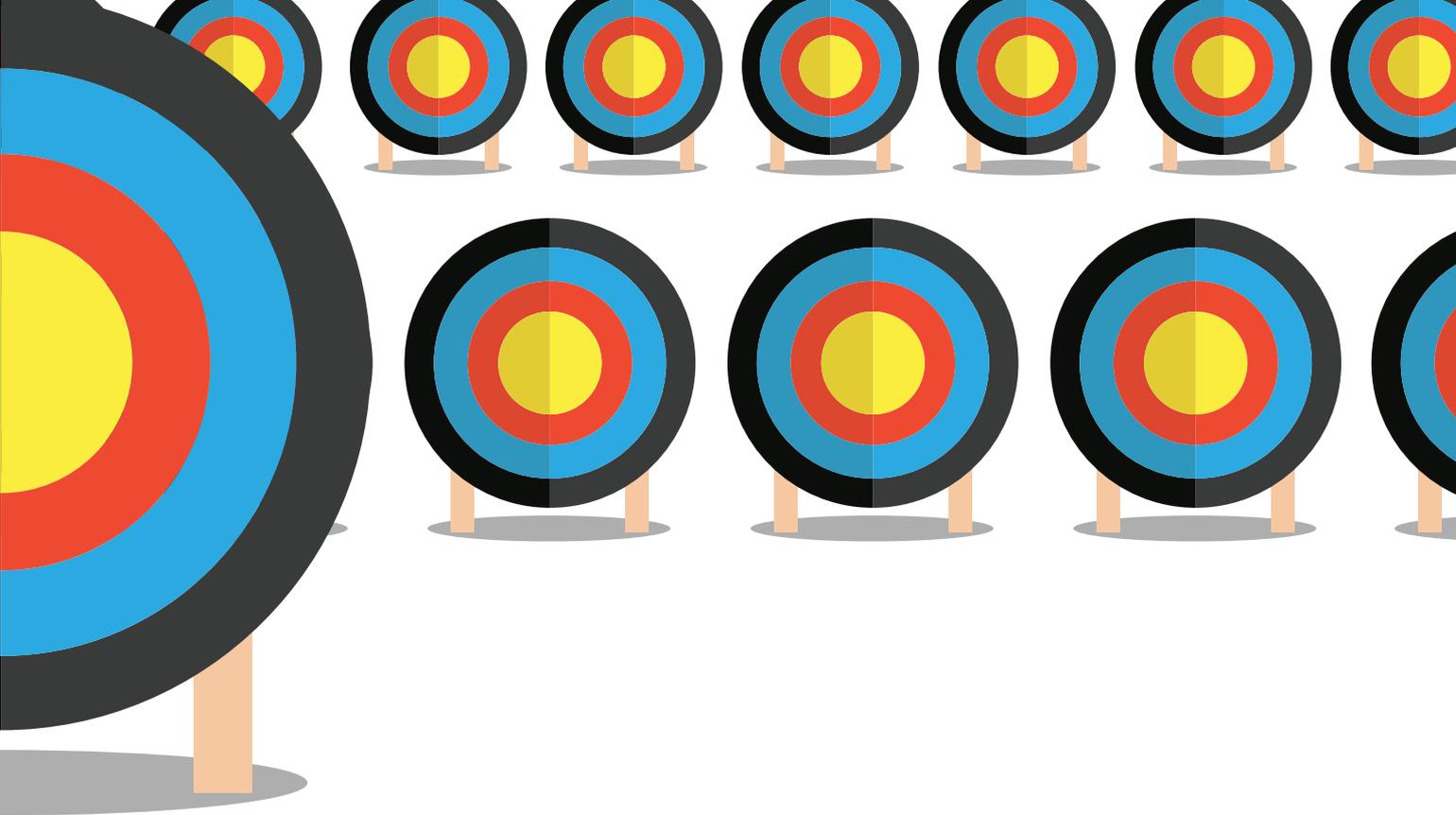
Much of the OECD work on BEPS has focused on preventing artificial transfers of profits or excessive allocation of capital to entities within a group, particularly those in low tax jurisdictions. It is perceived that inappropriate returns can be achieved in such entities where groups have been able to separate risks, functions and assets through contrived contractual arrangements. In particular, the OECD has looked to better align returns with value creating activities and prevent transactions that would not occur between third parties. In other words, profit should arise where there is genuine commercial activity taking place.

The OECD's work on this action has resulted in an extensive rewrite of parts of the OECD

Transfer Pricing Guidelines. These guidelines, originally published in 1979 and subject to much re-writing over the last 30 years, provide a framework under which global tax authorities may seek to tax intra-group transactions. Under the BEPS project, the OECD has now substantially re-written chapters of the guidelines. In particular, the revised guidelines now set out criteria for non-recognition of a transaction, meaning that tax authorities can now essentially ignore a transaction for tax purposes in certain circumstances. The key question in this analysis is whether the actual transaction possesses the commercial rationale of arrangements that would be agreed between unrelated parties under comparable economic circumstances.

The final guidance on non-recognition includes a captive insurance example in which a manufacturing company located in an area prone to flooding takes out insurance from an associated company in respect of inventory and plant and machinery risk, in exchange for a premium of 80 percent of the value of the inventory, property and contents. Given the substantial likelihood of claims, there is no active third-party market for the insurance of properties in the area.

The guidelines state that the captive insurance arrangement is "commercially irrational" and there is no market for insurance given the likelihood of significant claims. As such,



the transaction should not be recognised under the revised guidelines. In other words, the insurance premium would not be tax deductible for the manufacturing company.

