captive insurance times

The primary source of global captive insurance news and analysis

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ASR launches captive solutions offering

Africa Specialty Risks (ASR), the pan-African focused reinsurance group, has launched a captive solutions offering.

Its new captive solution offering is focused on a partnership model. It includes the establishment, management and administration of the captive, while deploying its capacity and sharing the risk alongside the captive owner.

ASR says its product "[will] enable corporates and financial institutions to have greater control and flexibility over their insurance programmes."

Commenting on the launch, Mikir Shah, CEO of ASR, says: "This unique captive structure can proactively lower the total cost of risk, enhance risk management and also turn the captive into a profit centre."

Q2 stats show interest in Cayman insurance industry remains "very strong"

The Cayman Islands Monetary Authority (CIMA) has released licensing statistics for Q2 of 2023 which "demonstrate the continued strength of the jurisdiction's insurance industry."

Between April and June 2023, CIMA issued licences to eight new captive insurance companies and three new portfolio insurance companies. It also issued one licence for a Class D commercial reinsurer.

With these new additions there are 675 Class B, C and D insurance companies licensed in Cayman, with approximately US$22 billion in premiums written and $71 billion in total assets.

The Insurance Managers Association of Cayman (IMAC) considers the business development pipelines for the industry to be "very healthy." It expects a number of Class D, open market reinsurers to launch before the end of 2023.

IMAC encourages anyone who would like to learn more about Cayman Islands captives to register for this year's Cayman Captive Forum. The forum is being held at the Ritz Carlton from 28 to 30 November.

Commenting on the statistics, Howard Byrne, managing director of Aon Cayman, says: "Interest in Cayman captives remains "very strong". Aon has already established direct healthcare and affiliated non-life reinsurance licensees in 2023, and has a number of additional applications either with CIMA under review or pending submission."

Inherent Risk launches captive-backed Ukraine war membership

Inherent Risks, has launched a 'Medical Evacuation and Crisis Response Membership' to enable safe passage to (re) enter Ukraine, and (re)establish operations.

Inherent Risks is a global risk advisory firm. It collaborated with Guernsey-based captive Opportuna, LLoyd's and company market insurers to develop the membership.

The firm says 'the membership covers medical and crisis response, with no war exclusions. It also has its own Ukraine-based teams to respond in the event of an incident.'

Its medical response membership will offer US$ 250,000 of medical services. This will include bill payment for medical treatment in Ukraine, medical evacuation from Ukraine, and repatriation home; at a cost of US $39 per person, per day.

Its crisis response membership will offer $150,000 of crisis services in the event of a credible security incident or threat against an individual or organisation, for $19 per person, per day.

Inherent Risks has provided risk advisory and other services in Ukraine since February 2022.

Dan Kaine, head of risk and crisis advisory, comments: "From our experience providing essential services to staff and volunteers from global organisations travelling into, and around Ukraine, it became apparent that a more affordable and agile medical and crisis response option was needed."

Most organisations have an annual, global insurance policy in place, but many wanting to work in Ukraine are told that their policy is not valid in a war zone. Other insurance options on the market for short trips are expensive, labourious and require a broker.

Kaine adds: "[This] was unacceptable. Working with brokers, underwriters and compliance specialists, we have developed a solution that can be easily purchased online without a broker."

BMA and White Rock Bermuda to take action against Vesttoo

The Bermuda Monetary Authority (BMA) and White Rock Insurance (White Rock Bermuda) have jointly agreed to a course of action in the Supreme Court of Bermuda. The BMA says "the course of action will focus on pursuing maximum recovery for the (re)insureds impacted by the alleged fraud involving Vesttoo-related segregated accounts (Vesttoo Cells)."

Insurtech firm Vesttoo provides the insurance industry with access to capital markets through ILS — an alternative form of reinsurance.

Vesttoo has recently made headlines for allegations concerning fraudulent letters of credit related to Vesttoo's insurtech programmes.

Both parties have agreed for the Bermuda Supreme Court to appoint Charles Thresh and Michael Morrison of Teneo Limited to act as Joint Provisional Liquidators (JPLs) for White Rock Bermuda with respect to the impacted Vesttoo Cells.

The JPLs, the board of directors and management of White Rock Bermuda will pool their resources together.

"This action applies only to the impacted Vesttoo Cells. White Rock Bermuda continues to operate in the ordinary course of business, and this action has no effect on any other cells or White Rock Bermuda clients", the BMA comments.

AM Best: 'Global reinsurance market returns profit, despite challenges'

"Despite challenging conditions, the global reinsurance segment still returned an underwriting profit in 2022," according to AM Best.

The findings were published in AM Best's new market segment report, 'Global Reinsurers Face Challenges Even as Conditions Improve,' in which the challenging conditions were characterised by persistent and elevated claims activity.

AM Best notes: "Concerns about economic and social inflation, central banks' contractionary monetary policies, asset market volatility, and the recent underperformance of the global reinsurance segment, have translated into a higher cost of capital.

"Given reinsurers' prudent approach to deploying capital, they are likely to preserve underwriting discipline for a longer period compared to previous cycles. However, market participants are under pressure to innovate and expand in an evolving economy in which today's emerging risks will soon become the dominant ones.

Our stable outlook on the global reinsurance segment reflects this balancing act."

AM Best also notes: "In the past few years, there has been a shift toward non-catastrophe risks, especially for carriers heavily affected by losses in previous years. With much-harder market conditions since the start of 2023, interest in property catastrophe risks has renewed cautiously."

In 2022, AM Best's global reinsurance composite posted a combined ratio of 95.6, a 0.8 per cent improvement over 2021. While investment results were affected severely by unrealised losses on fixed-income securities, the global reinsurance segment posted a return on equity of 0.8 per cent in 2022, following a 9 per cent return on equity in the previous year.

Reinsurers' profitability began seeing improvement in 2021, reflecting key players' shift from the lower and medium layers of property catastrophe risks.

The report is part of the rating agency's analysis of the global reinsurance industry ahead of the reinsurance event 'Rendez-Vous de Septembre' taking place in Monte Carlo next month.

Commenting on the report, Carlos Wong-Fupuy, senior director at AM Best, says: "The January 2023 renewals highlighted the mismatch between supply and demand, but it's important to recognise the difference between 'available' and 'deployed' capacity. Available capital is not under pressure; however, the well-established global reinsurers have become much more cautious allocating their capital, which pressures the deployment of capacity."

KBRA assesses insurance market changes after Vesttoo and Trisura

"The Vesttoo and Trisura events have completely changed the fronting market," according to rating agency KBRA.

These events brought alleged claims of fraudulent letters of credit (LOC) collateral

from a single non-US bank, related to transactions facilitated by Vesttoo, and an US$81.5 million pretax write-down of a reinsurance recoverable by fronting carrier Trisura.

These findings were released in KBRA's report entitled: 'What Could Possibly Go Wrong? Fronting Market Changes Overnight'.

Insurtech firm Vesttoo provides the insurance industry with access to capital markets through ILS — an alternative form of reinsurance.

In Vermont, the allegations concerning fraudulent LOC related to insurtech Vesttoo programmes were a big topic of conversation, according to attendees.

Captive industry experts have discussed the opportunities for more collaboration between capital markets and large captives. Captive insurers are examining collateral issues in the wake of the scandal.

KBRA says: "The insurance fronting space was a fairly stable and predictable sector for over a decade. This was characterised by an attractive market opportunity, plenty of capital to start up businesses, demand for well-rated carriers to provide fronting services, and growth in aggregate managing general agent (MGA) premiums."

Commenting on the aftermath of the events, the report says: "The reputation of those in the insurance value chain is likely to suffer short-term damage as various fronting insurers, reinsurers, cedants, brokers and MGAs assess the full financial and operational impacts."

KBRA notes that "recent negative events underscore the critical importance of effective enterprise risk management and could be positive catalysts for change."

Following this, rating agency AM Best released a commentary detailing bank issuers of collateral LOC to (re)insurance companies, as well as companies with LOC exposures to China Construction Bank Corp., which has been linked to the ongoing situation.

AM Best commentary, named 'Vesttoo Highlights Importance of Managing Counterparty Risk', surveyed reinsurance counterparty credit risk and the forms of collateral held by US-domiciled insurers in statutory filing statements. Although it cannot identify which bank LOCs are related directly to Vesttoo transactions, a broad analysis shows that LOCs against business with unaffiliated reinsurers account for 22 per cent of total collateral held.

Kirk Watkins
President and founder
Promethean Risk Solutions

Setting captives alight

Kirk Watkins talks to CIT about Promethean Risk Solutions' unique programmes which redistribute profits back to clients. He also discusses how the company utilises its captive 'FairShare'

Can you explain the core mission of Promethean Risk Solutions and how it aligns with the name "Promethean"?

Promethean Risk Solutions is named after the ancient Greek Titan Prometheus. In Greek mythology, Prometheus took fire from the gods and bestowed it upon humanity in the forms of technology, knowledge and civilisation. With a nod to Prometheus, the essential mission at Promethean Risk is to help organisations capture profits traditionally retained by insurance carriers and redistribute them back to their own organisations and people.

Our mission is to create "win-win" risk financing solutions by utilising supplemental insurance programmes to create state-of-the-art and profitable third-party insurance programmes. These solutions are customised for each client. They are designed to give policyholders enhanced coverage at lower costs, while the sponsoring organisation generates new capital.

We work with partners and clients to co-create programmes that will best serve them. Whether their policyholders are employees, customers, contractors, tenants, students, franchisees, or association members. The benefits offered may change, but the mechanism is the same throughout. They are all unique, profit-sharing solutions funded by the policyholders. The sponsoring organisation earns 100 per cent of the net profits.

