

GCP INSIGHTS

A GLOBAL CAPTIVE PODCAST PUBLICATION



BACK IN FASHION

Captives are cool again as a new generation of companies embrace self-insurance

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ABOUT RICHARD

Richard Cutcher was Editor of *Captive Review* magazine from 2014 to 2018, building relationships with all the major stakeholders in the global captive insurance market from large corporate risk managers and regulators to leading captive consultants, legal experts and (re)insurers. In 2019 he joined the UK's risk and insurance management association, Airmic, where he took on leadership of the Association's Captive Special Interest Group.

In March 2019 Richard launched the *Global Captive Podcast*, supported by legacy specialists R&Q. In less than two years GCP has grown into the go-to resource for timely and highly relevant interviews with high profile captive figures. Captive owner interviews are a staple of the regular episodes, while high quality thought leadership is provided by a select and diverse group of leading firms and domiciles serving the captive market.

The launch of quarterly e-magazine *GCP Insights* is the natural next step for GCP as original, fresh, written analysis of the captive market is desperately needed at a time of great disruption and opportunity for our sector.

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**DILIGENT ANALYSIS OF
THE GLOBAL CAPTIVE
MARKET IS NEEDED
AT A TIME OF GREAT
DISRUPTION.**

WELCOME TO GCP INSIGHTS

Captives are cool again. And by cool, I mean back in fashion, talk of the town and top of mind for corporates of all sizes and from all sectors around the world. If it was previously in doubt whether captives are fit for purpose, take a look at our *Notable Captive Formations* breakdown on pages 14 and 15.

We've known for some time that existing captives, embedded into the insured's risk financing strategy, have continued to grow their premium and assets under management even through a prolonged soft insurance market. This hard market, however, and boy is it hard, is serving to give a whole new generation of companies and emerging sectors the extra shove they needed to embrace formal self-insurance. Cannabis, crypto and e-cigarettes are three of the more standout business areas to embrace captives this year, but an NFL team establishing a captive in their home state is pretty striking too.

Elon Musk's SpaceX formed Final Frontier Insurance LLC in Washington DC in 2016, but *GCP Insights* understands a single parent captive for Tesla is not on the cards. While the high-profile electric car company appears to have held a beauty parade with all the major captive consultants about alternative risk transfer options during 2020, Musk and his advisors remain deeply sceptical about the business of insurance. Musk's ambition to offer his own insurance products direct to Tesla customers, however, appears to have taken a further step. The Malta Financial Services Authority issued a licence to Tesla Insurance Ltd in October to write a host of third-party lines including motor vehicle liability, general liability and accident.

In reality, the examples highlighted above and in the following pages are just a few small snapshots of really exciting activity happening across the alternative risk transfer space. We're two years into a hard insurance market, not to mention a pandemic that has had lasting impacts on the way companies do business and risk is viewed, and this perfect storm has only strengthened the captive proposition.

State of play

So why am I telling you all this? *The Global Captive Podcast*, launched in March 2019,

provided an opportunity to take a step back from the day-to-day of captive journalism and form a broader view of the trends and activity in the international captive sector. With the fast-hardening market, which really began to show in early 2019, and the pandemic, the timing was illuminating.

For the majority of my five years as Editor of *Captive Review* magazine, the market remained soft and most of the headlines were dominated by 831(b) controversies, the impact of Solvency II in Europe and increasing scrutiny from the OECD's Base Erosion and Profit Shifting (Beps) project. As captive formations flattened, the traditional offshore captive centres of Guernsey, Bermuda and Cayman prioritised other growth areas, such as insurance-linked securities (ILS) and pension longevity transfers.

The European Union's favoured captive domiciles of Luxembourg, Dublin and Malta saw numbers of active captives remain flat or even decrease as they struggled to adapt to Solvency II. The 2016 Brexit vote also ensured European insurance supervisors were kept busy by seeking to attract and facilitate the large commercial carriers' need for new European headquarters.

The Asian market continued to promise growth, but the number of new formations in Labuan and Singapore remained modest. The United States was the one market where significant captive growth continued, but even that was stunted in 2017 and 2018 as the Internal Revenue Service (IRS) raised the temperature in its efforts to unmask and punish abuse of the tax election.

A new captive landscape

But the landscape has shifted considerably in the past two years. Scrutiny of 831(b) abuse rightly continues, but the hard market has re-emphasised the case for captives, large and small, and has been a reminder of their value for anyone who needed it. They are unlikely to say it publicly, but a number of captive consultants, particularly in Europe, have told me they've had to refrain from "I told you so" as clients, who went through captive feasibility studies four or five years ago only to decide against formation as commercial rates remained low and reducing, return to the proposition as skyrocketing renewals begin to bite.

Captive consultants and managers in all markets have been rushed off their feet throughout 2020 and the formation statistics, set to emerge over the coming weeks, will demonstrate rapid growth. But expectations in the EU should remain low for now. The real activity, in terms of new captives formed, is much more likely to materialise in 2021. The formation process is much slower in EU domiciles and there is less urgency to complete by year-end compared to the US.

The European market has been buoyed, however, by EIOPA's comments on increased proportionality under Solvency II that could be introduced later in the year, while the French government has indicated it will introduce its own captive regime in early 2021. Both these developments are discussed in our *News Roundup*.

So this new, more positive and thriving captive landscape requires more substantial reporting and analysis. Which companies are forming new captives and why? What is the next stage of evolution for the largest and most sophisticated captives? Which domiciles will prove most popular and fit for purpose as a new generation of captives are formed? What role does the traditional market and ILS have to play in supporting the growing size of established captives?

GCP Insights, in the form of this new quarterly e-magazine, will strive to explore all of these questions and more throughout 2021. Join us by subscribing, for free, to the magazine and the *Global Captive Podcast* to ensure you never miss a new release. ■

“
*Consultants have
been rushed off
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NEWS ROUND UP >>>

French captive regime expected in 2021

France's Ministry of the Economy and Finance is developing a legislative and legal framework to create a more welcoming environment for captive insurers domiciled in France.



Historically, French organisations have typically utilised Ireland, Luxembourg, Switzerland and Malta for their captive insurers with the former two regulating the majority.

Five existing captives are thought to currently be domiciled in France, including AXA Global Re and a captive formed in early 2020 for payment services giant Worldline Group. The French Association for the Management of Corporate Risk and Insurance (Amrae) has long campaigned for a more captive friendly regulatory environment in France and GCP Insights understands the Association is optimistic about the latest signals from the government.

Speaking on [GCP #45](#) in December Fabrice Frere (pictured), managing director within global risk consulting for Aon in Luxembourg, said he would welcome the addition of France to the options of domiciles in Europe, but the French Prudential Supervision and Resolution Authority would have to prove itself as a reliable, long term partner of captives.

"The approach of the regulator, the proportionality given to captives, the facility given to captives to have an outsourced model and the governance framework that will be imposed," Frere said. "All of those elements will be key to determine how competitive France is as a captive domicile and how easy it is for French clients to set up their captives in France."

Any French captive regime would have to follow Solvency II as all EU jurisdictions do, but the ability to build up equalization reserves could be adopted making it more comparable to Luxembourg as a captive domicile. Regarding the potential for existing French-owned captives domiciled elsewhere to consider re-domesticating in the future, Frere said he did not believe there would be a rush to do so.