Another feature of the new guidelines is the increased emphasis on demonstrating control over risk in the entity taking on risk. Although the guidelines acknowledge that some functions may be outsourced by a risk-taking entity, it is clear that there must be competent and experienced decision makers who have access to information relevant to the decision to take on or lay off a risk. In particular, the report notes that the mere formalising of the outcome of decision making, for example, with a board meeting or signing of documents, would not qualify as “the exercise of a decision-making function sufficient to demonstrate control over risk”.

Where an entity cannot demonstrate control over a risk, the return from that risk will be allocated to the group entity that does in fact control the risk and the return to the first entity will be limited to a risk-free return.

In most OECD and many non-OECD countries, the guidelines provide tax authorities with guidance in construing intra-group transactions. It should be noted that the OECD guidelines are incorporated in tax legislation in many countries and as such these changes could be implemented with immediate effect.

#### Deemed taxable presence

The final report includes changes to conditions under which multinationals may be deemed to have a taxable presence in another jurisdiction, or a so-called ‘permanent

establishment’ (PE). Conditions under which a PE arises and where it does, the taxing rights of the respective fiscal authorities, have historically been determined under domestic law and governed by the relevant double-tax treaty between states.

The international double-tax treaty framework for OECD member states (and many other states) typically follows the OECD Model Tax Convention. As a result of the BEPS project, the definition of a PE in the OECD Model Tax Convention has been widened. Now this includes not just situations where individuals have an authority to conclude contracts as was previously the case, but also situations where a person “habitually plays the principal role leading to the conclusion of contracts that are routinely concluded without material modification”.

This is particularly relevant for captives where individuals in group risk may operate in a capacity of managing or directing the captive. Activities may include procuring or outsourcing services from third-party captive managers or brokers. Even though the captive board may ultimately make decisions, to the extent individuals are dealing with these third-party providers when outside the captive location, even in a group risk role, this could give rise to PE risk.

The final report also includes changes to a previous exclusion from the PE rules for agents of independent status. The OECD has now changed the definition of an independent agent, so that an agent who acts exclusively or almost exclusively for a related entity will no longer be regarded as independent. This could create a PE for captive insurers that use a local agent to enter into a contract with a local affiliate. The

changes to the PE rules will be given effect through a multilateral instrument that OECD member states will negotiate in 2016.

#### Implications

It is evident from the final reports that the OECD regards captives as a potential source of profit shifting, which may result in local tax authorities taking an increasingly aggressive stance towards captives.

As countries begin introducing anti-avoidance legislation as a result of the BEPS project (see, for example, the UK Diverted Profits Tax, and the Australian Multinational Anti-Avoidance Law), captives may be on the receiving end of increased scrutiny from tax authorities.

Captives should be aware of how the themes outlined in the BEPS reports may affect their business, and take action accordingly. **CIT**



**Jenny Coletta**  
Insurance tax partner  
Ernst & Young



## Protecting your human resources

Using captives for employee benefits delivers major advantages to companies and workers, says John Miskel of Zurich Global Life, North America

For decades, captives have helped companies across North America and around the world achieve their enterprise risk management strategies. Today, the value of captives is indisputable, with more than 6,800 now operating in scores of domiciles across the globe. But while the number of captives meeting property and casualty (P&C) exposures is growing, the number used in the delivery of employee benefits remains quite small.

Reasons range from the still relative newness of the concept to perceptions about the complexity, regulatory hurdles and frictional costs of transitioning employee benefits into captives. But interest is growing as captive managers seek ways to diversify and broaden their risk portfolios, reduce volatility, and strengthen their value to parent organisations.

Back in 2000, the first company to introduce employee benefits into its captive was Columbia Energy. Since then, we've seen some pretty big names using their captives for benefits, but only about 30 or so to date. While captives are universally accepted for P&C risks, we're still not quite there with broad-based acceptance on the employee benefits side. It remains a promising and exciting opportunity for many captive managers.

From a financial and loss experience perspective, it makes sense to get the employee benefit risk into the captive so

you can benefit from some additional risk smoothing. Employee benefit risks tend to be very predictable, with exposures that do not correlate with those of a company's traditional P&C exposures. That means you most likely will not see the kinds of 'shock losses' in employee benefits that can be experienced when a large property loss hits a captive.

Hence, the addition of the employee benefit risk diversifies the captive's risk and helps to drive greater stability across the entire portfolio.

With captives, as with any kind of insurance vehicle, you want to add premium but also take positive steps to level out your total exposure to increase predictability. Adding employee benefits is a good and relatively safe way to do that.

### Regulatory approval required

One factor that may have delayed the utilisation of captives for employee benefits among some companies is the perceived hurdle of securing required US Department of Labor (DOL) approval for programmes that fall within Employee Retirement Income Security Act (ERISA) guidelines.

ERISA is primarily concerned with group life and disability. With good reason, the DOL wants complete assurance that any captive assuming employee benefit risk is solid, well organised and well capitalised, possessing the

skill set and administrative depth to make sure everything is done right. As an employee, the last thing you want is to have your employer insuring your benefits through a captive and then see the captive become insolvent or run into some other kind of trouble down the road.

DOL approval is mandatory when a carrier is insuring or reinsuring employee benefits risk if the plan sponsor owns 50 percent or more of the insurer. Since this is clearly the case with single parent captives, any company seeking to fund employee benefits through its captive must first receive a "prohibited transaction exemption". In 1979, the DOL expanded its statutory exemption process to allow insurance companies, including captives, to fund their own benefits as long as such employee benefit risk would not exceed 50 percent of the captive's business, including all internal and external (third party) P&C risk.

