CIT
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Catholic risk retention group signs up to new Willis captive solution

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A US Catholic healthcare system that operates in 19 states with a total of 76 hospitals and $10.5 billion in revenue is using a new online underwriting and data management system from the Willis global captive practice.

WillisCaptus is designed to help captives, risk retention groups (RRGs) and healthcare providers securely manage their data and develop underwriting information more efficiently.

"WillisCaptus combines customisable online access with the ability to quickly and easily handle thousands of records. It is designed to drive efficiencies in underwriting and insurance programme documentation by eliminating paperwork and issues with file maintenance and storage," said a statement from the firm.

The managing director of the Willis captive and consulting practice, Les Boughner, explained that managing RRGs is very labour intensive.

Willis's aim was to create a system that would be "much more efficient and responsive to clients needs for underwriting information," said Boughner.

The Catholic Healthcare Initiatives (CHI) is one of the first clients to sign up to the system. It uses WillisCaptus to cover medical malpractice and professional liability insurance lines.

Peter Jones, vice president of global insurance services for CHI, said: "WillisCaptus has proven to be an excellent administrative and underwriting system for our employed physician insurance programme. One of our requirements was that our programme should be as simple and easy as possible for our employed physicians to use."

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CITINBRIEF

Marsh picks Xuber for broking software

Xchanging's newly re-launched insurance software business, Xuber, will provide its Brokasure software to more than 1100 users around the world thanks to a mandate from Marsh.

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Apex Fund Services sets up a PCC in Guernsey

Apex Fund Services has launched its open-ended protected cell company (PCC) to enable fund managers to launch new funds quickly and cost effectively.

read**more p2**

Catholic risk retention group signs up to new Willis solution

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"WillisCaptus has achieved that through their web-based, state-of-the-art technology that integrates several functions without the intervention by staff. We have been able to work closely with Willis to tailor WillisCaptus to meet the specific requirements of CHI and we look forward to continuing our partnership to enhance the product as our programme evolves."

Boughner said that three other major healthcare RRGs are using the system as a bundled service from Willis.

He added that the benefits of WillisCaptus "transcend captives and RRGs."

"There is a consolidation of independent physician groups by hospitals driven by health care reform in the US. We see applications for hospitals with or without a captive, and medical malpractice insurance companies."

Marsh picks Xuber for broking software

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The 12-year contract will provide Marsh with a SaaS model delivering the latest Brokasure software to eight Marsh UK business units. Xuber's services will include implementation, data migration, customisation, testing and SaaS delivery, which will all provided through the company's onshore and offshore teams.

Adrian Morgan, head of Xuber, said: "We are delighted to extend our relationship with Marsh. We have invested significantly into Brokasure's product development and the close functional fit of our product suite will ensure Marsh has the right tools."

"Brokasure supports the full insurance life cycle, consisting of a range of integrated modules covering quotes, risks, claims and accounts. It provides powerful and robust automation, including seamless integration with other core Marsh systems. It thus equips Marsh with a scalable, configurable and functionally rich product suite."

Apex Fund Services sets up a PCC in Guernsey

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The new PCC will enhance Apex's capability to service private equity, property, alternative asset and structured fund vehicles globally to all of its clients.

In addition, Apex has expanded its private equity services with the opening of a new office in Guernsey. The office, which is located in St Peter Port, will be managed by Stephen Cuddihee, who has more than 25 years experience in the finance sector.

Peter Hughes, group managing director at Apex Fund Services, said: "The Apex global reach, local presence strategy continues to attract fund managers from all over the world who are looking for specialist expertise and effective ways to launch or run their funds."

"The opening of Apex Guernsey marks a further commitment to deliver locally the most innovative and highest quality services possible to our clients—wherever they are located."

Cuddihee, managing director of Apex Fund Services in Guernsey, said: "Apex's clients, via its Guernsey office, can now take advantage of the tax efficiencies the jurisdiction offers to funds and at the same time also benefit from the attractive regulatory framework for private equity funds."

"The continued increase in the value of the Guernsey fund market reflects the growing importance the jurisdiction has in the global finance industry. Via Apex, its clients can now fully access the specialist services in Guernsey."

Cayman insurance law specifies captives

The Cayman Islands has passed new regulations that are required to implement the Cayman Islands Insurance Law 2010, including the fee schedule for both the existing and new categories of insurance companies.

Speaking to delegates at the 2012 Cayman Captive Forum, government minister Mark Scotland promised that the remaining regulations were in process and would be released in the coming weeks.

Gordon Rowell, head of insurance supervision at the Cayman Islands Monetary Authority, said in his presentation that the law underscores the Cayman Islands's commitment to a creating a "platform for growth in this important industry."