Like the Titan Prometheus who shared vital resources with all of humanity, the new capital generated can be used to fund further risk financing programme enhancements that will continue to benefit all parties. Fun fact: The word 'promethean' also means 'foresight' and 'rebelliously creative and innovative.'

Could you provide an overview of the distinctive reinsurance programmes you've developed throughout your career? What motivated you to concentrate on reinsurance?

I have always been committed to creating insurance products and programmes that benefit both the policyholders and the sponsoring organisations. I enjoy working with large organisations with a high number of stakeholders and developing unique insurance solutions that create large positive impacts, both financially and through enriching people's lives.

Whoever the stakeholders are, there are so many possibilities via unique profit-sharing solutions to create win-wins.

Consistent with that ethos, I created BeneCap and TechProtect during my time as captive insurance programme leader at the Marsh McLennan Agency. These programmes brought and continue to bring significant value to the market.

> *"Each member of our well-known and highly respected professional team has deep knowledge, experience and insight into various aspects of the captive insurance, reinsurance and employee benefits industries"*

Our team's focus with Promethean is to develop innovative, best-in-class voluntary benefit reinsurance programmes focused on providing tailored coverage for employees or other stakeholders — reducing costs while improving coverage.

These reinsurance programmes are unique because they are fully transparent regarding coverage, costs and profits. Important data points are available for the policyholder and the sponsoring organisation to see. This lowers claims disputes and creates goodwill within organisations.

The programmes we create draw from a full menu of supplemental coverages for a wide range of needs. Coverage examples include hospital indemnity, critical illness, accident insurance and others that can be hard to find or expensive on the open market — items such as identity theft coverage, legal, rental liability waiver and pet and tenant insurance.

This is in addition to integrated electronic device coverage, including smart phones, tablets and all the devices within a household. Programmes are custom created depending on the stakeholders' needs. Offering bespoke coverage increases stakeholder participation, reduces the cost of workers compensation programmes, and can potentially provide captive insurance tax benefits.

Your team boasts over 200 years of collective experience. How has this wealth of experience contributed to your success of devising solutions for intricate risk management challenges?

We like to say that Promethean Risk Solutions boasts the highest combined captive insurance IQ in the industry. Each member of our well-known and highly respected professional team has deep knowledge, experience and insight into various aspects of the captive insurance, reinsurance and employee benefits industries.

The team provides state-of-the-art advice and counsel on compliance, captive insurance programme development and management, medical stop-loss, reinsurance and connections with a broad range of potential clients. We are a trusted partner for our clients and represent a creative, flexible and nimble organisation poised to create positive change.

Could you elaborate on the concept of your highly customisable profit-sharing solution and how it enables organisations to retain profits traditionally taken by insurance carriers?

Commercial supplemental insurance programmes are very profitable for the carriers. Typical loss ratios are in the 25 to 35 per cent range. This provides an opportunity for the programme sponsor to work with Promethean and directly offer its stakeholders supplemental insurance programmes which offer improved coverage at a lower cost.

The policyholders pay 100 per cent of the cost of the supplemental coverages purchased. The lower costs and improved benefits build stakeholder goodwill. The fronting insurer earns a fee for administration, underwriting and managing claims. The front cedes all or a portion of the risk to FairShare, Promethean's captive insurance company, and 100 per cent of the net profit is returned to the programme sponsor. FairShare can retrocede the risk to clients that have their own captive.

Promethean does not offer general liability, property and casualty, workers' comp, or core medical coverages. We focus only on profitable supplemental lines of insurance for employees, tenants, contractors and students, among others. We are the go-to source for innovative, profitable third-party insurance programmes.

An important distinction for us is that we partner with all brokers, consultants and captive managers. We do not compete with them, we become part of their team and help them identify and develop optimal solutions for their clients, organisations or captives.

Could you explain how your captive insurance company FairShare benefits both organisations and their employees?

FairShare reinsures the risk from our clients' employees, members, tenants, franchisees, students or customer insurance programmes. It provides the same benefits enjoyed by captive owners utilising predictable, low-risk, profitable third-party programmes to organisations without a captive insurance company.

There is no need for our sponsor organisations to own their own captive, join a group captive or post collateral or capital; this is a helpful differentiator. Instead, sponsor organisations are able to utilise FairShare and access the same benefits as a captive owner and participate in FairShare's profit sharing at no risk.

FairShare can also be used by sponsor organisations that choose not to invest the additional capital needed to support these coverages in their own captive. For captive owners who want to use their own captive to reinsure the risk, Promethean will retrocede the sponsor's share of the risk to its captive.

Folks have heard me say many times: "it's a win-win-win for all parties."

The benefits include providing policyholders with better coverage at lower costs. This is in addition to empowering policyholders through greater control over programme design and offerings, as well as creating a way for sponsor organisations to attract and retain ideal people, boosting profitability and stability. It can also generate additional capital with low-risk, predictable business.

How does Promethean assist organisations that don't currently have captives to participate in your programmes? Could you elucidate how your captive, FairShare Insurance Company, fits into this?

We work with a client and their insurance broker or captive manager to develop profitable third-party insurance programmes using FairShare. Promethean's FairShare Insurance Company reinsures the policies issued by the fronting carrier. We target a conservative combined ratio of 85 per cent to allow for lower costs and increased benefits for the policyholders.

> ***"For captive owners who want to use their own captive to reinsure the risk, Promethean will retrocede the sponsor's share of the risk to its captive"***

We also have parties interested in using FairShare to become familiar with how captives work, prior to forming their own captive. It is great to know that we are able to help the captive community and bring more companies into the industry.

Your team includes esteemed professionals like M. Michael Zuckerman, who's an associate professor in risk and insurance management. How does the expertise of such individuals shape the services you offer?

Knowledge and experience are powerful assets. Our team is growing and each member brings extensive expertise to the table.

Professor Zuckerman brings a unique perspective because he advocates tying an organisation's risk identification or assessment process to the development of economically efficient captive insurance programmes.

Gary Osborne has implemented and managed a myriad of captive insurance programmes. David Provost and Michael Corbett know first-hand what programmes work and which don't because of their significant captive insurance regulatory experience.

> *"Our vision is to become the industry leader of profit-sharing insurance solutions and to be the go-to source for innovative, profitable insurance programmes"*

Courtney Claflin is a captive owner who is very innovative, has built bespoke captive insurance programmes and understands Promethean's proof of concept firsthand. Our most recent addition, Fred Anton, brings over 30 years of reinsurance experience to the team.

Promethean was honoured to receive a 2023 Business Insurance Innovation Award. We will continue to grow and provide excellence in all we do.

What benefits do organisations and their employees enjoy by participating in your programmes, both from an insurance coverage perspective and in terms of revenue generation?

Benefits include the improvement of stakeholder attraction and retention, boosting profitability and stability — it means happy customers, tenants and employees. It reduces costs and improves productivity, which grows organisational value.

It provides stakeholders with better coverage at lower costs; stakeholders are empowered through greater control over programme design and offerings, and could retain more disposable income to be used for other purposes.

It generates additional capital for the sponsoring organisation with low-risk, predictable business and can transform the organisation's captive into a central profit hub within the enterprise ecosystem.

The notion of transforming captives into profit centres is intriguing. Can you provide an example of how a company has successfully achieved this transformation with Promethean's assistance?

Yes, we are currently working with a very large real estate firm with tens of thousands of apartments. It had only been offering renters liability and deposit waiver programmes.

We presented a solution to offer additional programmes including ID theft coverage, group auto and home, pet insurance, electronic device coverage and pre-paid legal coverage to its tenants.

These programmes provide better coverage at lower premiums than the tenants could purchase at retail, which creates goodwill, enriches lives and attracts and retains tenants.

Additionally, when the tenants move, the coverages are portable.

Therefore, within a few years, the landlord or lady will have a book of millions of dollars in ported policies, this will create a recurring revenue stream from previous tenants.

Looking ahead, what are your future aspirations for Promethean Risk Solutions? What impact do you hope to have on the risk management and employee benefits landscape?

Our vision is to become the industry leader of profit-sharing insurance solutions and to be the go-to source for innovative, profitable insurance programmes. We will continue to innovate to serve the needs of our clients and partners.

We will continue to partner with brokers, consultants and captive managers — focusing only on profitable supplemental lines of insurance. We work together with our partners and sponsor organisations to co-create the best programmes.

Our leading-edge enterprise risk management solutions are easily scaled, improve stakeholder relationships and add great value to an organisation. ■

Captives: a circular view

Frances Jones explores how the functions of a captive can be used as tools for a company's transition to net-zero

The transition to cleaner energy, or net-zero, is high on the agenda of the boards of most companies around the world.

Now, more than ever, they need to respond to market and environmental pressures to meet ESG commitments. This follows the World Meteorological Organisation's confirmation that July 2023 was the hottest month ever recorded globally.

Against this backdrop of urgency, this writer asks what functions a captive has that can aid its parent company's transition to net-zero.

John Yaple, senior vice president of captives at Hub International, says: "The captive can aid the parent in a number of ways, particularly by a formal financing mechanism for exposures that may not be easily transferable to the commercial market. Without sufficient loss and underwriting data it is unlikely the commercial market will be able to address the challenges of a net-zero energy transition."

Niall Lucas, principal consultant at Aon, comments: "By utilising the captive, parent companies gain more control over their risk management strategies. Therefore, the parent can tailor its coverage specifically to address the unique risks associated with transitioning to renewable energy sources. This allows them to better protect their assets and investments while supporting its sustainable development goals (SDGs) and driving the parent to positive ESG outcomes."