"Some of the clients are in specific domiciles for specific reasons. For example, in Dublin being able to write direct across Europe and access to the United States is driving a lot of the activity there, in Luxembourg being able to build eligible capital when you have very high catastrophe risk exposures," he added. "France will be on the list in the domicile comparison and when clients are assessing their strategic options, depending on what they want to do from a risk management and insurance underwriting perspective, we will have to compare France to some of the other options to make a decision."

Guernsey begins 48 hour pre-authorisation pilot for cells

Guernsey has significantly reduced the set-up time for mono-line insurance cells in an effort to facilitate the growing demand for captive solutions. The Guernsey Financial Services Commission (GFSC) introduced the pre-authorisation for the creation of new cells within existing protected cell companies in December 2020. The pilot is expected to run until the end of 2021.



Artex was the first manager to complete a new cell formation under the scheme and *GCP Insights* understands several other managers are set to utilise the pilot in the coming months.

The Guernsey International Insurance Association (GIIA) contributed to the consultation with the GFSC to introduce the scheme.

"Because we're coming out of this period where captives haven't necessarily been flavour of the day, people are going through what is quite an educational process at the same time they start their renewal process," Pete Child (pictured), head of European operations and managing director at Artex, said on [GCP #45](#) in December.

"Quite often there was not sufficient time to be able to grasp what the captive concept meant, be able to allocate the finances and the time to set up a captive vehicle and then take advantage of that at renewal."

Child said as a result often the client would run out of time and have to put off formation for 12 months or not complete at all.

"What we wanted was a solution that made the cell captive a fundamental and realistic alternative to the traditional, whole risk transfer renewal all the way up to as close to the renewal as possible," he added.

The scheme is only open for protected cells within an existing PCC that is owned by a licensed insurance manager. Only cells that are writing a single line of insurance qualify.

"Insurance managers in Guernsey are licensed," Child said. "Therefore if a manager was to go through this process and there were some unwanted ramifications then that insurance manager is putting the whole of its business in jeopardy, because the GFSC, if it chose to do so, could impose restrictions on its licence or remove its licence."

Captive associations raise concerns over TRIA changes

Captive insurance leaders in the United States have submitted comments to the Treasury Department outlining concerns about changes proposed to the participation of captives in the Terrorism Risk Insurance Program (TRIP). The Terrorism Risk Insurance Act (TRIA) was originally introduced in the aftermath of 9/11 and has been reauthorised through to 2027. It provides a federal backstop for captives writing eligible lines of terrorism insurance.

On 10 November 2020 the [Treasury requested comments](#) in response to questions it posed regarding captives ongoing access to TRIP. Concerns from the Treasury include whether captives are likely to obtain larger payments under the Program compared to traditional insurers, if captive parent revenues should be attributed for TRIP deductible purposes, and to what degree information on participating captives should be made public.

The Captive Insurance Companies Association (CICA), the Vermont Captive Insurance Association (VCIA) and the Captive Insurance Council of the District of Columbia (CIC-DC) submitted their comments on 11 January. They pushed back on many of the suggestions in the Treasury document.

With regards parent revenues being taken into account, the letter stated: “Such a change could make terrorism insurance provided by a captive insurer unaffordable for many insureds, thereby reducing capacity for terrorism insurance and threatening the stability of the market.

“We note that captive insurers, like other insurers, are required by state regulators to set premium rates in accordance with accepted actuarial principles and maintain the financial capacity to pay expected claims, including claims for losses resulting from terrorism. In addition, captive insurers have less access to

reinsurance for terrorism risks than large, conventional insurers because they do not have the same spread of risks as these larger entities.”

The associations also stated they saw “no justification” for the Federal Insurance Office to make public the financial information of captives participating in TRIP. “Singling out captive insurers for the disclosure of sensitive information would be detrimental to TRIP and contrary to the purposes of TRIA,” the letter explained.

“Congress intended to maintain the confidentiality of information reported by insurers, including captive insurers, in response to TRIA data calls by having a statistical aggregator collect the information and provide it to the Secretary of the Treasury in aggregate, anonymized form or otherwise in a manner that would protect the confidentiality of insurers submitting such information. Even if TRIA granted authority to the Secretary to disclose confidential information provided by captive insurers, we can see no benefit to be derived by doing so. Indeed, we are concerned that disclosing such information in anything other than an aggregate, anonymized form could present a security risk to policyholders who purchase terrorism insurance from captive insurers.”

Dan Towle (CICA), Rich Smith (VCIA) and Joe Holahan (CIC-DC) signed the letter and Towle said: “Captive insurers have played a critical role in achieving the market stability TRIP was designed to ensure by providing insurance for terrorism risks for which coverage from other insurers is insufficient or unavailable.”



Switzerland the latest addition in SRS Europe expansion

The continued expansion of SRS Europe has reached Switzerland with the first of three new hires in the country beginning work for the independent captive manager. Twenty-eight captives are currently domiciled in Switzerland, including entities owned by Rio Tinto, Shell and Nestle. Self-management is common in Switzerland, but Aon is the dominant captive manager in the jurisdiction.

GCP Insights understands SRS' Guernsey operations are set to move up a gear in the coming months with a captive management licence, the formation of a PCC and new hires on the horizon.

The independent captive manager has also ramped up formation activity in Malta, including the formation of a protected cell for Griffin, a professional indemnity mutual providing cover for intermediaries and MGAs. The establishment of a cell within Atlas Insurance PCC will enable Griffin to issue pan-European policies post Brexit. A single parent application for a Spanish agricultural business is also pending in Malta.

Delaware adds 70 licences in 2020

Delaware's Bureau of Captive & Financial Insurance Products issued 70 new licences in 2020, including 42 series captive insurance companies. Of the 70 new licences, 67 took advantage of the conditional licence application procedure that was introduced in 2018.

The conditional licence application authorises a captive to begin conducting business while the Commissioner completes the review of application materials, which must be accompanied by evidence of the minimum capital and surplus required.

As well as 40 new series captive insurance companies (similar in structure to protected cells), 25 pure, two special purpose captives, 25 pure and one individual cell were licensed.

Speaking to *GCP Insights* Steve Kinion, director of the Bureau, said the hard market had been a significant driver of new business and noted there was growing interest in captives insuring Side B and C D&O exposures.

“The D&O market has driven some new captive formations in Delaware,” he said. “These are not small captives. They are large businesses that are increasing the self-insured retention and using the captive to finance it.”

NEWS
ANALYSIS

EIOPA proposes improved proportionality for captives under Solvency II

Lorraine
Stack

Some captive insurers domiciled in European Union member states may be set for greater proportionality under Solvency II after the European Insurance and Occupational Pensions Authority (EIOPA) published an opinion in the latest stage of review of the insurance directive.

Solvency II came into effect across the EU on 1 January, 2016 with the captive insurance market largely disappointed in their efforts to achieve a significant degree of proportionality for the self-insurance vehicles. This latest review by EIOPA has provided an opportunity for further progress to be made and the first responses are relatively positive.

Fabrice Frere, managing director within global risk consulting for Aon in Luxembourg, and Lorraine Stack (pictured), international advisory and sales leader at Marsh Captive Solutions, both welcomed the development.

"We welcome the fact that captives are on the EIOPA agenda and the stated intent to reduce governance burdens and apply proportionality principles under Solvency II is a fundamental milestone," Stack told *GCP Insights*. "The stand out comments for us relate to the potential for reduced reporting, and disclosure limitations which may be available for certain captives."