Colombian utility reinsurance captive scores affirmations

Fitch Ratings has affirmed Maxseguros EPM's Insurer Financial Strength rating at "BBB".

Maxseguros EPM captive reinsurance company is a core subsidiary in charge of managing the risks and structuring the insurance coverage for the Empresas Publicas de Medellin EPM group.

The rating reflects the strategic importance of Maxseguros EPM to its parent.

Key rating triggers that may lead to a downgrade include negative changes in availability and willingness of Empresas Publicas de Medellin to provide support to its captive.

Fitch has also affirmed Empresas Publicas de Medellin's Local Currency Issuer Default Rating at "BBB".

This reflects Empresas Publicas de Medellin's low business risk resulting from it business diversification and characteristics as a utility service provider.

The company's ratings also reflect its solid credit protection measures, which are supported by low leverage, healthy interest coverage and strong liquidity position.

NAIC warns over one-size-fits-all capital rules

The National Association of Insurance Commissioners (NAIC) raised concerns regarding the proposed application of 'one-size-fits-all' capital rules on thrift and bank holding companies that are engaged in insurance activities.

NAIC President and the US State of Florida's insurance commissioner, Kevin McCarty, testified on behalf of US insurance regulators before a joint subcommittee hearing of the US House Financial Services Committee.

He said that the prospect of bank-centric regulatory rules being imposed on insurance groups is problematic. "It is critical that the regulatory walls around legal entity insurers that have successfully protected policyholders for decades not be jeopardised."

The NAIC has submitted comments to the US Federal Reserve, Federal Deposit Insurance Corporation and Office of the Comptroller of the Currency on proposed capital requirements to be applied to thrift and bank holding companies.

"We fear the same overreliance on capital could become a reality in our sector, with no diversity of regulation to mitigate the wrong incentives or prevent systemic risk taking," added McCarty.

"The existence of global capital standards in the banking sector did not prevent the last crisis and did little to prevent large institutions from becoming larger while chasing each other off their own fiscal cliff."

The hearing, which is entitled Examining the Impact of the Proposed Rules to Implement Basel III Capital Standards, was an opportunity for financial regulators to address concerns with the proposed rules. The subcommittee heard testimony from a number of financial regulators in addition to McCarty.

Tailwind keeps its debt rating up

A.M. Best has affirmed the debt rating on $130 million worth of Series A Floating Rate Insured Notes from Tailwind Holdings that are due in 2036 at "a-".

Tailwind Holdings is a Deleware limited liability company and wholly owned subsidiary of Unum Group. It is the sole shareholder of Tailwind Reinsurance Company, a captive insurance company that is domiciled in South Carolina, and was formed to hold the stock of Tailwind Re, which provides reinsurance coverage to Unum Life Insurance Company of America.

"A.M. Best's rating action takes into consideration the current financial strength rating of A (Excellent) and issuer credit ratings of 'a' of Unum's operating subsidiaries."

"Tailwind Holdings' debt rating and outlook may come under negative pressure if an unfavorable earnings trend develops over a prolonged period or if certain benchmarks are not achieved or deteriorate relative to its plan/forecast," said a statement from the ratings firm.

American Overseas moves out of Bermuda and into Barbados

American Overseas Group will re-domesticate its operating subsidiary, American Overseas Reinsurance Company (AORE), from Bermuda to Barbados.

An application is pending with the Barbados Financial Services Commission for licensing of AORE as an exempt insurance company in accordance with provisions of the Barbados Exempt Insurance Act 1983.

"AORE has received confirmation of no objection from the Bermuda Monetary Authority's Insurance Division of its discontinuance from Bermuda in accordance with the Insurance Act 1978, and intends to file notice of discontinuance under the Companies Act 1981," said a release from the firm.

AORE submitted a business plan to begin writing short-tail, non-catastrophe, property/casualty reinsurance business upon its licensing and continuance in Barbados, while continuing to run-off its existing financial guaranty reinsurance portfolio.

AOG's CEO, David Steel, said: "Our strategy is to enhance shareholder value by writing short-tail, P&C reinsurance business complimenting our long-tail financial guaranty portfolio run-off. AORE's re-domestication is integral to our business plan."

AOG will remain a Bermuda-domiciled holding company with 100 percent ownership of the common equity in AORE. In addition, AOG's affiliated management company, Reid Street Services, will continue to be domiciled in Bermuda and will continue to provide services to AORE.

A.M. Best brings the hammer down on healthcare RRG

A.M. Best has placed a Charleston-based RRG under review after contingency issues, as well as a declining surplus level for policy holders.

