

STILL THE BEST

Katie Kelly, of PwC, analyses the influx of captive origination to Bermuda from Latin America, measures the BDA have taken to unify Bermuda's service providers, and why it is still a premier jurisdiction

Since 2011, the number of captive insurers registered in Bermuda has remained relatively stable (775 at 31 December 2016). A 10% decrease between 2011 and 2016 has been largely offset by growth in Special Purpose Insurer incorporations. In the face of significant competition from over 25 global domiciles, some of whom are offering incentives or attempting to capitalise on negative press aimed at offshore domiciles, this can be considered a success for the Bermuda market.

In order to grow these numbers, over the past few years, attention has been paid to the Canadian and Latin American markets. However, since 1 January 2015, based on statistics published by the Bermuda Monetary Authority (the Regulator), at least half of new captive insurance companies continue to originate from the traditional US market, while approximately 15-20% are from Canada and Latin America. Let us evaluate the state of play in each of these markets.

Canada

The tax information exchange agreement (TIEA) signed between Canada and Bermuda in 2010 provides Bermuda with a further competitive advantage against other jurisdictions – specifically Barbados – which was the traditional offshore domicile of choice for Canadian companies.

Canadian companies' preference for Barbados was mainly due to their Income Tax Agreement. That agreement means that a Barbados affiliate is classified as a "foreign affiliate" of a Canadian parent, resulting in dividends that are remitted to Canada from Barbados being considered "exempt surplus" in Canada and so non-taxable according to Canadian laws. These rules mean that a Canadian company would pay a normal rate of tax in Barbados and be allowed to remit the remainder to Canada tax-free. The TIEA levelled the playing field

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with regards to exempt surplus.

As a result, Bermuda did see some of the largest Canadian companies, particularly in the oil and gas and mining sectors, move their captive to, or set up captives in, Bermuda. This was particularly noted where access to the reinsurance market was important to the company's insurance programmes. These were big wins for Bermuda. However, there is not the same volume of similar Canadian companies to generate a large number of new captives as Bermuda has seen from the US. For smaller Canadian companies that had captives, their tenure in Barbados was often lengthy and, where reinsurance market access was not important, there would be no perceived benefit to moving.

Nonetheless, the impact of the Solvency II equivalence process in Bermuda, that brought with it significant scrutiny by the European Commission, has reinforced Bermuda's profile as a world-class regulated domicile. This has generated increased and renewed interest in Bermuda, in particular as a result of focused attention on Canada-Bermuda relations by the Bermuda Business Development Agency (BDA) and Bermuda industry representatives. Consequently, the group/association captive

market is starting to see activity, with construction and auto dealership groups being among the first to look to Bermuda as an answer to their risk management needs.

Latin America

For the same reasons that Bermuda became the world's largest captive domicile, it makes sense that Latin American companies consider the island as a key option when considering alternative risk management strategies. From 2012 to 2014, there appeared to be a "flurry of activity" with captives of Latin American parent companies establishing in Bermuda. However, while incorporations continue, it has not perhaps been at the same brisk pace first seen.

The industry continues to pursue Latin American business and the in-place or in-progress tax agreements with Mexico, Brazil, Argentina and Chile reflect this desire. It remains the belief of industry participants that ongoing investment in the relationship will reap rewards. Versus other countries, Colombia has seen the most captive growth. It has successfully navigated its internal regulations and its risk managers are well educated in captives and their structure, primarily due to high profile oil and gas companies having led the charge some ten years ago. It is expected that the growing economies of Chile and Peru, among others, will join Colombia as success stories for the captive market.

But why has progress been slower than hoped in other countries?

The regulations in each country are different regarding non-admitted coverage and reinsurance. Often, governments limit the number of permitted insurance carriers. Further, when a captive is not rated and registered in the policy-issuing country, the captive may require a single or double locally-registered fronting agreement to place business in it. The largest Latin Amer-



ican companies (mainly in the banking and oil and gas sectors) have formed captives in Bermuda; however, the cost and administration of these requirements can be a barrier to mid-tier or family-owned companies. Additionally, smaller company structures, while still seeking sophisticated risk management solutions, need to be comfortable with Bermuda as a domicile to be associated with. They must be certain that a Bermuda subsidiary will not be negative to its reputation, especially in light of other offshore jurisdictions undergoing recent scrutiny. The Solvency II process has helped Bermuda's position in the Latin American market in this respect.

Lastly, once the pending tax agreements are finalised, it is expected that increased activity will follow. It may also be the case that as more success stories are shared by Bermuda-based captives, showing the benefit of navigating the intricate internal licensing requirements and regulations, that the risk management teams (supported by brokers) considering whether to establish their captive take the step forward to do so.

Bermuda and the US market

The US has always been the biggest source of captive business for Bermuda but now its states are seen as some of Bermuda's biggest competitors. Principal among these is Vermont. As at August 2017, the Vermont Department of Financial Regulation's Directory of Licensed Captives included approximately 600 companies. 2015 saw 33 new captives and 2016 had 26 (including re-domestications).

“Bermuda has shown an ongoing change agility”

So, does Bermuda need to do more to compete against Vermont and the other US domiciles (Utah, Delaware and Nevada being among the largest)? Perhaps it does. While Latin America and Canada remain very strong and active opportunities, perhaps we need to remember our historic partner and refocus on reminding US companies why Bermuda is the best captive domicile.

Credit for Bermuda's continued strength and ability to compete against these jurisdictions must be given to the key industry players, including the Regulator. Bermuda is considered to have a first-class professional infrastructure. All service offerings are available on-island and each has captive specialists. This infrastructure is one of the primary reasons Bermuda remains able to attract business from the US (particularly those companies with multi-national presence). Further, the Regulator continues to be regarded as very accessible to its registrants as well as potential investors. It is consultative with the private sector and this has ensured appropriate and proportionate levels of oversight of captives. The overall speed to market is also considered to be comparatively quick, while remaining a robust process.

Since its establishment in 2013, the BDA has been helping the industry “go to mar-

ket” as one team in other jurisdictions. No longer do individual companies travel to overseas conferences to represent their individual needs, rather representatives from each of the service providers in Bermuda attend as part of a combined BDA delegation. At the RIMS annual conference in Philadelphia in April 2017, over 30 representatives from the Bermuda industry and government were in attendance as part of the BDA's team. This truly highlights the collective power of the experts and providers in the domicile.

Bermuda has shown an ongoing change agility. A continued focus on innovation, such as employee benefit and cyber risk coverages, as well as its integration with the reinsurance market stand it in good stead. Attention to the group and association space is also important.

Bermuda should also take credit for its very successful and established segregated cell company infrastructure as well as its expertise with medical malpractice captives. Other jurisdictions may present themselves as leaders in these area, however Bermuda is long established as a front-runner here.

In closing

With continued focus on innovation, Bermuda's longstanding success areas, as well as through a unified approach to all three markets, Bermuda will continue as the number one captive domicile. The captive contribution to the Bermuda economy is significant and one that all parties should continue to work hard to preserve and nurture and continue Bermuda's vital contribution to the global risk markets. 