SDGs are the United Nations (UN's) 17 interlinked objectives, including climate action and affordable and clean energy, designed to serve as a "shared blueprint for peace and prosperity for people and the planet, now and into the future."

Depleting fossil fuel reserves and the rise of extreme weather events and temperatures have caused increased momentum from stakeholders. This has led many parent companies to consider net-zero as their ultimate or long-term goal.

"The captive's primary role is to support the objectives of the parent company. Through this alignment, a captive may be better equipped to address new initiatives to meet the long-term goals [being net-zero] of the organisation," Yaples notes.

An ESG and captive match

The "E" — the environmental element of ESG — can help measure the rate of a company's transition to net-zero. Although, the "S" and "G" can also be interlinked as a measure of a company's wider corporate social responsibility strategy.

Companies with a captive have higher than average ESG risk rating scores, according to insurance broker and risk advisor Marsh. The company affirmed the finding by analysing data from its ESG risk rating tool, launched in March 2022.

Finky (Qingcen) Yan, vice president at Marsh Captive Solutions, says: "A captive is ideally positioned to assist organisations in their ESG efforts. For the "E", as insurers' appetite to underwrite carbon intensive risks continues to wane, we [at Marsh] expect captives will address coverage gaps, exclusions, climate-related perils, third-party coverages and renewables."

What makes ESG and captives such a successful match? Lucas explains: "A captive is well-suited to addressing ESG risks as it provides an avenue for parent companies to integrate sustainable practices into their risk management strategies."

Lucas finds that clients' captives are being positioned to coordinate ESG risk efforts for their parents, whereby captive meetings bring together key members of the parents.

Aon's captive consulting process begins with aligning the ESG risk registers of the parent and captive, focusing on the parents ESG mission. Then the firm advises on potential initiatives, bearing in mind the UN SDGs alignment with the Principles of Sustainable Insurance (PSI).

Considering the role captives can play in an ESG strategy, Yaple writes: "ESG concerns have increased over the past few years in the US — many organisations are reviewing their internal position and objectives for the future.

"These objectives are creating unique risks that may not be addressed in their current risk management programmes.

> *"As ESG covers such a broad range of issues, it is hard to know which framework to use. For captives, compare it to something like GAAP accounting standards, which are set, concise and widely-recognised"*
>
> **Andrew Baillie, The AES Corporation**

Captives have always been touted for their ability to not only provide coverage for unique risks, but also respond quickly. For example, a captive can achieve this through its ability to pre-fund for potential losses in a captive, as well as the ability to utilise captive surplus to help re-invest in the parent company's ESG objectives."

A question of accountability

However, during the discussion group 'What is ESG for You and Your Captive?' industry participants at the Vermont Captive Insurance Association's annual conference expressed concerns regarding the shortfalls of ESG metrics.

Talk coordinator Andrew Baillie, programme director of global insurance at The AES Corporation, said: "As ESG covers such a broad range of issues, it is hard to know which framework to use. For captives, compare it to something like GAAP accounting standards, which are set, concise and widely-recognised."

Reporting standards vary from country to country which can affect how environmentally friendly a country's operations are in that area. This can make it harder to track companies' environmental impact and subsequently hold them accountable.

Even, in some cases, a history of corporate non-action has led to a way of thinking about environmental policies as "what can we get away with?" as opposed to "how can we be proactive about this issue?" Baillie gave an example of a recent incident involving a Brazilian mining company's run-off into a local village, only when the company "got caught" did ESG due diligence come into play.

Baillie used a football (soccer) analogy to articulate what a company's approach to climate risk should look like. He said that "different outcomes could be: the team risk engineering to control losses, the bench could provide insurance to cover losses and the goalkeeper could action contingency planning."

Furthermore, Baillie discussed the mass exodus of insurers from the UN's Net-Zero Insurance Alliance which was "due to the lack of clear reporting metrics." It's becoming clear that there is a gap between the stakeholder requirement of companies to transition to net-zero and a clear reporting metric. How to quantify ESG risks also remains a problem for insurers.

A discussion group participant said that rating agencies, such as AM Best, are addressing this concern. Since 2021, AM Best has become a signatory to the UN's Environment Programme's Finance Initiative for PSI. It says "it incorporates ESG-specific factors into its ratings methodology to help identify risks and opportunities not captured by financial metrics."

Although, how the ratings agency will do this remains unclear. Companies, including Marsh, have created their own ESG assessment tools using surveys, but who is holding company-developed assessment tools accountable?

Most environmental discussions around captives are centred around broad ESG frameworks. However, should the dialogue be streamlined to a wholly environmentally–focused discussion aimed at creating an insurance-specific standardised and comparable metric?

Green captives

A number of energy companies, including The AES Corporation, have a captive and use it to help meet their needs and their renewable energy goals.

Yan affirms: “Many companies, especially energy companies, are actively looking to invest in green energy projects. Captives can play a role in a company’s net-zero transition as the surplus built up in the captive can be used to fund green projects. Marsh has a number of clients that have done this.”

However, Baillie maintains that it’s important to consider the full lifecycle of a company’s renewable energy use. He advocates for a company to compromise; using a combination of renewable and non-renewable assets to combat the problems of renewable energy — a technology in its infancy, such as an intermittent supply from solar energy.

> *“Captives can play a role in a company’s net-zero transition as the surplus built up in the captive can be used to fund green projects”*
>
> **Finky (QingCen) Yan, Marsh Captive Solutions**

Lucas provides an example of: “a captive used by an energy company investing in renewable projects overseas. The captive helps mitigate environmental risks associated with these projects by providing coverage for potential pollution incidents or natural disasters that may impact local ecosystems or communities.

The captive is uniquely positioned to provide this coverage due to its customisable nature. It allows its parent to design policies according to its specific need, inclusive of covering emergency net-zero technologies.”

Entities exist for the primary purpose of generating profit, in some cases, the parent may have to forfeit profit in its short-term transition to net-zero. Increasing momentum, that is showing no signs of slowing, from a company’s stakeholders is catalysing companies’ transition to net-zero. Parent companies can leverage their captive to lead the charge.

Circular re-investment

Lucas closes his green captive example with: “This has been a part of captive-financing strategies for some time and has even developed to where the captive is used to write the transformation risks of third-party or “green” joint ventures. This allows the use of surplus captive funds to be used to support carbon offset measures.”

In 2021, Marsh-managed captives reported more than US$110 billion in surplus, according to a Marsh article entitled ‘How captives can help organisations with ESG’.

Parent companies can use this surplus capital to support green investments. In essence, the captives’ “higher-scoring” ESG programme generates extra income which can be re-invested into environmentally-friendly initiatives, creating a financial loop or ‘circle’.

Yaple gives an example of a parent using capital surplus held in the captive to “add solar panels” or “shift its investment portfolio to more friendly companies that align with the parent’s overall objectives.”

When considering whether companies are doing this, Baillie said: “it depends on the company’s culture.”

Drawing from this, a captive’s ability to aid is entirely dependent on the parent company’s mission and own level of engagement in environmental policies. ■

Stephen Taylor
Director
Bureau of Captive & Financial Insurance Products
Delaware Department of Insurance

From DC to Delaware

Stephen Taylor talks to Frances Jones about his role and his ambitions for the Delaware captive programme

How has your previous regulatory experience helped you in your new role? What do you hope to achieve as Delaware captive director?

My roles as the former commissioner, deputy commissioner and general counsel for the Washington DC Department of Insurance provided me with comprehensive experience in insurance regulation. I gained a deep understanding of how captive insurance should be regulated, as well as knowledge of how to grow a captive programme and maintain its competitiveness with other domiciles.

As Delaware's captive director, I'm working with Commissioner Trinidad Navarro to ensure Delaware maintains its best in-class programme with the finest statutes, regulations and network of service providers.

We're working to ensure that Delaware sets the standard for smart, flexible, innovative, fair, professional, transparent and consistent regulation of captive insurance. It's important to stress that we really want to have a great programme so that the Delaware domicile remains highly desirable and respected.

The programme provided is flexible and responsive to meet the risk management objectives of businesses. As Delaware was the first colony to ratify the US Constitution, we want to ensure it remains a great first choice for forming and expanding captives.

What do you think are the strengths of the Delaware captive programme? How do you intend to build upon those strengths?

Delaware is the third-largest domicile for captives in the US and the world's fifth-largest. The state is renowned for its specialised insurance regulatory expertise. First and foremost, our captive team is what really makes the programme special.

For the captive programme, we have a knowledgeable and savvy team of 36 dedicated individuals. The team is extremely experienced and many of them are highly credentialed in the insurance and financial fields. This means we have the know-how when it comes to regulating captives.

Each captive company is assigned a regulatory analyst, who will act as the captive's liaison into the programme, which really helps captives with any operational needs.

Another key strength of the Delaware programme is that it is built upon what's called a 'The Delaware Advantage' — Delaware's corporate law. This state business law is the 'gold standard' for business formation and corporate law in the US. Also, our modern corporate laws are regularly updated by the legislature and there's an expert corporate legal bar that helps shape the law. Finally, the Chancery Court has special jurisdiction to interpret corporate law adding predictability and stability.

> *"Delaware's captive law provides businesses with a great deal of flexibility. Our captive laws provide many options in terms of a captive's legal form, as well as allowing the licensing of multiple entity types. Delaware is also a great location on the East Coast — proximal to the US financial centres of New York, Philadelphia, Boston and Washington DC"*

Given the evidence supplied, it's no wonder 50 per cent of Fortune 500 companies call Delaware home.