### Sweetening employee offerings

Among its various requirements and considerations, the DOL requires the fronting carrier to be A-rated at minimum. In addition, the captive must be either a domestic, US-domiciled entity or, if an offshore captive, it must have a permanent US branch.

One of the most significant, non-negotiable DOL requirements in approving a captive-based employee benefits programme is the inclusion of improvements and enhancements in features

provided to employees above and beyond what would typically be included in a plan from an external provider. These can include enhancements in programme design or lower premiums paid by employee members.

In effect, what the DOL is saying is that if you want to move your benefits into your captive to enjoy greater control, cost savings and administrative efficiencies, there has to be something in the transaction for your employees, too.

One example of a benefit enhancement under a group life plan is an accelerated death benefit in the event of a medically certified case of terminal illness. Under this enhancement, someone deemed to be terminally ill by a physician, with the doctor's prognosis regarding time remaining, would be able to access his or her life insurance proceeds prior to death in order to help pay for expenses.

Historically, that's been 50 to 60 percent of the death benefit, although we've seen that percentage rising over the past few years. We've seen cases in which plans might allow for 75 to 80 or 90 percent in order to qualify as an enhanced benefit worthy of DOL approval. What you want to avoid is increasing any benefit in such a way that it might have an overall cost impact.

For instance, in the case of life insurance, if you double the automatic benefit from one times salary to two times salary, you've pretty much doubled the cost of the life insurance you are providing because your volumes have just doubled.

The good news about securing DOL approval is that the process can proceed remarkably smoothly, with six-month review and approval processes not uncommon for organisations that have done the required homework up front. The DOL also has an expedited, fast-track process in place (EXPRO) for companies that have earned two prior exemptions, making the securing of any future exemptions even faster.

Employee benefit coverages most often included in captives are basic and supplemental life for active employees or retirees, as well as long-term disability.

Medical stop-loss protecting the company against large losses can be a common feature too, with the added benefit that it is not subject to DOL or ERISA oversight and exemptions. Workers' compensation is another typical coverage that can be administered through a captive.

Less common programmes are accidental death and dismemberment and business travel accident, which are low-premium, high-exposure coverages that can result in unexpected, large losses that may affect the expected predictability delivered to the captive with the inclusion of employee benefits.

## Collaboration is the key to success

While gaining regulatory approval may not be as burdensome or formidable as some risk managers may believe, occasional pushback from employee benefits and human resources (HR) units can be a speed bump, although not an insurmountable one with good, interdisciplinary collaboration.

We have heard from a number of risk managers about getting some degree of pushback from the HR and employee benefits sides of the house. Within many organisations, there is still a chasm between risk management and HR on this issue. As an experienced captive fronter, Zurich discusses P&C captive services with risk managers all the time. However, in those cases there is little or no interaction with HR or employee benefits.

When it comes to employee benefits in the captive, it's another story, and it can be a challenge for the risk manager to navigate through the HR channels to get to the right employee benefits decision makers. However, if the risk manager can engage the C-suite and get the CFO's support, it's more likely to get serious consideration.

The intent is not to circumvent the oversight of the HR and employee benefits teams, but rather to initiate constructive communication among key players. As with any change initiative, collaboration and transparency is the surest way to lay the groundwork for a successful transition of employee benefits into a captive.

We emphasise to risk managers and employee benefits leaders that communication and collaboration are very important in engineering a smooth transition to a captive solution.

It's important to engage with both sides of the shop to embed a clear understanding of the administrative and financial advantages to the organisation as well as the enhancements that will ultimately benefit their employees.

## Better data, greater customisation

Beyond the purely financial perspective, one of the most compelling benefits of placing employee benefits into a captive is a greatly enhanced degree of control over risk data and analysis, something that most HR leaders crave. In addition, the organisation will gain much greater latitude and flexibility in dictating programme design.

When your employee benefit risks are housed in your captive, you have much more flexibility to design the individualised plan you want. Since the captive is bearing most of the risk, the insurance company will be less hesitant about helping you implement the features you want. The insurer is usually ceding at least 80 percent of the risk back to the captive, and is pricing it at a pure mortality or morbidity rate.

With the exception of charging fronting fees to cover administrative expenses and use of the paper, all the other traditional market costs are largely eliminated, and in a sense you can dictate to the fronting insurance company what you want. For instance, they aren't going to argue if you want additional amounts of guaranteed issue in your plan, as long as the requests are reasonable and the captive is willing to take that risk. It's a balancing act, however. You don't want to push too far because at some point the price is going to go up.

The administrative benefits of placing employee benefits into your captive are significant. You can manage your risk charges and frictional costs better, and you can negotiate for more flexible benefit designs.

In addition, plans can be harmonised more readily and greater coordination of data through the captive more achievable. These are some of the additional benefits that have to be communicated to the HR teams to get buy in.