The ratings agency stated that it was placing under review, with negative implications, the

financial strength rating of “B++ (Good)” and issuer credit rating of “bbb” of Healthcare Safety & Protection Risk Retention Group in Charleston, South Carolina.

It cited “disclosure of a significant contingency amount recorded in the third quarter of 2012 … related to a dispute in reinsurance ceding commission”, as well as policyholders’ surplus level declining since the beginning of the year “to levels indicating increased leverage for the company”, as reasoning for the action.

The ratings will remain under review pending further discussion between A.M. Best and the RRG’s management regarding strategic options for the company going forward.

CICA announces Palm Springs line-up

The Captive Insurance Companies Association (CICA) has announced the conference line-up for the CICA 2013 International Conference 10-12 March at the Westin Mission Hills Resort & Spa in Palm Springs, California.

Dennis Harwick, CICA’s president, said: “When the CICA [programme committee] started putting the 2013 International Conference together, everyone was wondering what was just over the horizon in this era of change—so that is where we are focusing during the CICA 2013 International Conference—new horizons.”

The conference opens with a keynote address from demographer and forecaster Ken Gronbach, who will speak on the topic ‘Charting the Course through Demographic Change’.

New tax issues such as procurement taxes, regulatory issues and NRRA will be addressed by Kenneth Levinson and Jason Kimpel, partners at Faegre Baker Daniels, and Michael Lusk, vice president of insurance and risk management at Archer Daniels Midland Company.

‘Value Driven Enterprise Risk Management for Captives’ will be discussed by Jeffrey Driver, executive vice president/chief risk officer at Stanford University Medical Indemnity Trust, and John Celona and Edward Hall of Stanford University Medical Center.

Dave Provost, deputy commissioner of captive insurance for the State of Vermont, Chaz Lavelle, partner at Bingham Greenbaum Doll, Peter Kranz, senior vice president at Beecher Carlson, and Les Boughner, executive vice president of Willis captive consulting, will all be on the panel for successful strategies for the ‘exploding’ small captive market.

Finally, an advanced tax update will be given by Tom Jones, partner at McDermott, Will & Emery, Bruce Wright, partner at Sutherland Ashbill & Brennan, and Rick Irvine, partner at Tax Services Limited, PwC, in Bermuda.

Additional sessions cover topics such as Solvency II, captive governance, and new data for the CICA captive market study.

National Guardian RRG gets rated

Demotech has assigned the Ohio-based National Guardian Risk Retention Group the Financial Stability Ratings (FSR) of “A (Exceptional)”.

National Guardian Risk Retention Group was founded in January 1989, after three commercial medical professional liability carriers went bankrupt, on Emergency Consultants, almost in succession, in the mid 1980s.

“This level of FSR is assigned to insurers who possess exceptional financial stability related to maintaining positive surplus as regards policyholders, liquidity of invested assets, an acceptable level of financial leverage, reasonable loss and loss adjustment expense reserves and realistic pricing,” said a statement from Demotech.

The go-to bank

CIT talks to Simon Phillips about his new role as head of captive insurance at Barclays and how the firm is tackling current industry issues

JENNA JONES REPORTS

What sort of captive services does Barclays provide?

The Barclays offering to the captive market spans four key product pillars: transactional banking, Standby Letters of Credit (SBLoC), investments, and trust structures as an alternative to SBLoCs. It is not unusual for banks to provide some of these services but few can claim to be able to provide them all.

For captive insurance entities, there is great peace of mind in knowing that you are dealing with a team that has in-depth experience of the captive insurance sector. It means that the captive can benefit from a number of choices, deal with a knowledgeable partner that can demonstrate flexibility in the approach that it takes and do so quickly when it is appropriate. At a time of challenges for captives, the ability to draw on a wide range of services in a number of geographies is appealing to the captive insurance market.

The head of captive insurance role at Barclays is a new one—why was this position created and what will you bring to the captive insurance business at Barclays?

The captive insurance market is a key area for Barclays and this role was created to ensure that as an organisation we have the right strategic focus on the sector. This will enable us to bring the full capability of the Barclays group to captive clients to help them maximise the opportunities that we see in the current challenging operating environment. Captives are looking for experts who can work in partnership with them to ensure the best possible alternatives are put forward for banking services, investment and structuring choices across key captive locations.

How is Barclays planning to expand its business in terms of geographical scope and service offerings?

We will continue to provide a high level of service to our existing clients as well as expanding our client base to include new captives. We have recruited, and will continue to recruit, a team of industry experts who have real insight and experience of the captive sector, in addition to their knowledge of banking, trust and investments.