The captive programme has been constructed on top of 'The Delaware Advantage'. Delaware's captive law also provides businesses with a great deal of flexibility. Our captive laws provide many options in terms of a captive's legal form, as well as allowing the licensing of multiple entity types.

Furthermore, we have a very business-friendly state government and a stable political and corporate environment. Delaware is also a great location on the East Coast — proximal to the US financial centres of New York, Philadelphia, Boston and Washington DC.

We work closely and collaboratively with The Delaware Captive Insurance Association (DCIA). This partnership promotes and supports the captive industry, helping to maintain the best regulatory environment to address the needs of captives and the businesses they support.

We also have a robust and expert network of captive management companies, insurance professionals, law firms, actuaries, financial institutions, accounting firms and other service providers.

Finally, our philosophy is to be collaborative and open to explore captive insurance solutions for businesses while staying responsive and transparent.

In an interview with AM Best you said you would like to explore more opportunities in ESG. How do you plan to do so?

As I mentioned then, many participants in our industry are looking at addressing ESG initiatives that have become a strategic imperative for many organisations over the past year. I think interest has grown partially due to some of the social, economic and political shocks that were created by the COVID-19 pandemic. Indeed, increased emphasis on ESG initiatives often originates from pressure and focus from investors, regulators and employees to make it not just a focus at the board level, but also an essential part of an organisation. There's a growing interest in the use of captives to address ESG issues and Delaware stands ready to help meet that interest through our programme.

For example, some say a captive demonstrates good governance because a captive is a formalised entity licensed by a regulator. It's a regulated entity which has been established to protect your organisation against threats, provide structural risk management oversight and to facilitate tax and regulatory compliance.

In terms of the "S" (the societal aspect), captives can offer organisations the flexibility and control to address their people risks that might impact their businesses, including employee benefits and employee engagement programmes.

I've seen captives being used as a mechanism to harmonise benefit coverages across geographies, for example, providing coverage that may not be available in some locations such as maternity benefits or to enhance diversity and inclusion programmes.

For the environmental side, captives can capitalise on gaps created by commercial insurers that are reducing their appetite and ability to underwrite carbon intensive risks as they work to reduce their carbon intensive investments and underwriting. We're also seeing some captives being used to address other coverage gaps and exclusions.

For example, we have some captives that are writing business interruption coverage as well as protecting against supply chain issues. This demonstrates that a captive can serve a critical function as a business resilience tool, as they can help fund an organisation's risk up front.

We also might see ESG driving up the interests among owners to redomicile their offshore captives to address issues of corporate responsibility.

What challenges do you foresee for the Delaware captive market? How are you planning to face these challenges?

This current hard marketplace, of course, provides the general macroeconomic challenge of inflation.

Also, we're looking at how the Internal Revenue Service (IRS) has impacted the captive space.

Captive insurance companies that have exercised the Section 831(b) election continue to be under the scrutiny of the IRS. That's the election for small businesses where it gives them some federal tax benefits as they work to manage their risk. Subsequently, we've lost a number of smaller captives due to the scrutiny from the IRS.

Many in the captive industry argue that the recent proposed regulation from the IRS will impose onerous reporting requirements. If the proposal is passed in its current form, captives electing 831(b) that fail to meet the new loss ratio requirements of 65 per cent, or engage in related party financing, will be subjected to significant reporting requirements under the threat of severe penalties.

While we fully support the IRS' tax enforcement efforts, we agree with many in the captive industry that the proposal is overboard and would adversely impact small businesses that legitimately used the tax law as intended when Congress enacted section 831(b).

We hope to see those better efforts targeted at bad actors who are engaged in tax abuse rather than those businesses that have established legitimate insurance operations under the law, which is what we do in Delaware. We make every effort to ensure that those companies are operating as insurance companies and not using our domicile to set up tax abuse entities.

"Many in the captive industry argue that the recent proposed regulation from the IRS will impose onerous reporting requirements. If the proposal is passed in its current form, captives electing 831(b) that fail to meet the new loss ratio requirements of 65 per cent, or engage in related party financing, will be subjected to significant reporting requirements under the threat of severe penalties"

With the IRS, we're continuing to monitor and provide any support to ensure that the appropriate tools are focused to eliminate those few truly abusive tax schemes and not harm a perfectly legitimate industry.

A further challenge for the captive industry is the war for talent. The challenge remains for insurers to attract and retain the best people. Captive insurance seems to lag some of the other 'sexier' industries. However, I think captives are pretty sexy. It's a fun industry that offers ample and diverse opportunities for young talent.

The nature of work creates meaningful and varied career paths with ample room for development. It demonstrates that insurance can be a professionally and personally rewarding industry, as any other.

> *"Delaware has a new law that allows its corporations to obtain Side A coverage for directors and officers liability from captives"*

Is there any recently introduced key legislation that you think could dramatically change the captive market in the next year to 18 months?

Delaware has a new law that allows its corporations to obtain side A coverage for directors and officers liability (D&O) from captives.

Delaware licensed the first captive that issued policy for side A D&O and the industry was excited about that. Due to the increased costs of D&O coverage, the law came in at a good time for the commercial space.

Following this, we're also going to be issuing some guidance for D&O coverage, responding to piquing market interest.

Also, while the legislation will not be involved, we're looking to deal with some of our policy and procedures. We will be taking some of the procedures that we've had in-house and codifying those public facing policies and procedures to increase the consistency and transparency of regulation.

This will be in addition to modifying some of those concepts which are either outdated or unnecessary to create the most streamlined experience for captives in the state.

For example, we are looking at our process for confirming the appropriate capital and surplus for companies.

The team will be doing a comprehensive review of our statutes and regulations to identify areas where we can change and improve.

Finally, how would you describe the growth of the Delaware captive market? What is Delaware doing to remain competitive with other captive markets?

Akin to most other industries, the COVID-19 pandemic had an adverse impact.

However, over the past couple of years, we've seen some growth. Mirroring the wider captive industry, which itself has grown 2 per cent worldwide.

Captive use is growing as commercial insurance rates for lines such as cyber have increased over time. This means that companies are increasingly looking at captives for these types of lines.

Captives are also being used to fill gaps in higher layer programmes as opposed to just being for vehicles to fund a lower layer of coverage.

The captive industry in Delaware remains strong given Delaware's respected captive programme, team of regulators and our productive partnership with the DCIA over the last couple of years.

The state has witnessed a good number of new captive formations and the number of captives in Delaware is increasing.

This is despite a few of our smaller captives deciding to dissolve rather incur the costs of the increased IRS scrutiny of small businesses and their captives.

Last year, we saw 63 new captive formations and we've seen 11 this year so far. We're growing through our collaborative relationships with captive owners and service providers to develop optimum business plan programmes to achieve risk management objectives. ■

An emerging solution: how captives can be used for D&O in Delaware

The past few years have seen eye-watering rates for companies seeking D&O liability insurance. Barney Dixon looks at the solutions that emerged to solve this issue and whether or not captives are a suitable alternative to traditional Side A coverage as rates return to normal

Last year, Delaware governor John Carney signed into law a bill that facilitates the use of captive insurance for Side A directors' and officers' (D&O) liability insurance. The bill amended the Delaware General Corporation Law (DGCL) to allow corporations to purchase D&O insurance through captive insurance companies to cover both indemnifiable and non-indemnifiable loss.

Initial expectations were that the legislation would have a "positive impact by providing flexibility and an alternative to traditional D&O insurance, either due to pricing considerations or limited insurance capacity," according to J. Andrew Moss, partner at law firm Reed Smith.

Steep turns in D&O

Historically, companies would purchase traditional Side A D&O insurance to cover non-indemnifiable exposures. But, while D&O rates have been low for much of the 2000s, the past four years have seen a significant spike in prices.

Lorraine Stack, international consulting leader and head of operations at Marsh Captive Solutions, Ireland, says that up until 2019, Marsh had "less than 40 captives writing some element of D&O, almost exclusively Sides B and C."

"At the time we were managing about 1500 captives, so this was a very small proportion."

She explains: "The reason is that between 2002 (the last D&O hard market) and 2018/19, D&O rates were low, and there was plenty of capacity available. So there was really no reason to self-insure or take a lot of D&O risk on the balance sheet. But that really changed between 2019 and 2022."

"In 2019, there was a steep turn in the D&O market. Prices spiked; buyers were seeing eye-watering renewal quotes and capacity was scarce."

Stack says that an increase in US litigation, US securities claims, higher settlements and class action lawsuits drove these rises, pushed further by insolvencies resulting from COVID-19.

"As with any time when there's a challenge in the commercial marketplace, there was a sudden interest in captives. During 2020 and 2021, the D&O premium written by the captives that we managed increased by 50 per cent."

> *"Senate Bill 203 took many by surprise, including the Delaware captive regulators"*
>
> **Arthur Koritzinsky, Marsh**

This increase in interest led to captive owners using their captives to fill in gaps and create additional capacity for their risk in the commercial insurance market, Stack notes, but this was primarily for Sides B and C.

She explains: "Side A is not indemnifiable by the group, so Side A, at the time, was not deemed necessarily suitable for a captive."

"That's because of the conflict that might arise around asking a captive, which is a subsidiary of the group, to pay a claim for an act by a director that the company is either not permitted to indemnify or actually chooses not to indemnify, and is maybe in dispute with."

"What emerged during that time was an interest in the potential to use a protected cell company (PCC) for Side A D&O."

Marsh operates a number of cell facilities, which Stack says are more often viewed at arm's length and are more independent than a single parent captive.