Speaking on [GCP #45](#) Frere said the dialogue between FERMA and EIOPA has been much more productive in the past 12 months than it was when debating the development of Solvency II in 2013 and 2014.

"The discussion has been much more open, there is clearly a better understanding of the captive business model, recognition that captives are specific frameworks that need specific rules, but also enable more proportionality than others," he added.

The EIOPA opinion suggests there is the potential for limitations to be introduced on the extent of reporting on areas including investments and derivatives, assets and liabilities by currency and variation analysis.

There is also a proposal for the own risk and solvency assessment (ORSA) to be submitted every two years rather than annually, while the Solvency and Financial Condition Reports could be stripped back for captives and not be required to be publicly available.

Direct impact

The proposals from EIOPA will not come into immediate effect and will ultimately need to be approved by the European Commission, but if they are implemented in their current state then the impact will vary depending on size of captive and may be more useful to new formations rather than existing captives.

Derek Bridgeman, risk consulting practice leader at SRS Europe, says it will be key for any additional proportionality made available to captives to be implemented by the local supervisors. To date, a degree of regulatory arbitrage has remained between EU domiciles.

"For instance Dublin does not apply the same proportionality to captives around regulatory reporting that Malta or Luxembourg does," he told *GCP Insights*. "In Dublin all captives, irrespective of size have been required to complete quarterly European and national reporting templates. This process impacts considerably on captive managers and owners to a lesser extent, and results in higher operating costs and resource requirements.

"Although the EIOPA review makes a number of recommendations around the reporting templates, as long as the captives are required by national regulators to report these then there will be minimal if any positives from an operational perspective."

In regards to captive management and administration costs there may not be much impact for existing clients, but new captives could benefit with the new criteria being considered at formation stage.

"If we assume that the majority of pure captives outsource the captive management then it is reasonable to assume that there will not be any reduction in management fees," Bridgeman added. "Although there were increases in the yearly management fees charged with the introduction of Solvency II, it is likely that these increases did not fully cover the additional resources and investments in technology that were required by the management companies, therefore I would think it is unlikely that the proposed changes would materially impact the operational expenses of a captive."

Stack and Frere are both in agreement that changes

to the SFCR will be welcomed by some clients, particularly if the current public requirement is dropped. "We argued from the start that captives should not be subject to the public disclosure because it doesn't make sense for captives to do public reporting," Frere said. "How impactful that is going to be in terms of true workload and costs for the captives? Probably not dramatically impactful."

Loans to parent

While some of the proposed additions to proportionality for 'low risk undertakings' will automatically be applied to single parent, first-party risk captives, there are others that appear to come with further criteria.

One stand out criteria introduced for captives to qualify is that loans to the "parent or any group company do not exceed 20% of total assets held by the captive".

Considering captives loaning cash back to their parents is a common investment strategy this is likely to be an obstacle to achieving further proportionality.

"That criteria is a good example of some of the debate we had with EIOPA around the fact that the new proportionality measures were very welcome, but they were also coming with quite a lot of complexity, in terms of who had access to them, in what circumstances and what you'd need to do to apply them," Frere said.

"In my view it is pretty clear that there is a limited number of captive owners who would reduce their intra group cash pooling to get a bit more proportionality on Solvency II because the cost of managing that cash is by no means comparable to the potential admin costs of doing one report in addition."

Adjusting an investment strategy for a captive requires a longer term outlook and Stack says a trade-off would need to be assessed and would likely deter some captives.

"While we have not discussed this with our clients yet, it is conceivable that this could lead to an erosion of capital base because captive owners might dividend out all profits and surplus cash rather than increase an existing intercompany loan," she added. "Once equity leaves captives it is very difficult to get it back so this could prove a counter-productive measure. External investments are only returning negative interest rates leading to further erosion, whilst intercompany loans tend to be profitable and have recalls built in for security." ■

"The discussion has been much more open, there is clearly a better understanding of the captive business model" Fabrice Frere, Aon

Neighbourhood Watch

In the first of his quarterly columns providing a broader perspective on the commercial market, Mark Geoghegan has a rummage through the (re)insurance world's bins and reports back with some encouraging news.

London's Covid-restricted Christmas provided a rare chance to get to know one's neighbours a little better. I don't mean in the sense of a renewed social covenant where we returned to an idealised version of the 1950s in which we all looked out for each other, arriving gaily on doorsteps unannounced, proffering baked goods and sage counsel. No, my opportunity for fact-finding fell firmly into the nosy neighbour category. Being forced to celebrate the Holiday season alone left nowhere to hide.

Recycling boxes do not lie. Gone were the apocryphal fathers-in-law and their insistence on drinking hosts out of house and home. Banished were the maiden aunts and their addiction to pungent liqueurs with strange names.

As the refuse collectors wearily began their New Year's clean-up, neither the flash nor the frugal had any excuses to hide. It was wonderful sport. And what holds true for suburban snooping also applies to global wholesale specialty and reinsurance renewals in 2020-21.

This year we found out exactly what the market's true appetites were. I am happy to report that a thorough inspection of the global (re)insurance street's refuse shows that these appetites are healthy.

The soft market excess has long gone. The pavement has not been littered with discarded jeroboams of vintage champagne since at least 2016, but there is early evidence that austerity will soon be coming to an end. Three years of rate rises, mostly in the primary insurance business, have begun to restore confidence in the underlying profitability of the overall book.

The net result is that on a global aggregated basis we are now at overall rating levels that most would be happy to maintain indefinitely. Meanwhile capital levels have recovered and are ahead of where they were a year ago.

We can also learn much from the fact that a long-flagged crunch in retro - the reinsurance that reinsurers themselves buy - was largely avoided.

The only pockets of hardness that remain are the ones you already know



very well about in the tough end of casualty insurance. Here it will still take time for capacity crunches to ease, but the core news is good.

After running scared to reinsurers for capital relief, readily swallowing harsh terms in previous renewals, the better insurers in these classes were finally happy to retain more of these risks unless reinsurers gave them sweeter deals. They are starting to regain confidence that after doubling prices and restricting cover, what they are writing now is very likely to be profitable.

A path to recovery?

It cannot be long from here to recovery. When fear ends, greed is never far away! But there is one fly in the ointment. And it's a big fat one. Ongoing Covid cover has disappeared, never to return.

Indeed, this renewal was far more about making sure that everyone was on the same page on this existential question than it was about remediating pricing levels. The industry took a look at a global systemic exposure of US\$ trillions and swiftly concluded that this was not a commercially insurable risk. The bins on the street are overflowing with discarded disease exposure.

This renewal reinsurers inspected original wordings like a bomb squad frantically searching a building for unexploded devices.

The assumption was that as 2021 works through, any underlying Covid exposure on insurance policies will expire and

that all new and renewal insurance will be applying an appropriate exclusion. Like with the disease itself the strategy is one of containment and inoculation. If you want this cover you will need to fund this yourself. It is never coming back commercially.

However, for the Covid losses already in the system from contracts on the books in 2019 and 2020 the news is somewhat better. Whilst still almost entirely comprising theoretical, incurred but not reported (IBNR), entries, the overall numbers look much more manageable than they looked before massive government aid packages and rapid vaccine development made a big dent in the most pessimistic loss assumptions.