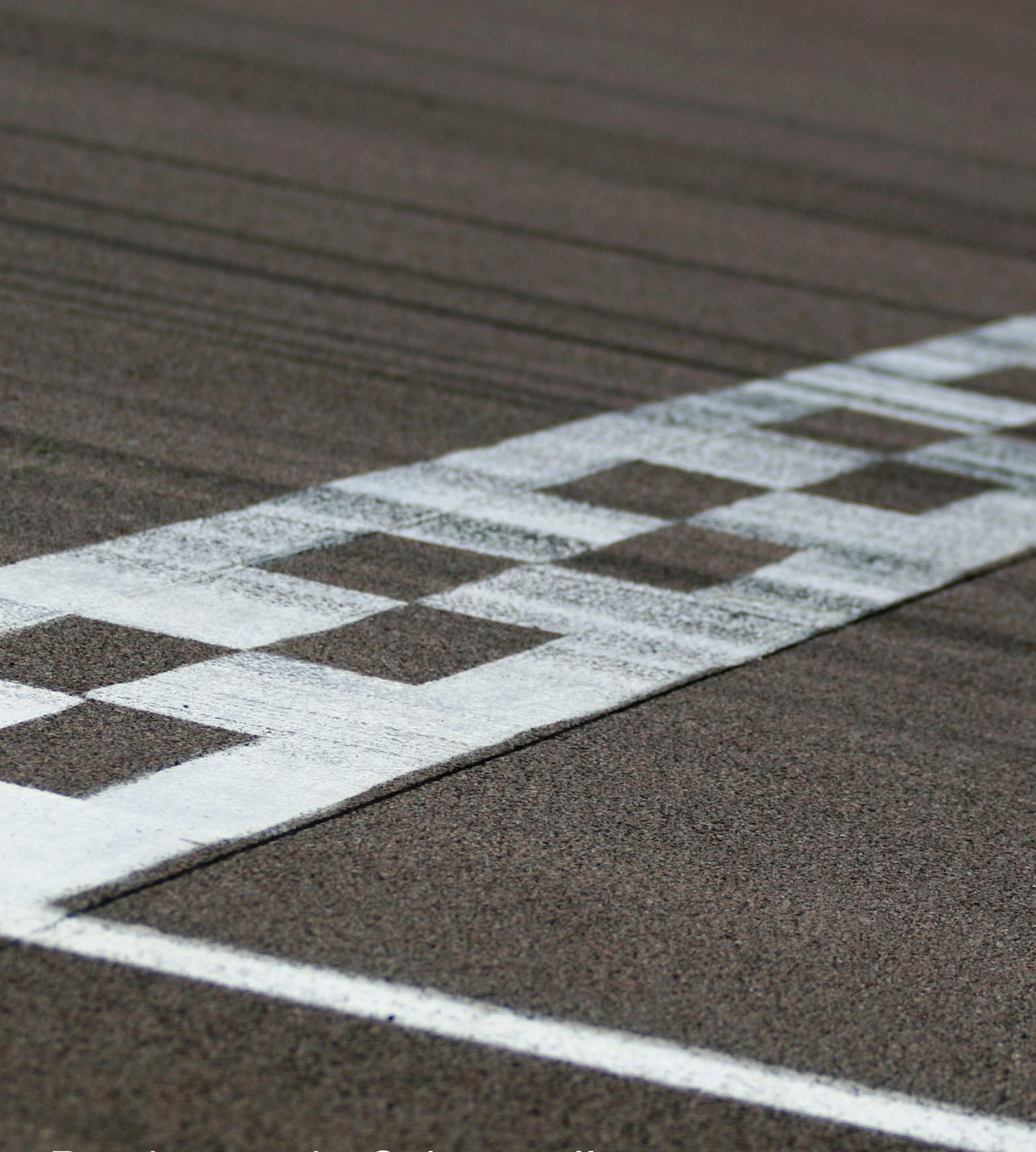
In addition to having better control over your employee benefit design and features, you can keep your employees happier, harmonise employee benefits, workers' compensation, long-term disability and return-to-work programmes, and create a risk management architecture that is much more adaptable to changing conditions.

But it takes a long-term vision and a collaborative spirit on everyone's part to create the architecture for a truly world-class, highly flexible and successful captive-based employee benefits programme. When that commitment to collaboration is present, success is virtually assured.

My advice to companies considering using their captive insurers to manage employee benefits is simply to think about it and definitely look into it. It's a good option for harmonising and gaining better control over the total picture of your risks, and it can definitely be worth the effort. **CIT**



**John Miskel**  
Head of corporate life and pensions  
Zurich Global Life, North America



# Ready, steady, Solvency II

Dublin is ready for the implementation of Solvency II, says Sarah Goddard of the Dublin International Insurance & Management Association

BECKY BUTCHER REPORTS

## What's new for Dublin's captive insurance industry?

In recent years Dublin has been actively implementing the forthcoming new pan-European regulatory rules coming into effect at the beginning of next year.

There's been a lot of preparatory work at the local level, including a new corporate governance regime in advance of the Solvency II requirements and a proportionality regime known as the Probability Risk and Impact System (PRISM), and these have embedded into the way self-managed captives and captive managers approach the forthcoming regulatory environment, ahead of its full implementation.

This has meant that there has been a lot of activity around systems, processes and understanding the application of risk in a captive's context in recent years.

As the embedding process has been finalising, the captive industry in Dublin has been looking at future strategic opportunities for clients, bringing to bear the deeper and more intense understanding of risk coming out of the regulatory infrastructure changes.

There have been a few changes in the local fiscal environment, but one of the biggest initiatives at the moment is the IFS2020 project, launched by the minister of state, Simon Harris, who is leading a multidisciplinary team to establish the new infrastructure for the next phase of international financial services development in Ireland.

This is a very exciting initiative that is gaining a lot of momentum and there's a lot of activity as various threads are actively developing.