It is not enough to have experts in one jurisdiction. Barclays offers a wealth of expertise in a number of key jurisdictions, including Guernsey, the Isle of Man, Gibraltar, Malta, Bermuda, the Caribbean and onshore in the US, which are all key areas for captive work. We are expanding the team both in terms of number and geography, offering services to captives and providing a level of understanding that means we can act as a consultative partner as well as providing the core services that captives need. Our ambition is to be the 'go-to bank' in the captive sector.

You have said that the global economic situation has made captive companies/managers consider other options to more efficiently manage captives. How will Barclays tackle this?

Captives face challenging times. Costs continue to rise while returns on assets continue to be challenged on the back of the historically-low interest rate environment and the volatility in the investment market. We have seen an increasing number of captives reviewing their existing arrangements and service providers to ensure that they have the right strategy in place to control costs while maintaining acceptable returns on their assets within defined risk parameters.

We believe that it is harder to do this if you are seeking these services from a range of providers that don't necessarily have a complete view of the activities and objectives of the captive. I am pleased to say that existing, and new, Barclays clients see the benefit of working with Barclays to bring a tailored solution covering their collateralisation and investment needs. The bedrock is that we offer a very experienced and knowledgeable relationship team that can give clients access to the wide capabilities of the Barclays group across the key captive jurisdictions globally.

Traditional cash-backed SBLoCs will remain a key part of our offering but we do see clients wishing to look at alternatives such as trust structures, which also links in with desire to review the investment strategy for assets that sit within the captive—whether this is cash, fixed income or, in some cases, a degree of exposure to equity markets. While the global economic environment is, and is likely to remain, challenging for the foreseeable future, we do see opportunities to maximise the upside while managing, with acceptable parameters, the downside risk. Our view is that it is even more important that captive boards—in conjunction with parent organisations—review their current arrangements to ensure they are aligned to current and expected future market conditions.

How will regulatory changes affect the captive market and what solutions will Barclays provide to help clients comply with these regulations?

Regulation continues to increase globally across financial services business and the direction of travel or pace of change is unlikely to abate in the short-term. An obvious example of regulation that is affecting the captive and wider insurance sector is Solvency II. While the high level structure of the regulation is understood, the day-to-day implications for captives in various jurisdictions require further clarity.

While it is not our role to tell our captive clients how they should approach regulation, we do work collaboratively with clients to help them in structuring their banking and investment needs to meet the changing regulatory landscape. CIT

Simon Phillips
Head of captive insurance, wealth and investment management
Barclays


reinsurance

More than just motorbikes

The Isle of Man will always be known for its strength in financial services, and captives are no exception. CIT takes a look

GEORGINA LAVERS REPORTS

This tiny island, nestled between Ireland and England in the cold Irish Sea, is most famous among the general public for the most prestigious—and dangerous—motorcycle race in the world: the Isle of Man TT.

But among finance professionals, the motorbikes can lie forgotten as the region proves time and time again that financial services are its true calling.

Though the island has attempted to branch out into areas such as technology, gaming, and clean tech, insurance remains one of its main pillars, with the biggest share of GDP of any sector of the economy at 14.7 percent. And among big names such as Royal Skandia and Axa are a significant portion of captive insurance companies.

According to CICA statistics, the island currently has 133 captives—a slight dip from the 148 recorded in December 2008.

"The Isle of Man is currently handling an unprecedented number of new enquiries, certainly in terms of the last 10 years," says Isle of Man Captive Association chair Gaynor Brough. "There are a number of reasons for this including the competitiveness of its fees, its enviable client-base which is testament to its reputation as a robust and well regulated (re)insurance domicile, it's infrastructure and sterling track record in terms of regulation and management of insurance companies."

She adds that insurance licence-holders currently stand at approximately 141, with the island due to issue more up-to-date statistics for gross premiums written and funds under management in the next few weeks. "However, there are not expected to be significant changes to the previous reported figures and will be circa £9 billion gross premiums written and circa £55 billion funds under management."

The island's 'AAA' sovereign credit rating, two decades of continuous economic growth, political stability and proximity to London all seem to provide a strong platform, especially considering a soft insurance market that makes it hard for captives to make their mark. It also operates a risk-based approach to regulation, with changes made in 2008 including enhanced solvency requirements—to allow inter-company loans from a captive to be fully admissible when calculating the captive's solvency margin.

In addition, certain financial liabilities may revert to shareholders' funds for the purposes of calculating the insurer's margin of solvency. This particular measure requires written approval from the Insurance Supervisor and, in effect, results in such liabilities being treated as equity capital of the insurer for regulatory purposes.