Today Covid looks like costing the equivalent of a medium-large (US\$50-70bn) US landfalling Hurricane and one that the market expects to pay for very slowly over many years. Industry cashflows are likely to stay positive. Healthy capitalisation and relative vigour also bodes well for disputes. In a beauty parade for newly profitable business in a cashflow-positive world, no-one will want to be known as the reinsurer who didn't pay their Covid losses. The bill will be quietly eked out of profits for years to come.

So, should you be inviting yourselves around and looking for new long-term (re) insurance partners in 2021? By all means. The market is in good health and the best incumbents have further differentiated themselves. They are here for you now and have increased appetites at these more sustainable pricing levels. 2021 and 2022 should be years of continuity and increased pricing stability for consistent buyers.

And without exception the new class of 2020 neighbours who have just moved in are actually very seasoned players who know exactly what they are doing. Their pristine balance sheets may come in useful, so it is worth inviting them round soon to check them out. Lockdowns permitting, it will be time to meet the neighbours in 2021. ■

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Stepping up to the plate

The hardening insurance market dominated most conversations on the Global Captive Podcast in 2020, so how are existing captives meeting the challenge and what formation activity can we realistically expect as a direct result?

Aside from the pandemic, the hard insurance market has been the dominant conversation topic for the captive world over the past 12 months. Plenty of platitudes are shared as to it being a “good time for captives,” but captives are ultimately owned by insurance buyers. This is not a good time for them.

The Marsh Q3 Global Insurance Market Index showed commercial insurance pricing increased, on average, 20% year-on-year in the third quarter of 2020. While global property insurance pricing was up 21% and professional lines up 40% on average, casualty rates were up just 6%. These broad, global averages hide much more nasty increases in specific lines and regions, however. D&O pricing in the UK and Australia, for example, was up more than 100%, while in the US it was up nearly 60%.

This harsh market, as it is regularly termed by risk management associations around the world, is as much about late and poor communication by insurers as it is about pricing. Eleventh hour notification of reduced capacity, significantly increased rates or complete withdrawal is leaving insurance buyers with few options and difficult conversations to be had with senior management.

“We didn’t have any good experiences due to the harsh tone, lack of partnership and lack of relevance of the traditional commercial carriers and market,” Heiko Ditzel, director of risk finance & transfer at Adidas, said in November on [GCP #43](#). “Without properly explaining why increases are needed, why capacities are reduced, coverage is restricted... it is quite difficult to explain the adverse development to the C-suite level.

“We do understand the principles of insurance, but subsidising bad performing contracts, business fields, high costs or even questionable underwriting decisions cannot be simply accepted. Many insurance carriers are jeopardising well established, respectful and professional relationships, making the insurance market less relevant in the future.”

While D&O has emerged as the poster boy of particularly problematic lines during the past two years, professional

indemnity has also caused major problems for legal firms and other service providers.

“Rates for PI have gone up anywhere from 50% to 100%, but we’ve also seen the line sizes that insurers are willing to provide decrease,” said Damian McNamara on [GCP in December](#). “Overall capacity, from the insurers point of view, has decreased. We have seen instances where insurance companies have refused to take on any new business after September 2020 because they have told underwriters that they are simply going to have to renew the current book with increased rates.

“We know of certain professions that are struggling to get their basic lines of insurances placed, which of course has led to organisations investigating captives.”

“

“Subsidising bad performing contracts, high costs and questionable underwriting decisions cannot be simply accepted,”
Heiko Ditzel,
adidas

Captive response

While captive formation activity will ultimately dominate headlines that seek to analyse the long-term impact of this market cycle, the response of existing captive owners should be of equal note. If Ditzel’s attitude is shared by many of his peers (spoiler, it is!), then captives will increasingly be stepping into the fray.

Marsh’s annual Captive Landscape Report, published in September 2020, reflected premium growth between 2018 and 2019, just as the hard market was beginning to bite. An increase of approximately \$6.3bn premium was written through Marsh’s portfolio of captives during that period with the

biggest increases year-on-year coming in supply chain, business interruption and contingent business interruption (283%) and contractor/vendor P&C (117%). All-risk property premium increased by \$2.4bn (64%) and casualty lines saw an increase by \$1.5bn (14%).

“One development that we have seen from the last renewals is really an intensification of the use of our captive for protecting gaps or fronting layers of coverage in towers where premium pricing is really prohibitive,” said Laurent Nihoul, group head of insurance at ArcelorMittal, when co-hosting [GCP #36](#) in August. “Where the capacity is disappearing in the market, we use the captive to fill the gaps in the programme. It is beyond the usual

way of financing frequency on the bottom layers. We see more and more our captive being used on the top layers for capacity or to transfer some sub layers that are overpriced.”

Ditzel added that they were increasingly using the captive to try and smooth pricing volatility. “Becoming more independent from the insurance market is one important role [for the captive] going forward,” he added.

Captive utilisation stretches far outside of large multinational corporates, however, also proving invaluable to not-for-profit organisations such as EIIA, a Chicago-based membership organisation that serves the risk management and insurance needs of colleges and universities across the United States.

Mary Ellen Moriarty, vice president for property & casualty and student programs at EIIA, said spending years building a strong bench of loyal reinsurance partners in multiple markets had eased the impact of hardening rates. EIIA owns an association captive and a risk retention group in Vermont.

“We really look at the global (re) insurance marketplace for supporting our members because of the size of our risk,” she added in GCP #36. “Our property insurance programme probably has 30 to 40 underwriters on it so in today’s environment we are so blessed to have that. We try to capitalise on capacity across the globe so that if something goes really bad somewhere, we’ll have friends everywhere that can support us and help us out.

“The overall higher education market has contracted significantly so maintaining \$50m coverage per institution has been a challenge. We have been really blessed with loyal partners, but what we have asked College RRG to do is to step up and be willing to front a layer of the excess liability in the event that one of our existing partners fails. We have reached out to the reinsurance market for support for that front and we have had a nice welcome.”

Impact on formations

While the scrutiny of 831(b) captives in the United States and the slow nature of the captive formation process within the EU may dampen the formation numbers from 2020

somewhat, there is no doubt that the hard market is driving the establishment of many new captives.

GCP Insights understands the State of Vermont licensed 38 new captives in 2020, compared to 22, 25 and 24 in the three years previously. The last time it added as many new captives in one year was 2011 when it authorised 41.

While not confirmed, GCP Insights understands at least eight new captives have been formed in Singapore this year, a considerable change from the regular one or two new licences issued there in recent years. Guernsey, Europe’s largest offshore jurisdiction, has seen a considerable uptick too.

Speaking on [GCP #45](#) in December Peter Child, head of European operations and managing director at Artex, said the last quarter of 2020 was when formation activity in Guernsey really started to accelerate.

“In September, although there had been a lot of interest in the captive concept, the number of new licences remained comparatively small at the time,” he said. “In the two and half months since then, the landscape has changed. In Guernsey I know the GFSC is up to double digit figures, with many of those applications seeking to form before the end of the year. And the same is true with my experience within Europe. In Malta there are new captive applications going in at the moment.

“I suspect when we look back in 2023 at the way these licences flowed through as a result of this hardening market, we will see the peak in 2021, possibly into 2022. 2021 will be a bumper year for captive formations there is no doubt.”

Nihoul said it was logical to see a correlation between the hardening insurance market and the rise of self-financing solutions as commercial insurance becomes a less efficient tool. He is, however, concerned that some corporates have left it too late.