She notes that interest in Side A D&O PCC captives increased during this time, and Marsh now has around 13 Side A D&O PCCs, mainly in Guernsey and Bermuda.

These cells are typically used by companies who are unable to get Side A and need it — namely crypto companies, cannabis companies and financially-strained companies who are about to go into Chapter 11 bankruptcy.

Arthur Koritzinsky, managing director at Marsh, says that companies will "generally be able to get permission from bankruptcy regulators to fully fund a cell."

"The funds would be segregated and would theoretically be bankruptcy-proof in the event of claims resulting, after a certain point in time." Stack adds that this is still an "emerging solution."

The Delaware solution

Those in dire straits did not have to wait long for another solution to present itself, however. Senate Bill 203, was introduced in December 2021, and passed unanimously two months later. Delaware, known for its business-friendly corporate laws, would now be able to provide a solution for those struggling to acquire Side A D&O coverage.

Stack says that the Delaware solution was a "response from the Delaware regulator to the scarcity of D&O insurance."

Koritzinsky says that following this legislation, Marsh decided to form a new cell facility in Delaware. He notes that the bill passing "took many by surprise, including the Delaware captive regulators," but that key to Marsh's decision "was the fact that the corporate laws would be the same for the captive as the insured corporation if both are incorporated in Delaware." This would remove any risk of a conflict of law.

"That's important," he adds, "it's one more thing that the directors can take comfort in."

Koritzinsky says that in other states, a captive would be problematic where there are specific rules prohibiting the use of corporate funds; "we assumed if Delaware chose to specifically allow it, then Delaware is the place to do this."

It took nearly six months for Marsh's first cell to be approved as there were "no regulations or rules that were issued by the Delaware insurance regulator," according to Koritzinsky, and Marsh is now working on a second client cell.

However, Koritzinsky says this solution "is not for the masses" and it will only be appropriate when there is a "significant rate online." The average company will not pursue this type of policy.

"The company has to fully fund the policy limit. It was very important to make sure the claims adjustment process was independent so there are contracts with third-party administrators and legal counsel executed with the cell.

The cell is in a Marsh facility, we've got Marsh directors and officers, but the company that decides to form the cell only has a representative."

And, specifically on the PCC structure, Stack notes that it hasn't been tested in a court of law. So it is available as a "potential solution," but certainly not for the majority of companies.

Stack adds the market opened up in the latter part of 2022 and demand has decreased a little. It's easier to get commercial insurance, and rates aren't as difficult as they were – new insurers have entered the market and capacity has become available.

Jalen Brown, associate at Reed Smith echoes this notion, and adds that "if pricing and availability of traditional D&O insurance is more attractive, one would assume that the use of captives as an alternative may decrease."

However, Stack says that, despite this, there is still interest in the Delaware solution.

Considerations

With this in mind, what should companies consider when looking to use a captive or PCC in place of a traditional insurer for D&O coverage?

According to Carolyn Rosenberg, partner at Reed Smith, there are a few concerns for companies looking to use a captive for this purpose. For example, in a bankruptcy or insolvency situation, "the captive needs to be sufficiently capitalised and in compliance with applicable law to be able to protect the directors and officers if the company can not indemnify them, which may be inherently difficult."

"In addition, those who control the captive may face competing considerations as to where to put capital in this circumstance," she adds.

"It is also possible that payments by a captive may be challenged by creditors in an insolvency situation. Traditional Side A D&O coverage is typically negotiated with sufficient terms and conditions to allow it to remain a source of financial protection for the directors and officers."

> ***"If pricing and availability of traditional D&O insurance is more attractive, one would assume that the use of captives as an alternative may decrease"***
>
> **Jalen Brown, Reed Smith**

Stack says that for Sides B and C, many considerations are similar to factors that would be looked at with any other line of insurance. This includes consideration as to whether the captive is appropriately licensed to write the risk and if it fits with the risk appetite of the board.

However, for Side A, Stack explains that the biggest consideration is whether the risk can be fully funded. She recommends the appointment of an independent claims handler to further enhance the 'arm's length' nature of the structure.

While the Delaware solution may not be for every company, and certain considerations may make traditional Side A insurance a more attractive option, Delaware's captive D&O law provides an alternative for those that require it.

Rosenberg concludes that companies "may not want to take on the administrative and capital contribution responsibilities of a captive. It may also be that increased capacity and more attractive pricing have elevated traditional Side A coverage options above a captive."

"That being said, retaining the flexibility is a positive development for those situations where it may make the most sense in terms of a company's overall insurance goals and programmes." ■

A call to protect the US Constitution

Matthew Queen, owner of The Queen Law Firm LLC, explains why he thinks Congress must act against the IRS' assault on captives election of 831(b) to protect federalism

Protecting Federalism: Congress must act against the IRS's assault on captive Insurance

Irony possesses a cruel sense of humour. Every once in a while, Congress gets it right. In 1945, Congress passed the McCarran-Ferguson Act which established that the business of insurance is state law.

The Act is among the most insightful actions from the federal government and single-handedly precluded the monopolisation of the insurance industry as is seen in banking and other financial services.

By any objective standard, the McCarran-Ferguson Act was a congressional grand slam.

Of course, the IRS wants to eviscerate the Act.

Federalism is the hallmark of the US Constitution. The purpose of the McCarran-Ferguson Act was to enshrine that states govern the insurance industry better than any federal agency. However, the IRS disagrees and leverages its unlimited power to define "insurance" for federal income tax purposes as a bludgeon against the captive insurance industry.

Captive insurance is formalised self-insurance. In general, a captive is a subsidiary company created by a business for the purpose of insuring the parent entity or a group of related companies. In many ways, it is the same as any other form of insurance. A business deducts premiums paid to the insurance company as a business expense. However, there are two twists. First, if the captive pays no claims, then the parent company retains those premiums. Second, if the captive writes less than US$2.65 million in gross written premium then the captive may make the so-called "831(b) election." Section 831(b) of the Internal Revenue Code permits a captive to exclude any underwriting income from the captive's federal income tax obligation.

For decades, the IRS has viewed the captive industry with suspicion. The agency has particular venom for the 831(b) election and recently proposed to add it to the "listed transaction" list. A listed transaction is a legal status where the IRS treats certain transactions as potentially abusive. This triggers audits, punishing paperwork and scares many certified public accountants from assisting with audit and tax compliance.

Adding the 831(b) election to the listed transaction register threatens the survival of the small captive insurance company industry. The proposed regulations are unconstitutional because they seek to elevate the IRS to the de facto federal regulator in the insurance industry. This effectively overturns McCarran-Ferguson and places the federal government as the final word on insurance. The way the IRS accomplishes this is through purported safe harbours built into the listed transaction for captive insurance carriers with a 65 per cent loss ratio or if the captive owners declare a certain number of dividends.

Congress determined that the business of insurance is state law. Now the IRS wants to usurp the states' departments of insurance authority by mandating how captive insurance companies run their business. Upholding the McCarran-Ferguson Act and protecting state insurance regulators' authority is essential to maintaining an efficient and fair insurance market. By standing up for states' rights, Congress can safeguard the balance between federal and state authority, fostering innovation and competition in the insurance industry.

One of the very few universally acclaimed actions by Congress is under attack by an executive agency hellbent on destroying an industry it fundamentally misunderstands and has hated for decades. The irony would be hilarious but for the criminal and civil penalties wielded by the IRS against middle-market companies. These are the very same companies responsibly managing their risk through captive insurance programmes. ■

Matthew Queen
Owner
The Queen Firm

Matthew Queen is the owner of The Queen Firm, LLC, a law firm providing captive insurance consulting services.

His work focuses on providing advice and guidance to business owners seeking to take control of their risk financing, risk management and insurance issues.

The sun shines on VCIA conference, despite showers

The VCIA's annual conference held in South Burlington, Vermont from 7 to 10 August, demonstrated how the domicile maintains its regulatory 'gold standard'. Frances Jones reports on the highlights

The Vermont Captive Insurance Association (VCIA)'s 2023 Annual Conference saw nearly 1100 industry participants gather in Vermont (VT) to learn, network and celebrate the state's success.

The event officially opened with the 'Newcomers Orientation & VCIA Update' panel, a talk that welcomed first-timers and members looking to learn more about the association.

When life gives you lemons

Wednesday afternoon saw the Hilton's Emerald Ballroom host the VCIA's 'Special Event: Awards & Keynote Speaker Juliette Kayyem.'

VCIA president Kevin Mead introduced the event by commiserating with the golfers among the crowd as the morning's golfing event was cancelled due to rainfall on the course.

Mead quickly lifted attendee spirits by announcing that the funds for the golf tournament would be donated to the VT Flood Response & Recovery Fund 2023, supporting those affected by the July flooding which submerged downtown Montpelier as well as farms and neighbourhoods in the area.

Furthermore, the association donated the tournament's sandwiches to the Vermont Foodbank, the largest anti-hunger organisation in Vermont. This proactive spin on a cancelled event encompasses the association's and city's spirit and ability to make the best of any situation — when life gave them floods, citizens of Vermont ran lemonade stands to raise money for those affected.

Vermont takes industry top spot

Mead describes Vermont's captive team as being propped up by a "three-legged stool" consisting of Brittany Nevins, Sandy Bigglestone and Kevin Gaffney.

The Vermont regulatory team revelled in their achievement as, during the conference, the state of Vermont was declared the number one captive domicile in the world. The state surpassed its two main competitors, Bermuda and Cayman Islands, according to data verified by two industry publications.

Commenting on the statement, Gaffney said: "This reflects all our hard work in maintaining the industry's 'gold standard.' Vermont is certainly open for business!"