Over recent years, Dublin has become a hub for much tech activity, and organisations such as Google, LinkedIn, Facebook, PayPal and many other very familiar brands have set up extensive operations here. The IFS2020 project is looking at the conjunction of financial services and technology, using the expertise in both areas that is present in Ireland, to develop a new generation of 'fintech' within the next five years, and the focus on analytics and risk will ultimately have a positive impact on the captive industry here in Dublin.

## How many captives are currently domiciled in Dublin?

It may seem unusual, but this is a difficult question to answer. Because different jurisdictions classify captives in different ways, there isn't a clear comparison with the Irish industry, where a very 'pure' Solvency II-type definition has been in place for several years.

The Central Bank of Ireland's definition of a captives is: "An insurance or reinsurance undertaking, owned either by a financial

undertaking other than an insurance or reinsurance undertaking or a group of insurance or reinsurance undertakings within the meaning of point (c) of Article 212(1) of Directive 2009/138/EC (the Solvency II Directive) or by a non-financial undertaking, the purpose of which is to provide insurance or reinsurance cover exclusively for the risks of the undertaking or undertakings to which it belongs or of an undertaking or undertakings of the group of which it is a member."

So there are certain reinsurers and insurers in Dublin that would be classified as captives in other jurisdictions, leading to the number of captives in Ireland, currently standing at more than 100, not being an accurate comparison with other countries.

## Is there a trend in the types of captives domiciled?

In the past year or so, the trend has been for large companies in certain sectors to set up captives in Ireland. In particular, pharmaceuticals, energy companies and professional services firms have been active in establishing new operations.

Other trends include parent companies using their captives for employee benefits business, which has been growing over recent years.

## Which parent companies are you seeing writing and setting up in Dublin?

Most of the parent companies which have recently set up are either pan-European or global companies looking to use captive structures as a central part of their risk management strategy.

## How has Dublin's reinsurance market developed?

Dublin has been a significant centre for reinsurance for many years now, assisted by the early adoption of the Reinsurance Directive which paved the way for Solvency II in the reinsurance context.

Many of the largest global reinsurance companies have significant operations in Dublin, some of which are European or global headquarters.

As well as large non-life reinsurance businesses, Dublin is a hub for international life reinsurance operations, and indeed the latest authorisation, Unipol Re, is an Italian-owned life reinsurance entity.

## How is Dublin finding the run-up to the 1 January 2016 deadline for Solvency II?

The Solvency II implementation programme has been going for many years now. Ireland has the second largest number of companies

applying to use internal models, after the UK, and there has been significant work by the Central Bank of Ireland, the regulatory authority in Ireland, on this and many other aspects of implementation, such as Forward Looking Assessment of Own Risks and reporting systems.

In reality, Ireland has been implementing aspects of Solvency II for more than five years, for example, the corporate governance code, which was implemented in 2010 and as part of which it developed a specific regime for captive reinsurers and insurers.

The Central Bank of Ireland hosts a monthly Solvency II implementation forum and issues regular newsletters about progress towards implementation, and has undertaken surveys across industry to ensure there is a good level of readiness.

DIMA has been involved in many of these initiatives, working with the regulator on certain aspects through consultations, and separately providing training workshops and briefing sessions on a vast range of subjects.

It is important that with such sweeping changes, industry has the tools necessary to implement as efficiently and effectively as possible, and the fact that some of these aspects are already hard wired into business practices in Ireland, because of early adoption, bodes well for the deadline.

Ultimately, Solvency II is such a huge challenge that the implementation deadline of 1 January 2016 is in reality only a milestone rather than the ultimate goal.

At a market meeting in Dublin earlier this year, European Insurance and Occupational Pensions Authority chairman Gabriel Bernardino commented that there will be continuous developments, and in particular singled out the Central Bank of Ireland's new actuarial regime as a direction that may be taken across Europe as part of the evolution of Solvency II in the future. **CIT**



**Sarah Goddard**

CEO  
Dublin International Insurance & Management  
Association

## Progress by numbers

The Bahamas has seen year-on-year increases in captive formations, says Michele Fields of the domicile's insurance commission

BECKY BUTCHER REPORTS

### Has 2015 been a successful year for captives in the Bahamas?

The Bahamas has continued to see interest in small- to medium-sized enterprises (SMEs) seeking to become involved in the captive insurance industry. We have seen a year on year increase in captive structures formed, both as standalone entities and cell captives. In addition, we have seen a new type of structure introduced to our market this year known as the investor captive.

### How many new captives have domiciled in the Bahamas this year?

For the 12-month period ending 30 September, we have approved two new standalone captive insurance companies and 43 cell captives (segregated accounts) established within segregated account companies (SACs). The cell captive structure has been a preferred choice of SMEs because it offers captive owners the same risk management and risk transfer facilities at far less costs than a standalone entity.

The majority of our companies are licensed as general insurers (property, casualty and liability insurance), however, the commission is engaged in discussions with companies and individuals proposing to establish companies to market private placement life products.

These proposals are intended to service clients seeking to use alternative risk transfer mechanisms for their estate planning. We expect to see growth in this area in 2016.

### What is new for The Bahamas in terms of regulation? And is there anything on the horizon for 2016?

While there have been no new regulations introduced in 2015, the Insurance Commission of the Bahamas continues to assess both challenges and opportunities associated with the broader legislative framework that affects the incorporation and formation of our insurance companies. The commission remains committed to providing industry support that will facilitate the sector's ongoing growth while maintaining a robust supervisory framework.