“Within this context, the use of captives will rise I have no doubt about that,” he added. “The question is around the timing – the hardening market has already started and you need a bit of time to fully utilise your captive. So, I hope it is not too late for some of them.”

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“The hardening market has already started and you need a bit of time to fully utilise your captive. So, I hope it is not too late for some,”

Laurent Nihoul,
ArcelorMittal



The next stage of evolution

The presence of captives in the insurance ecosystem is only going to be felt more heavily. Those promoting captives have long held up the negotiating power they can bring in renewal discussions and Ward Ching, managing director for global risk consulting in the western region for Aon, believes it is long overdue that insureds take more ownership and control of the price risk is transferred at.

Speaking on [GCP #35](#) in August, Ching outlined his NextGen Risk Finance concept, which requires the insured to utilise more sophisticated analytics, big data and benchmarking to produce a 'strike price' for lines of coverage.

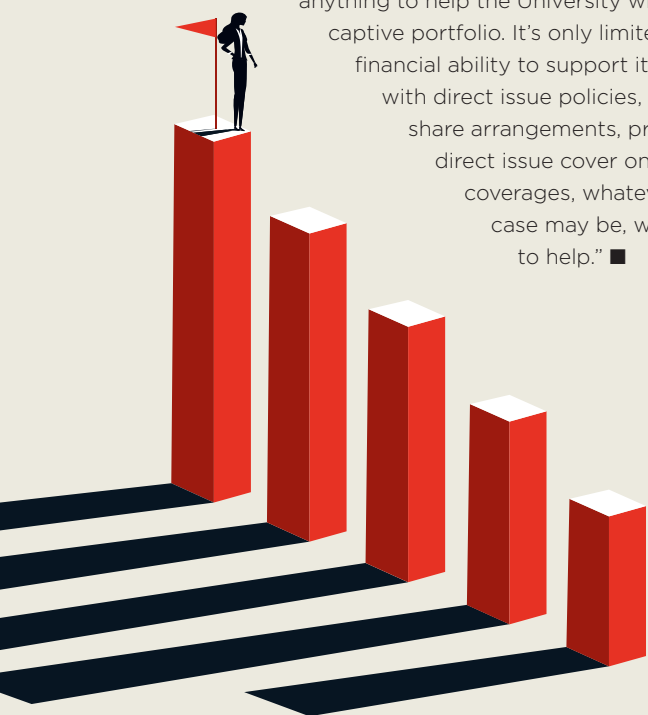
"The strike price is the price that I would be prepared to pay to myself to take that layer or retention position," he explained. "If the insurers are offering to renew with me above that price then there is no trade. If they are at the strike price or below, then there is the potential to trade. At the same time, you can establish what the strike price is for higher retentions.

"In most cases you are taking premium out of the marketplace and the question is, where do you put it? The answer is you put it in your captive. Your captive becomes a more active tool. It does what it normally does in terms of taking on premium, taking on retention etc, but it is looking opportunistically on where it could potentially play."

In a lively [GCP Short discussion in July](#) between Jason Flaxbeard, of Beecher Carlson, and captive owners Courtney Claflin, executive director of captive programmes at the University of California, and Michael Laperche, vice president of risk management at PRIDE Industries, the trio debated the best approach to defining risk appetite in a hard market.

"I believe my risk appetite is determined by the financial strength of my captive," Claflin said. "I don't create the risk and I don't manage the risk, I finance the risk. My role is to grow the captive so we can grow surplus and be turned to in a time of need.

"There is no 'appetite' because I will do anything to help the University with the captive portfolio. It's only limited to my financial ability to support it, either with direct issue policies, quota share arrangements, providing direct issue cover on excluded coverages, whatever the case may be, we are here to help." ■



D&O: The poster boy of this hard market

Historically, captives writing D&O insurance for their parents have been few and far between. While the Marsh 2020 Captive Landscape Report showed a 25% growth in D&O premium running through its portfolio of captives between 2018 and 2019, that percentage only translates to a \$12.6m increase. Until 2019, only 48 of the 1,400 captives managed by Marsh were writing D&O. Those figures are expected to grow in the next report and insureds are having to become more imaginative as to how they fund D&O exposures.

The above figures are driven by captives writing more Side B and C coverage. Side B insurance responds in the event a corporate provides indemnification to an individual that is facing a claim or investigation. Side C responds in relation to securities claims against the corporate entity itself.

"We started having a much greater number of conversations with clients in relation to the use of captives 18 months ago. It was prompted by the volatility in the D&O market, particularly in London," Beth Thurston, head of the Marsh UK management liability practice, said in a [GCP Short episode](#) released in November. "That volatility and those challenges around capacity have driven conversations in relation to how to mitigate the impact of the market conditions."

While Side B and C can be added to a captive in much the same way any other line can be and has little potential to raise conflict of interest issues, the challenge of self-funding Side A coverage is more difficult. Side A is insurance that responds in the event that there is no corporate indemnification for an individual facing a claim or investigation. As such, it must be transferred to a third party and a single parent captive is not appropriate.

In a select, but growing number of cases, this challenge has led to the utilisation of third-party cell captives to finance Side A. As of November 2020, Marsh had five clients utilising Bermuda cells for this purpose.

Lorraine Stack, international advisory and sales leader at Marsh Captive Solutions, said it was important to note the cell captive approach is a developing concept that was yet to be tested in court. Companies considering this option should also be sure to "consult with legal and tax advisors, as well as their accounting teams, to ensure that the setup will work for their organisations".

Other challenges remain around the issue of collateral, but they can be overcome. "The aggregate limit written by the cell should be fully funded and that is with a combination of premium and collateral," Stack added. "Collateral can be an LOC or potentially surety."

Abuse, scrutiny and ... light at the end of the tunnel

Abuse of the 831(b) tax election is more widespread than many want to admit, but a continuing stand-off with the IRS is not achieving much

The battle between America's captive insurance industry and the Internal Revenue Service arguably peaked on December 1, 2020 when the topic reached the floor of the United States Supreme Court. CIC Services, LLC Vs. IRS does not examine the pros and cons of the 831(b) captives, but it nonetheless represents just how little trust and cooperation exists between the sector and the Service.

It is important to separate, to some extent, the 831(b) world from the larger, 'traditional' captive market. The tax election was enacted in 1986, but it was not until 2015 that the IRS really began making a public stink about the estate planning potential.

For readers less familiar with 831(b) – it is a tax election available to non-life insurance companies that receive annual premium below \$2.3m. By making the election, the insurer is only taxed on investment income and not underwriting profit.

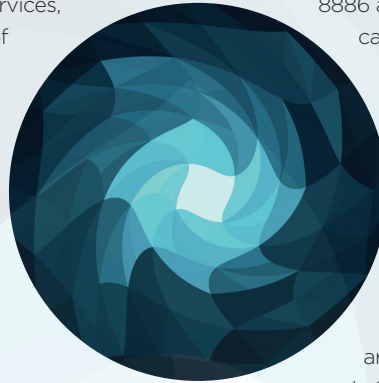
While many involved with legitimate 831(b) captives will argue the IRS has been heavy handed in its efforts to uncover abuses, few will dispute that abuse does exist. The first big win for the IRS came in 2017 when the US Tax Court found against the Avrahamis and their captive in St Kitts.

By and large, the captive industry was quick to disassociate itself from those involved – Celia Clark, the promoter and New York attorney largely responsible for it, and the disgraced actuary Allen Rosenbach.