The first company to be attracted by the changes was Keller Group, a FTSE 250 ranked company, which established a new Isle of Man-based captive, Capital Insurance, to replace its former EU captive company.

Jackie Holman, Keller's company secretary, said at the time that an increasing level of regulation in Dublin was a concern for Keller, with the island providing flexibility, "which we didn't have before".

Among those major names that have followed Keller to the island were Vaultex UK, a joint venture between two high street banks, BAE Systems and Millea Holdings.

More recently, Randall & Quilter has been given an insurance management licence "and we are also dealing with a further prospective new captive manager", reveals Brough. "Other islands are seeing a contraction within the number of captive managers whilst the choice in the Isle of Man is expanding."

The 'flexibility' that is so respected by firms can be attributed in no small part to the island's non-EU member status. "The Isle of Man is not part of the EU and its regulatory framework is based on the insurance core principles laid down by the IAIS," comments Brough.

"In 2011 the IAIS updated its core principles and it is compliance with these core principles which the IMF will base its assessment of all jurisdictions. The guidance provided by the IAIS recognises the need for proportionality especially when dealing with pure captive insurance companies and this type of approach is attractive to companies wishing to form captives to act as a risk management tool to manage their own risks."

However, another reason that is never stated for a change in domicile is cost, and here again the island shows that it can compete. The island has lower capitalisation and solvency margin requirements than many of its counterparts, which Brough explains as reflective of a long-standing minimum margin below which regulatory intervention would occur on a mandatory basis.

"In addition, in line with international best practice, the island has a risk-based capital adequacy approach (that is, capital requirements appropriate to risk exposure). At present the requirements are principles/outcomes based within the island's corporate governance code. However, like many jurisdictions, the island is assessing its framework against developing international standards with a view to implementing more detailed requirements which remain proportionate to its insurance businesses."

In terms of competition from the Channel Isles, "the insurance legislation and regulations in the Isle of Man and Guernsey are very similar," says Brough. "Both domiciles enjoy insurance legislation which is tailored to captive insurance and recognises the low risk nature of pure captive insurance companies, ie, writing the risks of its parent company. Both domiciles can offer both PCC and ICC structures. The differences lie in the cost base; the licence fees in the Isle of Manare considerably lower than some of its competitors and with the lower cost of living that the Isle of Man affords, salaries are generally lower and this is inevitably passed on to the client in lower captive management fees."

Size is also a factor, as Brough states that the relative size of the Isle of Man compared to some of its Caribbean competitors means that it has better scope for expansion, and more opportunity to attract new talent pools.

"There is a pragmatic work permit process in place, whereby our workforce faces no issues about finite work permits, and the ever- present danger of having to uproot families and leave the island. This produces a stable workforce and there is very little movement of staff in the Isle of Man captive sector, which serves to produce a strong and stable client service delivery model. Some captive domiciles have recently commented on a dearth of experienced non-executive directors—the Isle of Man has no such challenges and provides a good choice of qualified NEDs."

As for improvements, the only thing to be done, says Brough, is staying current with legislation. "In terms of the quality of its regulations, the Isle of Man stands shoulder to shoulder with other leading domiciles. However, it must continue to ensure that its legislation is foremost and keep abreast of changes in the sector so that it maintains its competitive edge."

The introduction of the Incorporated Cell Companies Act in 2010 built on the framework for captive business as part of maintaining a comprehensive range of corporate structures available to captive owners, but considerable change in international standards for the regulation of insurance business may have an impact on the island.

"The island, as with many other jurisdictions, is carefully reviewing its captive framework and will be undertaking consultation in due course on proposals for its update in order to maintain the island's high level of compliance with the Insurance Core Principles of the IAIS," concludes Brough. CIT

There's no place like home

Dodd-Frank's NRRA is contentious to say the least. Marc Lapointe of USA Risk Group looks at how—if left unchanged—it could affect your choice of domicile

On 21 July 2010, US President Barack Obama signed into law the federal Dodd-Frank Act, which contains the Non-admitted and Reinsurance Reform Act of 2010 (NRRA). The NRRA applies to both non-admitted insurance, which includes surplus lines insurance and directly-procured insurance, and reinsurance. The issue is whether this applies to captive insurance companies.

The applicability of Dodd-Frank to captives is not absolute. A coalition was formed to analyse whether there is a consensus as to the applicability. Generally, it is believed that the NRRA's provisions regarding state taxation of "non-admitted insurance" were not intended to and do not apply to captive insurance, and that the longstanding and substantial constitutionally-based limitations on state taxation of independently procured insurance remain in place. The coalition plans to talk to members of congress about the potential need for legislative solutions to the NRRA problem.