### Is captive insurance continuing to grow in the Bahamas? And are you expecting it to continue?

The captive insurance industry remains competitive throughout the region and internationally. The Bahamas, through a robust legislative framework and its experienced financial services providers, will continue to provide a market for international SMEs to develop their risk management and risk financing programmes through captives.

We are confident that while larger 'onshore' jurisdictions continue to develop competitive legislation for captive formation, the Bahamas provides a financially safe and sound alternative for those entities desiring to take advantage of the synergies within our financial services sector.

Furthermore, the Bahamas Financial Services Board, along with industry participants, remains committed to developing the Bahamas as the domicile of choice through its international marketing platform. Both of these factors support our expectation of continued growth. **CIT**



**Michele Fields**  
Superintendent  
The Insurance Commission of the Bahamas

# Bahamian rhapsody

## The Bahamas continues to define itself as a financial services centre of repute, says Aliya Allen of the Bahamas Financial Services Board

The Bahamas continues to define itself as a financial services centre of repute, carving out new niches in wealth management and highly specialised investment vehicles to distinguish itself from other jurisdictions in the region, and to meet the evolving requirements of a global market amid far-reaching changes in international regulatory standards and transparency requirements. Indeed, the Bahamas prides itself on its ability to shape its own destiny as a sovereign entity but within the framework of evolving international standards.

I'm very positive about the competitive position of the Bahamas because we've managed to hold onto our comparative advantage and our focus on the complex needs of high net worth individuals. This in large part is due to the fact that we are an independent sovereign state. We also have a range of professionals with huge expertise in the sector, and our extremely progressive and innovative legislative framework.

The Bahamas always has led the way among countries in this region on issues relating to due diligence and anti-money laundering, and we were an early mover on the implementation of transparency and exchange of information standards in the 2000s. We have affirmed our commitment to clean business in recognition that the whole world is moving in that direction. We have much more to offer than tax neutrality.

I also stress the sense of partnership between the Bahamas Financial Services Board (BFSB), representing the private sector, and the government, along with the financial services industry regulators. The Bahamas has long believed in a public-private partnership in financial services.

Companies can be sure they are coming to a jurisdiction that values the fertile environment created by such collaboration, and that the regulator will always carry out its responsibilities in a way that enhances and protects business.

One of the most striking aspects of the Bahamas's wealth management industry is the

trend among wealthy clients to set up home in the jurisdiction. The Bahamas offers a first-rate financial and technological infrastructure, alongside highly appealing homes and communities in a very attractive environment. The financial services infrastructure includes a regulatory and legislative regime allowing people to carry on proprietary or other business as needed. This island nation is very close to the US, which means the amenities of New York, Atlanta or Miami are just a short flight away.

The BFSB sees the jurisdiction as an attractive option for captive domiciles—and for captive annual general meetings. We continue to see wealthy individuals relocating to the Bahamas by purchasing either developed or undeveloped real estate as a primary residence, often including a home office for the management of their own affairs.

While the primary focus over the past few years has been on the wealth management and asset management sectors, the Bahamas is seeing captive industry growth. This can be attributed to this a confluence of factors, including: an increase in small- and medium-sized enterprises in the US looking to manage the cost of premiums; a more business friendly and proactive regulator in the Insurance Commission of the Bahamas; and sustained commitment by the government and private sector to develop the domicile.

In addition, other factors include location, with the Bahamas being 30 minutes off the coast of Florida, US pre-clearance, and idyllic surroundings for board meetings, which often take place in the domicile. Cost is another factor, which we have been able to manage in terms of formation and ongoing regulation in a way that encourages growth.

The statistics speak for themselves. The number of captives has increased steadily since 2011. There is a vast opportunity for the Bahamas as a captive domicile but there are a few things the jurisdiction has to ensure that it gets right.

Firstly, the process for the formation of captives and captive managers has to be as

clear and efficient as possible. In this regard, the Insurance Commission of the Bahamas has taken great strides and has been very responsive to revisiting its position on standards that do not assist in development or aid in regulatory oversight. The commission has also invested in the human resources necessary to assist the growth of the sector.

Secondly, the jurisdiction must continue to attract captive managers and has to ensure that all processes aid this effort. The licensing of Marsh, one of the largest captive managers in the world, is evidence that there is a business case that can be made for the Bahamas as a domicile.

At present, many of the captive managers are utilising registered representatives to fulfil physical presence requirements. As the industry grows, however, there is no reason why they would not put bricks and mortar on the ground to service the captives themselves.

Finally, the legal and audit fraternity must get firmly behind, and perhaps even in front of, the industry. The BFSB continues to be encouraged by the number of applications it receives for the annual International Center for Captive Insurance Education captive insurance designation scholarship, but we have to commit further resources in developing the expertise within the jurisdiction. **CIT**



**Aliya Allen**  
CEO and executive director  
Bahamas Financial Services Board

# Imitation is the greatest form of flattery

## Competition keeps domiciles on their toes, says Melisa Johnson of AMS Insurance

When a business is faced with competition, it is forced to compete if it wants to survive. With competition present, a business has to provide a superior service, an innovative product or differentiate itself. What happens when new competition enters an industry? When a new airline flies from a destination you see prices drop, and if a new coffee shop opens around the corner, you see better service or new products from the existing shops.

For most businesses, competition is a given. However, for the captive industry there were a few select domiciles that captive owners could choose with robust and effective captive legislation. These historic domiciles that have had the luxury of relatively low competition must now differentiate themselves from new competitors.