The win only emboldened the IRS, however, which had already promised more 'promoter audits' and had issued its now infamous Notice 2016-66 which required any taxpayers involved in these "transactions of interest" to fulfil new reporting requirements.

"The administrative burden has been significant," Jeff Simpson, a Delaware-based partner at Womble Bond Dickinson (US) LLP, tells *GCP Insights*. "In addition to already having to file Forms 8886 and in some cases having to defend audits,

captive owners were peppered in 2020 with vaguely worded but clearly threatening letters from the IRS and have had to expend additional time and resources understanding whether and how they might be required to respond to those letters."



Dissolutions and perception problems

While grey areas frustratingly remain as to what constitutes a well-structured 831(b) captive, the battles and activity since have largely revolved around the reach and due process of the IRS.

In the immediate aftermath of Notice 2016-66 and the, captive managers and regulators began reporting a reduced appetite for microcaptives and between 2017 and 2019 hundreds of captives making the 831(b) tax election were dissolved or restructured. That trend continued in 2020.

"It's not just the increased audit activity and reporting requirements, it's the apparently pre-ordained conclusion of an audit," adds Simpson. "The IRS' current posture is clearly that, if you have taken the 831(b) election and are selected for audit, we intend to find against you and punish you.

"As a result, there has certainly been a chilling effect on the industry. And it is an unfortunate chilling effect because there are quite a few perfectly legitimate, non-abusive captive structures that have been closed down, and many prospective ones that have ultimately not been formed, rather than risk the cost and consequence of an IRS audit."

There are also increasing instances of captives being formed

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2020: The 831(b) saga continues

By Cassie Bachman

IRS OFFERS SETTLEMENTS AND ESTABLISHES 12 NEW AUDIT TEAMS

The IRS announced that nearly 80% of taxpayers under audit (who allegedly participated in abusive microcaptive insurance transaction) who received offer letters elected to accept the settlement terms. In addition, the IRS established up to 12 new examination teams that are expected to open audits related to thousands of taxpayers. The teams "will use all available enforcement tools, including summonses, to obtain necessary information".

January 31

March 20 & July 31

IRS LETTER 6336: THE MICROCAPTIVE "SOFT LETTER"

The Microcaptive Soft Letters puts captives who elect(ed) to be taxed under 831(b) of the Internal Revenue Code on notice that they were identified as participating in a microcaptive, there have recently been consecutive tax court rulings issued in the IRS' favour, and they are increasing enforcement activity. The Soft Letter recommended that the taxpayer seek independent, competent counsel prior to filing 2019 tax returns, and to consult on whether the taxpayer should amend prior year returns for improper deductions or tax benefits.

below the \$2.3m premium threshold with the insured opting against taking the election.

"Many clients are entering the new formations to resolve their risk management issues and forgoing the election," Dan Kusaila, tax partner at Crowe LLP, tells *GCP Insights*. "I am also seeing increased activity surrounding the dissolutions of those captives with 831(b) elections."

Simpson believes the IRS' objective has been to convince captive owners to avoid using the election. He adds: "To me, this is a tragedy because these are captive owners that clearly have a risk management business purpose and are entitled to a tax benefit that they are being discouraged from taking."

Fightback

Although the below timeline shows another burdensome year of IRS attention, the captive industry has been buoyed by the unity and collaboration on show as it backed the CIC Services, LLC case against the Service.

The Captive Insurance Companies Association (CICA), Self-Insurance Institute of America (SIIA) and 21 state captive associations co-signed an amicus brief stating that Notice 2016-66 and the associated reporting had "come at a tremendous cost to taxpayers" and while they supported "appropriate IRS actions to curb abusive practices, it objects to the unnecessary regulatory burdens being imposed on taxpayers without a formal rulemaking or appeal process, contrary to law and Congressional intent".

Dan Towle, president of CICA, and Ryan Work, vice president for government relations at SIIA, both recognised the significance of the industry coming together to fight what they perceive as overreach by the IRS.

"The significance is that this group made up the largest coalition ever of captive associations to come together for a common cause," Towle says. "This bodes well for any future advocacy issue the industry may have to face."

Work adds: "There is no doubt that the industry collaboration was a big step forward, including the fact that so many diverse organisations agreed to come to the table and support the amicus filing. I will also note that this was more than just about the 831(b) election, it helped that this was also about how federal due process, procedures and rulemaking impact the captive industry in general."

An opinion in the Supreme Court case is not expected until

the middle of 2021 at the earliest and it remains to be seen what immediate impact a win for CIC Services and the captive industry would have.

"I don't want to minimize the impact a court victory will have, but I also want to make clear that it is not going to change IRS scrutiny of captives," Work explains. "For some, there is a false sense that a court victory will change the ongoing audits, exams or IRS criticism. It will not. It could, however, change the dynamic of how the IRS can issue notices in general, and also impact certain data collection and reporting requirements for captives. That will have a material effect on the administrative burden facing the industry, but it is not going to stop the scrutiny or audits."

Simpson says its hard to anticipate the impact since it is not clear what the remedy would be should the Supreme Court find in favour of CIC. "A finding in favour of CIC would be a great moment in any event because it would confirm that the IRS has been over-reaching in its attacks on captives taking the 831(b) election," he adds.

"But it could be a victory without a benefit if the IRS can continue to rely on information it has collected as a result of Notice 2016-66. On the other hand, if the ultimate outcome is that the IRS is prohibited from challenging taxpayers on the basis of information collected as a result of Notice 2016-66, then audit activity would be considerably slowed while the IRS re-tools its approach."

Another important case that has yet to be heard is a Petition to Enforce IRS Summons, filed by the IRS against the Delaware Department of Insurance (DDOI) in June. The IRS is seeking an order enforcing a request of their summons related to an ongoing case against Artex.

Cassie Bachman, an independent legal consultant experienced in captive compliance and the state of Delaware, said that, to the extent of the applicable law, the DDOI had complied with the IRS, having provided 18,331 pages of documents on behalf of 16 captives because they were given permission by those captives. "It's not that the IRS is claiming the DDOI has not cooperated," Bachman tells *GCP Insights*. "The IRS is requesting the DDOI be forced to breach its own laws."

"There is more at stake than I believe people realise. Current precedent and law give the power to regulate insurance primarily to the states. Realistically, implications of the IRS forcing the DDOI

IRS PETITION TO ENFORCE SUMMONS ON DELAWARE DOI

A Petition to Enforce IRS Summons was filed by the IRS in the US District Court for the District of Delaware. With this petition, the US seeks an order enforcing Request 1 of the summons (all records related to their case against Artex) to the extent the DDOI has not already provided those records to the IRS, and also requiring the DDOI provide the summonsed testimony to the IRS. The case was assigned to a Magistrate Judge on October 15.

June 19

July 16

October 1

MICROCAPTIVES REMOVED FROM THE DIRTY DOZEN

For the first time in five years, microcaptives are not included in the annual IRS Dirty Dozen list of "tax scams".

IR-2020-226: ENFORCEMENT EXPANDED

The IRS expanded its enforcement focus on abusive microcaptive insurance schemes and urged taxpayers to consult with an independent tax advisor before the October 15, 2020 federal tax filing deadline.

to break their own laws could create precedent for the IRS to force other state agencies to release confidential information breaking their laws, one day perhaps beyond insurance departments.”

Getting the house in order

Another troubling aspect resulting from the 831(b) scrutiny and legal battles over the course of the past six years, is that no one still really knows how widespread the abuse is.