As a captive consultant, the question arises: does the NRRA have a place in the domicile selection of your captive? The fact that 39 states now have captive legislation on their books, and promote themselves as 'friendly', is increasing the dilemma of what domicile will best serve your needs. What the NRRA did offer is a reason to consider a business forming its captive in its home state (assuming it has captive laws). By domiciling your captive in your home state, the issue of paying self-procurement tax goes away. There is no question that as the economy continues to grow slowly states will look toward collection of self-procurement tax as a way to increase revenue.

As our dependency on technology continues to grow at an exponential pace, laws and court rulings are at a significant disadvantage to keep up. Can we continue to depend on the Todd Shipyards case in the modern world of electronic communication where the location of activity and risk is global and hard to define? Where exactly are the policies that are in the 'cloud', that are backed up to multiple drives spread globally and immediately accessible by a company located anywhere in the world? Can a risk manager calculate premium allocations for the company subsidiaries and send them to their captive domicile electronically to be 'issued' from there? Until it is tested in court, we are simply depending on best guess as to the ruling.

There is no doubt then that our current captive environment is squarely in the grey. What steps do we then, as a manager, take to reduce the likelihood of a non-domiciliary state trying to impose self-procurement taxes on risk that is located in its state being insured in another?

- The non-insurance approach. If the captive is not seeking federal deductibility of premiums, the captive can take steps, such as having parental guarantees, to 'fail' insurance tests. The argument here being: such a captive is merely a fancy bank account and any such transactions should not attract premium taxes.
- Use a fronting carrier. The carrier pays the taxes that are due to the states involved. Simple, but expensive.
- The mind and management test. This is the current default situation for many captives where the argument against other taxes being imposed is that the company is operating from its domicile, is issuing polices, writing checks, holding its meetings, and carrying out management/board decisions in its domicile. In these circumstances, the non-domiciliary state has to first find out that risks in its state are being covered, and second, establish that a tax is due under the self-procurement statute. Few states have paid much attention in this area, but as noted, the burgeoning expansion of captive domiciles has brought this 'untaxed' sector to the fore.
- The home state as domicile approach. As an example, if you are an Arizona-based company forming your captive in Arizona, you can minimise many of the concerns arising out of the first two methods. There is a much smaller possibility of self-procurement taxes, and the need to exercise caution over having insurance activity in the home state is greatly reduced.

The home state approach is already gaining traction, as USA Risk Group has new clients very deliberately seeking to form in their home state wherever practical, and existing captive clients asking about the possibility of redomesticating. Unfortunately, for the successful captive states that have grown by attracting out of state business to their domiciles, the home state approach is probably the approach that will reduce their ability to attract this source of new business.

The trend for home state formation is likely to continue based on the current uncertain premium tax situation. However, large states such as California, Texas, Pennsylvania and Virginia have not joined the captive state list yet, so the choice of approaches remains out there for many businesses. No matter where or why the captive is formed, it is clear from these ongoing state issues that it needs to have a solid business purpose and risk management goals need to be considered alongside tax considerations, both nationally and at the state level. **CIT**

Black sheep of the family

PCC structures may be a way of disguising black money so that it can be re-introduced into the Indian market. CIT investigates

GEORGINA LAVERS REPORTS

Protected cell companies (PCCs) started off as the golden child of insurance arrangements. Lovingly introduced by Guernsey in 1997, the structures developed beyond insurance to become popular investment fund vehicles, mostly down to Jersey's 2006 introduction of the incorporated cell company (ICC).

The concept was a fairly straightforward one; a company with an internal structure that allows for the legal segregation of assets and liabilities into different cells and a central core. The framework was designed to offer increased protection to investors in individual cells from the liabilities and creditors of other cells.

The reason the structure swelled in popularity for captives is that a stand-alone company has to meet capital and solvency requirements—generally been restricted to organisations with insurance premiums of £1 million and above. The structure overcame this size restriction, permitting smaller organisations to take advantage of an easy and cost-effective way to enter the market. Different classes of business can be written into different cells within one vehicle, with one set of formation costs, a single capital requirement and easier repeat transactions. This improved on 'rent a captive' arrangements, which formerly relied on only a contractual separation of assets.

Not only is the cost lower, but the amount of senior management time that needs to be spent on dealing with insurance matters can also be considerably reduced.

ICCs were developed more recently, in Guernsey and Jersey in 2006. "The essential difference between them is that an ICC's cells are legal entities in their own right, unlike the cells of a PCC," according to HM Revenue & Customs in the UK. "The advantage of both cell companies lies in the cost and regulatory time saving in the creation of new cells."