The first legislation was formalised in 1978 by Bermuda, with the Cayman Islands formalising its regulations shortly after. It wasn't until 1981 that Vermont became the first US state to enact captive statutes. There were just a handful of domiciles then, but now there are close to 100 captive domiciles, providing captive owners with a variety of choice.

These new domiciles have current legislation and are looking to grow. The historic markets must separate themselves from other domiciles or risk losing the market share they have held for so many years. Many of the historical domiciles are now looking for ways to maintain this dominance and remain competitive in today's market.

What are the advantages of this competition?

### Competition validates your product

The first captive was formed in the late 1950s, and by the mid 1980s, most Fortune 500 companies were utilising some form of captive structure. Fast-forward to today and most mid-size businesses have either established a captive or are researching the implications of establishing one.

New captive domiciles joining the market further validates the importance of the alternative risk market and the role it plays in today's businesses.

### Competition helps to educate your target market

As you would expect, to be first can be a huge advantage, however, that also comes with the issues of educating the market on the risks and rewards of utilising a captive structure. The first domiciles had the task of educating businesses as to the solutions that the alternative risk market could provide.

The original domiciles spent countless hours and funds attending conferences, writing articles and even creating their own conferences to educate the business community. If you look back at the first captive conference held in Cayman in the late 1980s, there were about 250 attendees—this grew to approximately 1,900 in 2014, making it one of the largest captive conferences in the world.

The new domiciles reap all the benefits of an educated marketplace without the need to spend time and money to educate the market on their product.

### Competition pushes you

Businesses that have little or no competition become stagnant. Customers have few alternatives to choose from, so there is no incentive to innovate. Constant competition ensures that your marketplace continues to evolve.

Let us take, for example, timeframes for gaining regulatory approval. Historically, it was acceptable for the approval process to take four to six weeks. With newer domiciles being forced to differentiate themselves, some domiciles have a conditional approval within 24 hours of submission. How can they do this when historically it took so long to gain regulatory approval? They were forced to find a way to streamline the submission process in order to provide a more responsive turnaround of new applications.

How the established domiciles react to the new domiciles pushing change will determine how successful they will be at not only creating new business, but also maintaining their existing business.

### Competition forces focus

Without competition, it is easy to lose focus. The domiciles have a difficult job of maintaining a focus on regulatory control in a user-friendly environment.

In the current environment, domiciles must focus on what the captive owners need and how to make doing business easier while still maintaining regulatory control. This is a delicate process to balance. Take, for example, wanting to grant approval in 24 hours: how do you maintain enough regulatory controls to ensure the business is in line with the laws and regulations of the domicile?

A new domicile may be able to increase its market share, but to maintain a position for the long run it will have to find a way to balance the two sides.

### Competition forces differentiation

In a regulated industry, it is often difficult to differentiate your product, especially in the US domiciles. If you cannot differentiate your product, how do you make a successful entry into the market?

**Staffing:** one of the best things any organisation can do is hire knowledgeable and qualified staff. It doesn't matter how current and efficient your regulations and policies are, if you don't have an educated team you will not be able to compete in the market. Response time: in today's business environment responses are expected instantaneously. Gone are the days when waiting a week for a reply was acceptable. Those domiciles that want to earn a place in the top tier or those that want to maintain their current book of business must provide a timely and meaningful reply.

**Competition is challenging:** when you have strong competitors, you will lose business to them. Every time you open a magazine or attend a conference you hear the onshore versus offshore discussion. There are an increasing number of captives that are moving domiciles mainly due to the fact that they can get what they need in another domicile for a lower cost of capital and/or a quick response. Therefore, they see greater value for money in another domicile.

The original domiciles were very fortunate to operate in a market for so long without major competition. Imitation is the greatest form of flattery so it pays to be prepared for it. Domiciles that want to flourish will have to sharpen their elbows and get ready to play tougher in the market. Get ready for cheap shots and lost opportunities. It is a more streetwise world where domiciles will follow their competitors' examples when they get the chance. Most importantly for regulators and service providers alike, make sure that competition makes your domicile better. **CIT**



**Melisa Johnson**  
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## Industry appointments

London & Capital has opened an office in Barbados to provide further support and services to its network of Caribbean clients and their professional advisers.

Effective 2 November, London & Capital appointed **Lisl Lewis** as executive director for the Caribbean. The new office will be fully operational by the end of the year.

Lewis has held both board and senior executive roles for multiple multinational organisations throughout the Caribbean, and has first-hand experience of the investment needs of captives, insurance managers and private clients.

She has held roles at Ernst & Young in London, Royal Bank of Canada, CXE International Bank, and Southwold Bank & Trust in Barbados.

Most recently, she headed up her own specialist consulting business in Barbados, which included corporate directorships for captive insurers, international businesses and private banks.

William Dalziel, partner and head of the institutional division at London & Capital, said: "We're pleased to have found in Lewis an experienced and respected local expert who shares the same values and ethos as London & Capital. She is an excellent addition to our institutional team and I am delighted to have her on board as we continue to develop our business in the region."

"[Her] appointment will help ensure that we maintain and enhance our high standards of service in the Caribbean while we continue to grow in Europe."

London & Capital's institutional division now manages more than \$1 billion in assets for captive insurers, based primarily in Barbados, the Cayman Islands and Bermuda.

**E.Barclay Simmons** has resigned from the board of directors of the Bermuda Monetary Authority (BMA).

His resignation, effective 25 October, ends a nine-year spell at the BMA.