So, what roles and responsibilities does the captive industry have in self-regulating or rooting out the bad actors? “The industry is already in a better place than it was five years ago, I think largely due in response to IRS activities,” Work says. “However, the industry needs to continue to pay attention and put practices in place to ensure the abuse stops. It is frustrating any time an industry or group is trying to improve and strengthen actions or practices, yet some actors around it continue to skirt those intentions.

“Simply saying you are doing things the right way doesn’t mean you are actually doing things right. Now, more than ever, industry participants need to put words into actions.”

The IRS’ ongoing case against Artex Risk Solutions, Inc and Tribeca Strategic Advisors, LLC is the obvious and most high-profile example, but rumours surround other well-known regional players. Meeting one New Jersey small business owner at an event in New York in 2017, he explained that he owned two captives in Alabama. He had recently read about IRS activity concerning 831(b) abuse and was concerned that he was in way over his head.

To two respected industry professionals he met with, the structure sounded too problematic to be easily fixed and they did not want their own fingerprints on an arrangement they suspected was abusive.

In an ongoing investigation by the IRS into Moore, Ingram, Johnson & Steele, LLP (MIJS), which also operates as a captive manager, a judge noted MIJS had produced a full set of documents for only 4.5% of its insurance clients. MIJS has 202 captive clients and complained the original IRS summons is overbroad and the documents are protected by attorney-client privilege at any rate. On 7 December 2020, a district judge ruled that a petition to enforce the IRS summons be granted.

Stories about captive managers losing track or failing to produce documentation on their own clients when asked to present them is not uncommon. *GCP Insights* is aware of one captive manager

unable to tell a client where its captive is domiciled.

The point of relaying the above is to highlight the scope of the problem. Abuse of the 831(b) tax election does not exist in a vacuum. It is facilitated, to a varying degree, by promoters, legal and tax advisors and captive managers, some of whom speak at industry events, have been nominated for industry awards and even sit on association boards.

“SIIA has long advocated that instead of waiting for the next salvo from the IRS, the industry needs to have productive conversations among itself, and with outside parties,” Work says. “This conversation means having industry participants who are willing to be brutally honest, and regulators who are willing to come to the table without a pre-ordained bias against 831(b) captives. The ongoing burdensome data requirements are going to have to end at some point, and Congress has made clear its intentions on the tax code already.”

The role of insurance regulators may also need to be debated. “One comment I always remember that an IRS official made to me early on was that, ‘we’re doing this because we don’t think the state regulators are doing their jobs,’” Work adds. How far do state regulators go in terms of evaluating, approving and regulating risk and insurance as part of a captive structure? This leads to the centerpiece of recent IRS criticism and activity - whether or not a captive is acting as real insurance and conducting actual risk transfer.”

Towle does not believe the captive industry has been complacent in tackling the 831(b) abuse from within, however, and points to previous CICA initiatives to promote best practices.

“The captive insurance industry is often misunderstood and any abuse, real or perceived is not good for our industry,” he says. “Most of the industry is working hard with us to improve our reputation through education and celebrating best practices. It is unfortunate that the negative attention by a small number of companies, can hurt the efforts many of us are working hard to improve.”

How the dialogue concerning 831(b) captives and their treatment by the IRS continues may depend on the result of the Supreme Court case, but more self-reflection within industry as to the extent of the problem would be welcome in 2021. In today’s insurance market environment and the existential threat the pandemic has brought to many businesses, the virtues of captives have never been more obvious. Calling out and penalising those who abuse the use of captives should accompany and aid this resurgence. ■

IR-2020-241 ISSUED: “OUR OFFER TERMS ARE ONLY GETTING STRICTER”

The Service offers new harsher settlements for microcaptive insurance schemes with offer letters being mailed to groups under audit. These offers required substantial concession of the income tax benefits claimed by the taxpayer together with penalties that can be partly mitigated if the taxpayer can demonstrate good faith, reasonable reliance on an independent, competent tax advisor and if the taxpayer can demonstrate it did not participate in any other reportable transactions.

October 22

COURT ENFORCES IRS SUMMONS ON MIJS

District Judge Leigh Martin May enforced an IRS Summons on MIJS to hand over the remaining 95.5% of documents to the Service relating to its 202 captive clients.

7 December

December 1

SUPREME COURT HEARS ORAL ARGUMENTS IN CIC SERVICES, LLC VS. IRS

A case that originally began in the United States District Court for the Eastern District of Tennessee (EDTN) on March 27, 2017 made its way to the floor of the Supreme Court. The case had been brought by CIC Services, LLC and argued that the IRS published Notice 2016-66 was in violation of the Administrative Procedure Act (APA) and the Congressional Review Act (CRA). CIC Services argued that the Notice is a legislative rule that required notice-and-comment rulemaking and congressional review before it could go into effect. An opinion is not expected until March 2021 at the earliest.

NOTABLE CAPTIVE FORMATIONS IN 2020

A NEW GENERATION OF BUSINESSES HAVE BEEN ESTABLISHING CAPTIVES IN 2020. BELOW ARE A FEW NOTABLE FORMATIONS PICKED OUT BY GCP INSIGHTS.

GUERNSEY

Captive name: Linklaters Insurance Limited

Parent company: Linklaters LLP

Industry: Legal services

Captive type: Single parent



Analysis: *GCP Insights* understands the captive was formed in response to hardening professional indemnity rates. Legal and professional services firms have a long history of utilising captive insurance companies to write PI, and Linklaters joins other international law firms such as DLA Piper in choosing Guernsey to domicile its captive.

Captive name: White Knight Insurance Limited

Parent company: deVere Group

Industry: Professional services

Captive type: Single parent

Analysis: Another Guernsey captive driven by professional indemnity needs, deVere made the rare move of publicly announcing its formation of White Knight Insurance in October. The captive board will include deVere Group's chairman Pete Hobbs and Peter Moffat, formerly of the GFSC and Bank of England. As well as PI, the captive will write "selective other internal risks."

Pete Hobbs discusses White Knight on GCP #45



DUBAI

Captive name: Emaar Reinsurance Limited

Parent company: Emaar Properties PJSC

Industry: Real estate

Captive type: Single parent



Analysis: Emaar Properties is a multinational real estate development company based in the United Arab Emirates and listed on the Dubai Financial Market. *GCP Insights* understands further captive formation activity is expected to take place in Dubai and Abu Dhabi in 2021 as both financial centres look to update their captive regulations.

BERMUDA

Captive name: Nakamoto Ltd

Parent company: Gemini

Industry: Cryptocurrency

Captive type: Single parent



Analysis: Gemini publicly announced its captive formation at the start of 2020, stating it will insure crypto custody. Appearing on the Global Captive Podcast in December, Gemini's head of risk Yusuf Hussain said the captive helped open up more capacity as few underwriters are comfortable writing crypto custody risk.

Listen here: Yusuf Hussain discusses Nakamoto in this GCP Short



Captive name: Canopy Growth Corporation Insurance Limited

Parent company: Canopy Growth Corporation

Industry: Cannabis

Captive type: Single parent



Analysis: Canopy Growth is one of at least two new captives formed in Bermuda in 2020 that will be writing cannabis-related risks. Ontario, Canada-based Canopy Growth Corporation is one of the world's largest cannabis companies. The formations follow a Bermuda Monetary Authority Notice of 12 November 2019, confirming it had no objection to the insurance of overseas cannabis businesses that are lawful within the countries in which they are conducted.