> *"We have ongoing representation in Washington DC and Vermont, lobbying for a legislative regulatory environment conducive to thriving"*
>
> **Kevin Mead, VCIA**

Mead gave more detail about how Vermont achieves and continues to maintain its regulatory 'gold standard': "We have ongoing representation in Washington DC and Vermont, lobbying for a legislative regulatory environment conducive to thriving.

"For example, we recently had to testify against stopping medical stop-loss captives in the state. For starters, 97 per cent of those affected would be outside Vermont."

In his testimony, Mead condemned the idea as 'terrible'. "Vermont benefits from a strong relationship with its regulators," he affirmed.

Vermont long-time board member Tracy Hasset described how impactful the captive industry could be. She explained: "I've recently converted my group captive edHEALTH to a sponsored captive to increase cost benefits. I've already saved 25 educational institutions over US$155 million dollars."

edHEALTH provides health insurance for more than 25 educational institutions.

And the award goes to...

The Distinguished Service Award was awarded to AIG's Robert Gagliardi. The Captive Crusader award went to Clare Bello, who described her two decades involved with VCIA as "two decades of friendship."

The third award, the Honourary Member, was given to Stephanie Mapes and Michael Peiciak. This award will give them the opportunity to attend the event on a complimentary basis.

Tapping into talent

The industry's "talent gap" has been continually highlighted in the industry but the VCIA's efforts to recruit and retain young talent were evident throughout the conference. One example was showcased in the event lobby, with the promotion of the VCIA's new partnership with the Vermont Captive Insurance Emerging Leaders (VCIEL) Group.

To give some other examples, Hylant's Claire Richardson coordinated discussion group 'A Newcomers Guide to the Captive Industry' and the state's own Brittany Nevins hosted 'Building Talent in the Captive Industry.' It brought the conversation to the forefront; captive young stars took the initiative to create the dialogue needed to explore solutions further.

Students and newcomers alike agreed that there were ample learning opportunities for them, and that they were excited about being part of the captive community.

Vermont is famous for its maple syrup, which event organisers were proud to offer attendees. The process of making the sweet syrup involves tapping, a step in which the sap flows out of the maple into a tubing system. It appears that Vermont has been able to tap into the captive talent industry too.

Employee benefits

During the session, 'Medical Stop-Loss and Employee Benefits Strategies' Davies' Dennis Silvia described captives and employee benefits as "two friends who want to meet the growing needs of the healthcare industry."

This is against the 'alarming backdrop' of continually increasing healthcare premiums.

As Silvia elaborated: “10 per cent of employee benefit (EB) professionals are interested in captives — that number is rising but there is lots of opportunity to educate in this space.”

Speaker, edHEALTH’s Hassett, added: “The challenge within medical stop-loss (MSL) is trying to get HR professionals to understand the uses of captives. Trends we are witnessing, such as pharmaceutical price increases, are making employees look inwards. That’s where a captive can step in.”

Adding EB into a captive can help an employer protect employees from the rising healthcare costs in the traditional market.

Spring’s Prabal Lakhanpal weighed in: “There is a fundamental need to look at how HR professionals can bridge the gap between a financial and risk profile gap. Risk diversification is key to achieving that — adding MSL to a captive is a way to achieve that.”

Silvia summarised: “Captives provide employers with more control over their healthcare lines and may provide better benefits for employees.”

“Captives provide employers with more control over their healthcare lines and may provide better benefits for employees”

Dennis Silvia, Davies

What’s next for captive insurers?

Attendees packed the panel, ‘Where Will Captives Go Next? The Latest Uses for Captives.’

Captives often drive ahead of the commercial market when it comes to innovative risk solutions. This attendee-packed session offered succinct criteria for insurance risk pertaining that the IRS’ definition is “inconsistent.” It delved into the limitations of the commercial market “relying on past claims history”, the problem being the lack of claims in new and emerging markets and risks, such as cryptocurrency, telephone cable instalment and the climate crisis.

The panel, consisting of Joseph Ziolkowski of Realm Insurance and Paul Carleton from Old Republic Risk Management provided a case study of a recently-created insurance entity to address new risk. The moderator was WTW’s Ed Koral. The panellists discussed that a network of independent appliance installers has claims against faulty installations tendered to its insurer. This means the retailer has no visibility into the customer experience during the claim resolution process.

A poorly-managed claim can lead to a social media complaint, they added. This can damage the reputation of the retailer.

They agreed that a one resolution to these obstacles could be to use the retailer’s captive to create a general liability claim to cover the risk of the installers with the premium charged on a per installation basis. Subsequently, claims could be handled by a specialty third-party agent to protect the retailer’s brand.

Sunshine on the lake

Burlington’s brick-laden Church Street came alive on both the penultimate and last night of the conference. The city saw vibrant drinks receptions hosted by the event’s sponsors facilitating after-hours networking for attendees.

The final evening saw bright sunshine after the first couple of days of intermittent rain. Highlights of the evening include a reception at the upscale Hotel Vermont, close to Lake Champlain.

The function’s location accommodated delegates to watch the orange sun disappear behind New York’s Adirondack Mountain range adjacent to the still-blue lake. ■

Datuk Iskandar Mohd Nuli
Executive chairman cum CEO
Labuan IBFC Incorporated Sdn Bhd

Meeting your captive needs and beyond

Datuk Iskandar Mohd Nuli, executive chairman cum CEO of Labuan IBFC Incorporated Sdn Bhd, explains how Labuan's international business and financial centre provides a captive-centric ecosystem

Labuan International Business and Financial Centre (Labuan IBFC) was established by the Malaysian government in 1990. The financial centre is regulated by a single authority, Labuan Financial Services Authority (Labuan FSA), a statutory body of Malaysia's Ministry of Finance. Labuan IBFC Incorporated Sdn Bhd (Labuan IBFC Inc), a wholly-owned subsidiary of Labuan FSA, serves as the financial centre's official promotional and marketing agency.

Labuan IBFC adheres to international standards and best practices with access to Malaysia's double taxation agreement with over 70 countries. It offers fiscal neutrality and certainty while adhering to guidelines set by international bodies such as the Organisation for Economic Co-operation and Development, Asia/Pacific Group on Money Laundering and Financial Action Task Force. The financial centre is now home to licensed institutions and international companies from 125 countries.

Labuan IBFC caters to global investors and businesses by providing a wide range of business structures and investment solutions to facilitate cross-border transactions and international business dealings. These include banking, insurance, wealth management, business related to the capital markets, leasing, money broking and commodity trading, with the suite of solutions available in conventional, Shariah-compliant and digital forms.

The Labuan IBFC Strategic Roadmap 2022 – 2026

The Labuan IBFC Strategic Roadmap 2022 – 2026 positions the financial centre as the region's captive hub. Central to this is the financial centre's comprehensive legal framework, making it an ideal hub for the intermediation of risk.

Labuan IBFC also ensures that regulatory requirements are continuously reviewed and met, with the International Association of Insurance Supervisors' core principles and captive guidance observed to preserve a business-friendly market environment.

Labuan IBFC provides a cost-efficient operating base with a wide range of innovative captive solutions, such as protected cell companies, master-rent-a-captive, mutual captives and association captives. This range of solutions enables businesses that establish their operations in the financial centre maximum flexibility as they develop and mature over their individual lifecycles, which facilitates sustained global interest.

This has resulted in the formation of Labuan-based cell captives for global businesses, including several European- and Australian-headquartered businesses. The financial centre is also home to the world's first Shariah-compliant captive.

> *"True to its positioning as a regional captive hub, Labuan IBFC and LIIA will be jointly organising the region's flagship captive event, the Asian Captive Conference, on 7 September 2023 at the Sime Darby Convention Centre, Kuala Lumpur, Malaysia"*

Labuan IBFC strongly believes in a collaborative agenda as Asia's premier international financial hub. Labuan FSA and Labuan IBFC's partnership with Labuan International Insurance Association (LIIA) has been key to the growth and development of the financial centre's reinsurance industry, specifically the captive industry. LIIA is the largest industry grouping in Labuan IBFC with more than 200 license holders, all of which operate in the insurance, reinsurance and self-insurance space, creating a robust ecosystem for the captive sector to thrive.

Amid a challenging environment

Against the backdrop of a challenging economic environment, which has contributed to a hard market, the Labuan captive sector continued to gain momentum with five new players and total gross premiums registering at US $571 million in 2022. More than 62 per cent of the premiums were generated from the international insurance business.

Labuan IBFC is currently home to 67 captives, which include the subsidiaries of well-known global companies. This underscores Labuan IBFC's prominence as the captive market of choice regionally and globally.

True to its positioning as a regional captive hub, Labuan IBFC and LIIA will be jointly organising the region's flagship captive event, the Asian Captive Conference (ACC), on 7 September 2023 at the Sime Darby Convention Centre, Kuala Lumpur, Malaysia.

This will provide attendees with a golden opportunity to meet key stakeholders in the captive space, which will encompass representatives from regulatory bodies to captive owners, as well as service providers that specialise in end-to-end services pertaining to setting up a captive.

ACC 2023

The ACC 2023 is themed: 'The Connected Risk Journey in Self-Insurance'. Given that we are slowly but surely moving towards a digital and borderless business world, captive insurance is poised to cater to this changing landscape, by providing tailor-made insurance policies while having direct access to the global wholesale reinsurance market to meet non-conventional risks. This addresses long-term risk, connecting businesses to collectively provide risk management solutions for a more robust risk environment.