It's easier for cells of ICCs to transact with third parties, and the ring fencing is stronger. Each cell of the PCC or ICC has the same directors, secretary and registered office as the PCC/ICC, but different shareholders.

But the structures have come under scrutiny, as two separate and original reports from brokerage firms have questioned the quality of foreign institutional investor (FII) flows into India under the guise of the PCC.

The Securities and Exchange Board (SEBI) in India attempted to get a handle on the situation when it barred PCCs from investing in Indian markets through the FII route in 2010, after Indian 'black' money was being re-routed back into the market. But funds that are structured as PCCs still exist in domiciles such as Mauritius, legally entering into Indian markets through routes such as foreign venture capital funds. So 'foreign' flows could actually be Indian black money, which has been earned from drugs or arms trafficking, and quietly ushered back into the country.

Seeds of doubt were first sewn as Indian equities began to see a massive amount of FII flows. By October 2012, FII flows into India were bigger than any other Asian market, clocking in at $12.3 billion this year.

The success story was attributed to fund managers feeling that the rupee was cheap compared to the dollar, optimism surrounding the change in power at the finance ministry (from Pranab Mukherjee, to the more market-friendly Palaniappan Chidambaram), and monetary easing both in the US and Europe. But others weren't so sure that these reasons made up the whole story.

French brokerage BNP Paribas expressed concern about the nature of FII flows in its report, Solving the FII Riddle, stating that almost half of the funds came from 'other' or unexplained sources—comprising sovereign wealth funds, sector funds and hedge funds. "This classification has lent credence to the oft-repeated conspiracy theory that a lot of FII flows are Indian money disguised as FII money … that such a large quantum of money coming into the country from a non-regular source of money is adding fuel to the fire."

Portuguese broking firm Espirito Santo echoed these concerns in its own report, Where is the Money Coming From. The firm said that given the regulatory hurdles that have been faced by both India's life insurance firms and mutual funds over the past two years, they have been consistent net sellers of equities, leaving FIIs to take up the slack and increasing the correlation between FII flows and market direction.

"But why cumulative FII flows have held up since, and recently apparently increased (now $12.3 billion year-to-date), is much less clear. A seemingly endless political comedy show in Delhi, precipitous falls in consensus GDP forecasts … not exactly a list of reasons for foreign investors to increase allocations to India."

The report had a point. Top broking firms have downgraded Indian GDP and have expressed general dismay over the government's performance over the last few years. Add to that a stubborn inflation, off-track fiscal consolidation, and growing problems of asset quality in the banking system, and it is little wonder that some firms are uneasy about record flows.

The Portuguese broking firm went on to question the heterogeneous nature of these FII flows, stating that the flows “frankly, include round tripping of money through Mauritius and return of black money through the FII route in response to perceptions about rupee value”.

India’s SEBI has not been blind to these claims. In 2010, its chairman, CB Bhave, warned FIIs pushing for an extension that the deadline for compliance regarding fresh registration of FIIs (ensuring better safeguarding against potential round-tripping) would not be extended. The regulator has also expressed concern over FIIs using PCCs, segregated portfolio companies (SPCs) and multi-class vehicles (MCVs) as fund vehicles, stating that they make use of a complex web of sub-accounts, making the identification of beneficial owners very difficult.

But the regulator does not seem to have gone far enough. When asked about surging stock markets due to increased FII flows, SEBI’s chairman said that he had “no concerns”, and Espirito Santo—among others—has called the regulator’s data accuracy and methodology when it comes to obtaining FII flow volume into question.

Governmental powers have attempted to increase transparency. Former finance minister Mukherjee introduced a controversial General Anti-Avoidance Rule (GAAR), mainly to tackle structures in Mauritius that are aimed at avoiding taxes.

But new finance minister Chidambaram has been busily undoing his predecessor’s approach to GAAR, safeguarding India’s existing tax treaty with Mauritius, which accounts for 40 percent of foreign direct investment in the country.

Yogesh Kumar, head of legal and compliance at Amicorp Group, a fund services provider, said that the quality of the inflows through the FII route has been a question to chew over for some time. “There have always been allegations about the round-tripping of the funds. That is why, over a period of time the regulatory focus has been on due diligence and know your customer documentation of the investors routing their investments through FIIs/sub-accounts.”

“In April 2010, SEBI specifically sought confirmation from each FII or sub-account that they are not structured as a PCC. As per our information, the consultation between the regulator and the Reserve Bank of India led to a conclusion that it will be difficult to penetrate and know the beneficiary’s details for the investments coming through a PCC structure.”