Simmons, who is also managing partner of ASW Law, resigned from his position due to assuming increased responsibilities at one of the authority's licensed entities.

BMA board of directors chairman Gerald Simons thanked Simmons for his work at the authority.

He said: "E.Barclay Simmons joined the board in January 2007. He chaired the board's investment committee which is responsible for ensuring the prudent investment of the authority's portfolio of assets and he was a member of the board's corporate governance and ethics committee."



Willis Group has appointed **John Baudouin** as CEO of its retail business in Mexico.

In his new role, Baudouin will focus on leading the strategic vision for Willis in the region. He will enhance the value proposition to clients and prospects and to build on the acquisition of Carsa made in April.

Baudouin, who brings 32 years of industry experience, has previously worked at Aon Mexico where he served as CEO for Aon Risk Solutions and later Aon Consulting.

Stephens Insurance has hired **Stuart Wallace** as president and **Morgan Moore** as senior vice president to work in its oil and gas client portfolio located in Houston and other key markets.

In his new role, Wallace will serve in the recently opened Houston office. Previously, he served at Arthur J. Gallagher & Company for 15 years and during his time held several senior management positions.

Moore, who also worked with Wallace at Arthur J. Gallagher & Company, focuses on energy-related primary casualty programmes and client relations.

She also brings with her experience from previous roles including self-insured retentions and captive insurance programmes.

Martin Rhodes, president and chief executive of Stephens Insurance, commented: "This team furthers our ability to provide insurance clients with unparalleled knowledge of the energy sector and superior risk management solutions." **CIT**

## CIT CAPTIVEINSURANCETIMES

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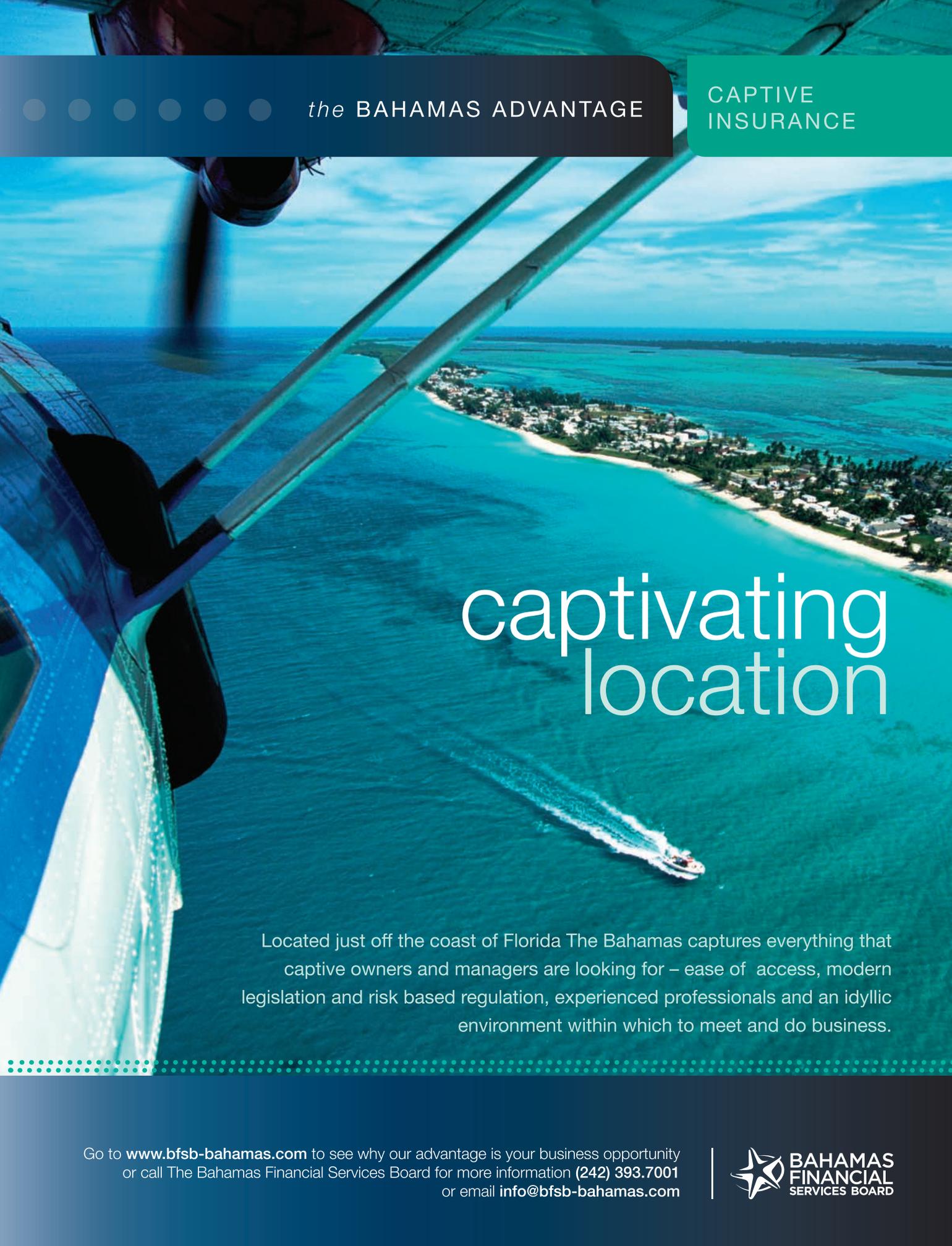
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