The conference will open with a presentation and discussion on how IFRS17 will impact self-insurance. This will be followed by a dialogue on how captives can be used to manage emerging risks in cyber and employee benefits. The seminar will also feature breakaway sessions for those seeking to establish captives and for those pursuing further benefits from their already established captives. The use of captives to meet the ESG agenda, facilitated by parametric insurance, will bookend the conference.

Looking at 2024 and beyond, Labuan IBFC's comprehensive digital services and offerings have resulted in an influx of digital financial services providers interested in and entering the region. Among these are insurtech providers that have revolutionised the conventional forms of financial offerings in the financial centre, including the possibility of setting up purely digital captives.

The Labuan captive space has much to offer despite the current challenging financial landscape domestically and regionally. Labuan IBFC is poised to further strengthen its position as a leading captive centre. ■

Jack Meskunas, MBA, ACI
Executive director - investments,
Captive insurance asset management advisor
Institutional Investment Group
The Meskunas Group of Oppenheimer & Co

FED forecasts and fixing fixed income portfolios

Jack Meskunas delves into the rationale behind the strategy of extending duration and the considerations captives should weigh as they contemplate this approach

The last few years have been challenging for captive insurance portfolios. Volatility — often only considered a characteristic of the equity markets — has been ever-present in the bond markets, particularly over the last 18 months. Due to the massive rise in and fluctuation of interest rates, bond investors have been presented with unique opportunities to navigate the challenges posed.

The strategy of extending duration should be gaining significant attention as a result of the mid-August increase in interest rates, and the whispers of potential interest rate cuts on the horizon. This strategy seeks to capitalise on current market conditions by locking in relatively high rates of return while positioning portfolios for the potential of equity-like returns in the fixed income market over the next two to three years.

The past month witnessed a noteworthy uptick in bond market interest rates, prompting investors to reassess their fixed income portfolios. As interest rates increase, the price of existing bonds tends to decrease, affecting the overall (mark-to-market) values of portfolios. This presents an opportune moment for captives to reconsider their investment approach, evaluate their holdings and explore the opportunities to reallocate or swap longer-held and lower-yielding positions for new investments at the current rates of interest.

Interest rates fluctuate but it has been decades since they were as high as they are today. Coupled with the fact that short rates were near zero for over a decade, extending the duration of bond investments by opting for bonds with longer maturities makes sense right now. By doing so, investors lock in current interest rates for a longer period, shielding their portfolios from potential “reinvestment risk” – the risk of having to reinvest maturing bonds at lower yields that will likely prevail in 2024, 2025 and 2026. While longer-dated bonds typically carry greater interest rate risk, the current environment presents an intriguing proposition for those willing to embrace this strategy.

> *"By reviewing Dot Plots from the past, we can see that the Fed has often been incorrect when predicting the future level of interest rates — but rarely have they been wrong on the direction of interest rate changes"*

The Federal Reserve's role: reviewing FED forecasts

Multiple times a year the FED governors meet to discuss the economy, inflation, and set the overnight Fed Funds Rate. In addition to this, they produce one of the most fascinating documents called the "Dot Plot". By reviewing Dot Plots from the past, we can see that the Fed has often been incorrect when predicting the future level of interest rates — but rarely have they been wrong on the direction of interest rate changes. This makes sense as they are the rate setters.

Even pre-pandemic with inflation in the "1 per cent area" the Federal Open Market Committee (FOMC) members predicted that the overnight rates would rise in 2021, 2022, and "longer term" with 2023 and onwards looking to have rates around 2.5 per cent. Now, of course, we know the rate is over 5.25 per cent, so they got the level wrong, but not the prediction of a marked increase in rates.

fig.1: Dot plot from 11/12/2019 *source:Bloomberg*

What are the FOMC members saying now?

Three and a half years after fig.1 was published, the FOMC is now saying rates will be lower in 2024, 2025 and “longer term.” Carrying out a median projection, the FOMC says that rates will be 1 per cent lower in 2024, down another 1 per cent or more in 2025, and down over 50 per cent to 2.5 per cent in the longer term (2026 and beyond). It is this anticipation of interest rate cuts from the Federal Reserve that has added fuel to the debate around extending duration, and with that debate comes significant opportunities.

While the Federal Reserve aims to balance economic growth and inflation, their own predictions of lower rates will eventually spread to market participants. As investors start believing future rate cuts could be on the horizon, they will reallocate their fixed income portfolios. The potential for lower rates in the future provides additional motivation for investors to consider extending duration now to lock in the higher yields currently available.

“While the Federal Reserve aims to balance economic growth and inflation, their own predictions of lower rates will eventually spread to market participants”

fig.2: Dot plot from 14/06/2023 *source:Bloomberg*

What are the risks?

Despite the potential advantages, extending duration is not without its risks. Interest rates are notoriously difficult to predict, and unforeseen economic events could delay near-term rate cuts and impact the efficacy of this strategy. Since longer-dated bonds tend to be more sensitive to interest rate changes, if rates were to move higher in the short term, bond portfolio valuations would also fall in the short term. Captives must carefully assess their risk tolerance and balance short-term needs for cash to pay claims and take their anticipated cash flow needs into consideration before committing to this approach.

Can bonds ever achieve equity-like returns?

Account executives from captive managers and captive owners who have met me recently heard me say: “This is the first time in 20 years I have been able to say the bond market looks attractive.” I’ve been saying this because one of the most appealing aspects of extending duration is the possibility of achieving equity-like returns within the fixed income market.

As interest rates begin to fall, and market conditions evolve, the potential for long-term capital appreciation becomes more evident. By taking advantage of the current environment and locking in higher rates, captives may well find their bonds trading at premiums to par or making up significant discounts — given the average intermediate-term portfolio owns bonds priced at about 88 cents on the dollar. As such, bond investors could well position themselves to capitalise on potential gains in the years to come.

Diversification

Diversifying a bond portfolio is essential for mitigating risk and achieving a balanced investment strategy. While extending duration can be a valuable tactic, it should not be the sole focus. Investors should consider a mix of bond maturities, credit qualities and sectors to ensure a well-rounded approach that aligns with their risk profile. Given the complexities of the financial landscape, and the large number of issuers and issues in the fixed income markets, seeking professional advice is prudent before making any significant investment decisions.

As the bond market experiences shifts and future interest rate cuts become more likely, the strategy of extending duration in bond investments holds significant promise. By seizing the current opportunity to lock in higher yields by extending duration, captives could potentially achieve equity-like returns within the fixed income market, positioning themselves for resilience and growth in what is typically the largest allocation in their investment portfolios. As with any investment strategy, careful consideration of risks, diversification and professional guidance is paramount. In an environment characterised by uncertainty, the decision to extend duration should be driven by a thoughtful assessment of current and near-future cash needs for your captive, as well as an ability to take on the increased risk as a concomitant with longer-duration bonds. ■

What to expect

Moyagh Murdoch gives CIT a preview of this year's European Insurance Forum

Insurance industry leaders from around the world will join together for a dynamic exchange of ideas to shape the future of the captive industry at the relaunch of the European Insurance Forum (EIF).

The forum, which will be held on 12 October, will take place at Printworks, Dublin Castle, Ireland.

Under the overarching theme of 'A New Era for Insurance,' this year's forum promises to be exceptional. We have carefully curated a line-up of influential speakers and industry experts who will delve into the most pressing challenges and opportunities faced by today's insurers.

Organised as a pivotal initiative, under the Government's Ireland for Finance Strategy, EIF will be the flagship event for the Irish, European and international insurance community.

Inspired by keynote speakers Irish Minister for Finance Michael McGrath and Charles Brindamour, CEO of Intact, industry experts and thought leaders will discuss the challenges and opportunities for the insurance industry while showcasing Ireland's outstanding role as Europe's leading international hub for insurance. These discussions aim to create a roadmap for our industry as we embark on a new era of transformation and risk.

Geopolitical risk and macroeconomic pressure, climate change and digital transformation are exposing businesses and consumers to unprecedented levels of uncertainty. Mastering this situation, and shaping a prosperous and positive future, unites many industry participants, politicians, economies and societies.

Beyond the formal discussions, EIF will facilitate networking and collaboration among industry stakeholders. Government officials, regulatory bodies, insurers, reinsurers, captives and service providers are invited to share experiences, forge partnerships and identify opportunities for mutual growth. These interactions are expected to spark new ideas and initiatives that could reshape the insurance landscape.

EIF 2023 is, therefore, more than just a conference, it is a confluence of ideas that will help to shape the future trajectory of the insurance industry. Set against the majestic backdrop of Dublin Castle, attendees can engage in thought-provoking dialogues, innovative brainstorming sessions and collaborative networking opportunities.

As participants explore pivotal topics, they will be able to envision the future of insurance and work collectively to build a more resilient, responsive and relevant industry.

EIF 2023 will see the return of the Irish flagship event after a four-year break due to the COVID-19 pandemic. Ireland is one of the leading international markets for (re)insurers and captives, servicing customers in more than 100 countries.

The special environment that Ireland offers to captive insurance and reinsurance undertakings — as well as captive managers — takes a prominent role in EIF.

One of the highlights of this year's agenda will be 'Captives in a new era of competition' provided by Lorraine Stack, managing director at Marsh Captive Solutions.

"EIF 2023 will see the return of the Irish flagship event after a four-year break due to the COVID-19 pandemic"

In its previous years, EIF gathered outstanding speakers, such as Denis Kessler, former chair of the board and CEO of SCOR SE, as well as Thomas Buberl, CEO of AXA Group, who presented insights into the future of our industry for (re)insurers and captives.

EIF 2023 will be yet another opportunity to gather the industry, regulators and political decision-makers.