The 2010 circular from SEBI, which was addressed to “all foreign institutional investors through their designated custodians of securities”, demanded additional information about PCC, MCV or equivalent structures in order to ascertain the constitution of FIIs and sub-accounts.

It asked for the following criteria: if the applicant was a MCV or an equivalent structure and had more than one class of shares, it should allocate common portfolios across various share classes and be broad based; if portfolios are segregated for each distinct share class, then each share class shall satisfy the broad based criteria; and in case of a change in structure/constitution/addition of classes of shares, prior approval of SEBI should be sought.

It appears that the circular was not enough. So long as the Indian government protects its friendship with jurisdictions such as Mauritius, foreign banks keep selling the idea of PCCs as a form of identity protection, and FII flow reach dizzying new heights, a close eye must be kept on foreign funds seeking to invest in India.

Kumar states: “The problem is that the FII and sub-account registration has been granted without proper due diligence and no certification in terms of them being regulated by a securities regulator in their home country. The black money of the promoters and other people is coming in the form of FII investment … the quality of the inflows through FII route has been an area of concern for quite some time.” **CIT**

Industry appointments

ING has recruited **Doug Caldwell** as chief risk officer of insurance and investment management for EurAsia. He has also been made a member of the management board insurance EurAsia. Both roles will come into affect as of 1 December.

Since joining ING in 1999, Caldwell held several senior management positions including vice president of financial reporting and control for ING Re individual life in Denver, Colorado, and head of ING Group corporate insurance risk management in Amsterdam.

Jan Hommen, CEO of ING Group, said: "We are very pleased to welcome Caldwell in our team. His strong qualities in risk management and long international career will be of great value in preparing our European insurance and investment management operations for the base case of an IPO."

Jersey-based insurance manager Vantage has recruited **Giles Dalby** to cater for increased interest in captive management services.

Dalby has joined as captive insurance manager, and will help Vantage to develop international insurance business on the island.

He moved to Jersey in 2001 as senior underwriter at Norwich Union and subsequently become local branch manager following the rebranding of Norwich Union to Aviva.

Richard Packman, managing director at Vantage, and chairman of the Jersey International Insurance Association, said: "I am delighted that we have been able to secure the services of Dalby."

"His extensive insurance underwriting experience is a rare commodity in the Island, and strengthens our team immensely. This now allows us to maximise the potential for ourselves, and Jersey as a whole, in developing captive insurance business here within the island".

Allianz Global Corporate & Specialty (AGCS) has appointed **Simon Buxton** as its new head of global reinsurance, based in London. His new role will come into effect from 1 January.

Buxton previously held the role of head of reinsurance solutions at Allianz Risk Transfer.

Bill Scaldaferri, chief underwriting officer at Allianz risk transfer and reinsurance and member of the AGCS board, said: "Buxton will be a great asset in helping bring new ideas to our reinsurance buying strategies."

Marsh has appointed **Martin South** as CEO of Marsh Asia Pacific as it combines the Asia and Pacific regions to expand global capabilities to clients.

South previously held the roles of CEO of Marsh Europe and Marsh UK. His new position will commence on 1 January 2013, based in Singapore.

Marsh has also appointed **Flavio Piccolomini** as CEO of newly formed Marsh Continental Europe, Commonwealth of Independent States (CIS), and Turkey.

South, Piccolomini and CEO of Marsh UK and Ireland, Mark Weil, will report to David Batchelor, president of Marsh's international division.

Batchelor said: "Bringing Marsh's Asia and Pacific regions together, which are consistent with our external reporting, we can better capitalise on the tremendous opportunities to serve the growing needs of clients in this vibrant region."

"The appointment of a dedicated leader for Continental Europe, CIS, and Turkey will bring additional focus to the growing risk challenges our clients face across the geography."

"Both South and Piccolomini are proven leaders with justified reputations for building strong customer focused organisations. They are well equipped to drive innovation and push these important regions to reach their full potential."

USHEALTH Advisors has welcomed **Mike Callahan**, a 35-year insurance industry veteran, as a new sales leader to Wyoming.

Callahan and his team of licensed agents represent the company's products in Wyoming, Montana and nine other US states.

"Having known and worked with Callahan for many years, we see this as a perfect fit for both, him and for our company," added USHA president and CEO, Troy McQuagge.

"What is most impressive to me has been the clear focus he has displayed; playing full-out to quickly become a significant contributor to the USHA success story. In just the short time he's been with us, Callahan has already proven himself as a top 25 division sales leader nationally." **CIT**

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