Join us to be a part of these discussions. ■

For further information on the event and to book tickets, please visit our dedicated event website at https://www.europeaninsuranceforum.com

Moyagh Murdock
CEO
Insurance Ireland

Murdock took over her current role from interim CEO Gerry Hassett in April 2020. Previously, she served as the CEO of Road Safety Authority (RSA), a position she started in February 2014. Prior to joining the RSA, she worked as chief operating officer for Bus Éireann. In 2007, Murdock became deputy chief mechanical engineer and was responsible for fleet maintenance and garage operations. She is originally from Newry, County Down, Northern Ireland and is now based in Dublin.

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Arch Re promotes Doughty and Soares

Arch Reinsurance (Arch Re) has promoted Crystal Doughty to chief underwriting officer, property and William Soares to chief underwriting officer, casualty.

Both will report to Jerome Halgan, CEO of Arch Re.

Doughty joined Arch in 2021 as senior property underwriter and has been leading several of Arch Re's insurance-linked securities initiatives. Previously, Doughty spent 15 years with Markel in various underwriting and actuarial roles.

Since joining Arch Re in 2006, Soares has held a variety of senior underwriting roles. He most recently served as head of casualty and specialty.

Matthew Dragonetti, president of Arch Re, will also expand his existing responsibilities to include leading client-centric initiatives across Arch Worldwide Reinsurance Group.

Dragonetti helped found Arch Re in 2001 and has been its president and head of property since 2017.

Pierre Jal, who serves as global chief underwriting officer for Arch Re has assumed the additional role of chief underwriting officer for Arch Reinsurance Europe (Arch Re Europe).

Based in Zurich, Jal will oversee underwriting strategy across both Arch Re and Arch Re Europe.

Halgan comments: "I want to congratulate Crystal and William, both of whom have been critical to the success of Arch Re. I am looking forward to working with them as we strive to meet the needs of our customers and grow our Bermuda platform."

He adds: "I am also excited to draw on Matt's and Pierre's experience and leadership as we advance several strategic initiatives across the reinsurance group." ■

Sompo International (Sompo) has appointed Angela Weiss as head of property and energy insurance for Continental Europe.

She will be based in Zurich and will report to Ralph Brand, Sompo's president of Continental Europe Insurance.

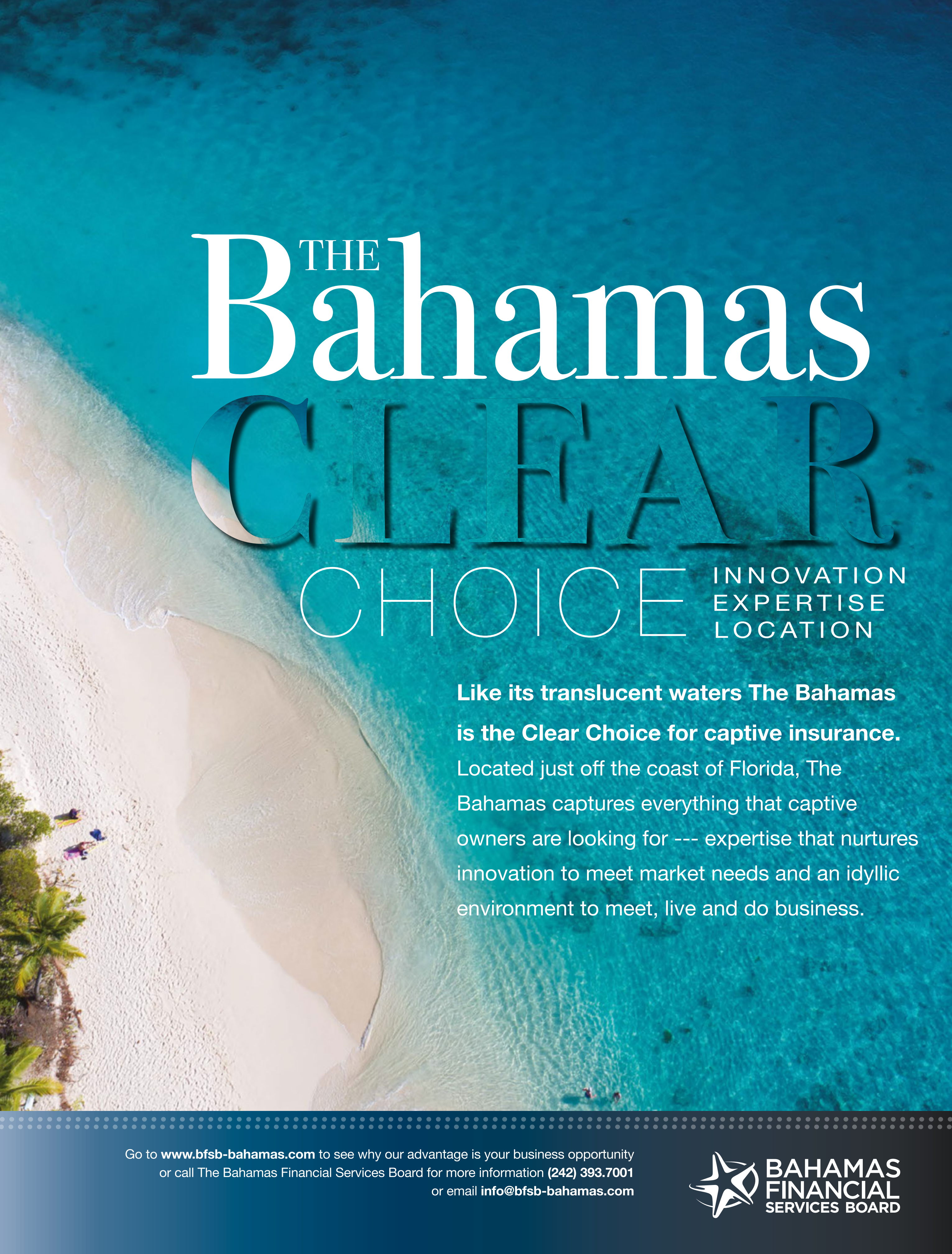
Weiss joins Sompo from Zurich Insurance where she was head of underwriting property, engineering lines and marine for Switzerland and international Austrian business. Her previous experience includes various leadership and underwriting roles in property, energy, engineering lines, marine and risk engineering at Zurich Germany, AXA and FM Insurance.

Commenting on the appointment, Brand says: "We're continuously investing in our property and energy offering for Continental Europe where we see a growing demand for market expertise and capacity.

He adds: "Angela's in-depth industry knowledge and broad experience, combined with her extensive network within the insurance community, make her the ideal person to lead our ambitions in this important field and build a strong team across Continental Europe."

The Vermont Captive Insurance Association's (VCIA) director of membership Janice Valgoi and director of finance Peggy Companion are set to depart at the end of the year.

Valgoi has served in the position for more than 10 years. Prior to joining VCIA, she was a project manager for Delaney Meeting & Event Management in Vermont. Previously, she was in the hotel business for 20 years.


THE Bahamas
CLEAR
CHOICE
INNOVATION
EXPERTISE
LOCATION
Like its translucent waters The Bahamas is the Clear Choice for captive insurance.
Located just off the coast of Florida, The Bahamas captures everything that captive owners are looking for --- expertise that nurtures innovation to meet market needs and an idyllic environment to meet, live and do business.
Go to www.bfsb-bahamas.com to see why our advantage is your business opportunity
or call The Bahamas Financial Services Board for more information (242) 393.7001
or email info@bfsb-bahamas.com
BAHAMAS FINANCIAL SERVICES BOARD

NFP RISC welcomes Amanda Wescott

NFP Risk & Insurance Strategy Collective (RISC) has appointed Amanda Wescott as vice president, director of captives operations.

Wescott will continue to be based in Vermont and will be responsible for the oversight and growth of US team members within NFP's captive operations.

She will collaborate with Kara Tencellent and Tracy Stopford, co-leaders of NFP RISC, along with Jonathan McKenzie, head of NFP RISC's US captive management operations.

Wescott will also be responsible for managing and growing captive businesses in its US and offshore domiciles.

She has more than 15 years of account management and leadership experience.

Wescott joins NFP RISC from Marsh, where she served as vice president for four years. Prior to that, she worked as a senior account manager at Willis Towers Watson for four and a half years.

Commenting on her appointment, Wescott says: "I feel fortunate to bring my industry experience and knowledge to this talented and dynamic team. With a foundation and shared vision for growing the captive practice, we will further differentiate the value we offer to clients, colleagues and industry service professionals we work with closely." ■

Companion has worked in her current role for over 15 years. She is responsible for all financial proceedings of the association and is the staff liaison for its finance committee.

Before moving to Vermont, Companion was based in Florida and held a position at investment management company Merrill.

The VCIA is currently hiring for Valgoi's role, giving the application deadline of 15 September.

Commenting on Linkedin, Francis McGill, says: "We are grateful for their tremendous contributions to VCIA and the entire captive industry. They truly represent the good nature that's found in so many captive professionals."

Michael Carey has rejoined RH CPAs as senior audit manager.

Based in North Carolina, Carey previously worked at RH CPAs in the same position from 2019 to 2020. He brings more than 20 years of auditing and management experience to the role.

Carey returns to RH CPAs from CBIZ MHM, where he also served as senior audit manager.

Prior to that, he worked at Cherry Bekaert for ten years, spending the first six at Thomas, Knight, Trent, King and Company, before it was acquired by the former.

Commenting on Linkedin, Leon Rives, chief visionary officer at RH CPAs, says: "Super excited to have Mike rejoin our team. His leadership and experience from insurance to government sets the stage for continued team growth!" ■