Captive name: Golden Arches Insurance Limited

Parent company: McDonald's Corporation

Industry: Food & drink

Captive type: Single parent



Analysis: McDonald's has owned a Dublin-domiciled captive since 1993, but made the move to establish a new entity in Bermuda during 2020. While the Dublin entity remains in operation, *GCP Insights* understands the long-term objective is for it to be run off and the

Bermuda captive will take on new business going forward. According to its 2019 SFCR, the Dublin captive currently writes property damage, business interruption, general and employers' liability and intellectual property liability for McDonald's Corporation, some McDonald's restaurants and Ronald McDonald Charity Houses in Europe, the Middle East, Asia, Australasia and Central and South America.

HAWAII

Captive name: Ala Kupono Insurance Company, Inc.

Parent company: JUUL Labs, Inc.

Industry: Electronic cigarettes

Captive type: Single parent



Captive name: Surety Services of Chenega, Inc.

Parent company: Chenega Corporation

Industry: Business development program

Captive type: Single parent

Analysis: Chenega Corporation is an Alaska Native village corporation that was formed in 1974 after the Alaska Native Claims Settlement Act of 1971. As well as investing in the development of the village of Chenega, it also provides government contracting services in the areas of environmental and healthcare, military, intelligence and operations support, professional services and security.

ARIZONA

Captive name: Bentley Murray Insurance Corp

Parent company: Arizona Cardinals

Industry: Sports and entertainment

Captive type: Single parent



VERMONT

Captive name: Bar Assurance and Reinsurance Limited

Parent company: New York City Member Law Firms

Industry: Legal services

Captive type: Industrial insured



Analysis: BAR was originally formed in Bermuda in 1979 by 21 New York City law firms, but was re-domiciled to Vermont in July 2020. The captive provides lawyers' professional liability (LPL) insurance to its members and allows for higher level excess coverage to be purchased as well.

Captive name: Certus Insurance Inc

Parent company: Epiroc AB

Industry: Manufacturing

Captive type: Single parent

Analysis: Epiroc, a Swedish manufacturer of mining and infrastructure equipment, is one of a handful of European corporates who formed captives in Vermont during 2020. Epiroc does have operations in the United States and Vermont is keen to attract more organisations from the continent who may find the US regulatory environment for captives more attractive than the Solvency II regime in Europe.



PEOPLE MOVES

FROM 2020

The past 12 months has been a busy year for people moves and promotions as merger and acquisition activity has disrupted the market and a new generation of captive leaders emerge. Below are eight appointments we believe are of particular note from 2020.

ADRIAN LYNCH

**Executive Vice President, North America
Artex**

Artex, the captive management operation owned by Arthur J. Gallagher & Co, announced in November that Adrian Lynch would be joining in March



2021. Lynch has been synonymous with Aon's captive presence in the Americas and the Cayman Islands after working two spells there – the most recent from 2014 to 2020 as managing director of Aon Cayman and captive strategy leader in the Americas. The move will reunite Lynch with Peter Mullen, who swapped Aon for Artex in March 2019, becoming the latter's CEO. Lynch will report to Jennifer Gallagher, president of Artex North America, and will be responsible for the oversight and growth of the captive management offices across the United States, Bermuda and the Cayman Islands.

"Adrian brings us valuable expertise and is a proven leader in the captive insurance marketplace," said Jennifer Gallagher. "Our growth strategy will be enhanced by his strong history in business development and sales. He is a great fit for our culture and I'm looking forward to working alongside him as we continue to build our enterprise." Kevin Heffernan, meanwhile, will retire from Artex in March 2021, ending his 15 year tenure in a number of operational and domicile management roles.

BELINDA FORTMAN

**Captive Insurance Section Director
Tennessee Department of Commerce &
Insurance**

**Listen to Belinda in
GCP #44**



The Tennessee Department of Commerce & Insurance (TDCI) announced in June that Belinda Fortman, an experienced captive manager previously with USA Risk, Strategic Risk Solutions and Risk Matters, LLC was joining as Captive Insurance Section director. Tennessee had grown its captive numbers considerably under Michael Corbett's tenure as director from 2011 to 2018. Jennifer Stalvey, formerly Corbett's assistant director, took on the role in 2019 but departed in July 2020.



"Tennessee has grown to become one of the top-tier captive domiciles due to its business-friendly environment, responsive regulatory team, and low operating costs," said Fortman. "Serving as the Captive Insurance Section Director is a wonderful opportunity to continue to contribute to the captive insurance industry in this state, and I am excited to be joining the TDCI team." In December 2020, the Department announced it had now licensed 700 'risk bearing entities', made up of 211 captive insurance companies and 489 cell captives.

DEREK BRIDGEMAN

**Risk Consulting Practice Leader
Strategic Risk Solutions Europe**

**Listen to Derek in
GCP #37**



Derek Bridgeman led a host of high-profile European hires for independent captive manager Strategic Risk Solutions in 2020



as it accelerated its expansion plans on the continent. Bridgeman, who had worked for Marsh for 13 years, joined SRS Europe in May. "Recent industry changes and economic pressures arising from Covid-19 mean that now, more than ever, clients will be challenged to seek opportunities to optimize their overall insurance spend," said Bridgeman. "I look forward to working with clients and prospects to challenge the status quo and consider alternative risk transfer options."

Paul Owens, CEO of the Willis Towers Watson Global Captive Practice from 2014 to 2020, joined the SRS board of directors in May with a particular focus on SRS European expansion, while the company also hired Brian Collins in Luxembourg, formerly of Marsh and with experience of being in house manager of various captives in the jurisdiction. Andy Hulme, previously chief underwriting officer at Builders Insurance Holdings and an EVP of JLT Insurance Management in Bermuda and London, was appointed director of underwriting at SRS in April, and Neil Campbell, an experienced independent captive consultant in the London market also joined SRS in 2020.

**The sector's most insightful
individuals feature regularly on
the Global Captive Podcast.**

MATTIEU ROUOT

CEO

MAXIS GBN

Listen to MAXIS experts on GCP



Matthieu Rouot took the reins as CEO of MAXIS Global Benefits Network on 1 July, succeeding Mauro Dugulin who had led the joint venture between AXA and MetLife since its inception in 2016. Rouot knows MAXIS well, having sat on its board of directors and overseeing operations from the AXA side as CEO of AXA International Employee Benefits. Employee benefits continues to be one of the strongest growth areas for the global captive market as large multinationals look to leverage their existing captives to take more central control of benefits and wellness programmes. "I'm excited for the future - working with our brilliant network to continue helping multinationals offer vital benefits to their employees to ensure they are healthy, productive and can thrive in all areas of their lives - more important than ever in these uncertain times," said Rouot on his first day. Since its launch in 2016 MAXIS has become joint leader of global employee benefits programmes by premium volume and now has more than 50 captive clients.



had joined the XL Group in 2014 as head of captive programmes, and took on the role of head of global programmes and captives after AXA's acquisition in 2018, has been promoted to chief underwriting officer for global programmes and captives. Latham's new role will be more internally focused, continuing to manage the captive and global programme regional leads around the world and leading distribution strategy for clients and brokers.

BRITTANY NEVINS

Listen to Vermont on GCP



**Captive Insurance Economic Development Director
Vermont Department of Economic Development**

Brittany Nevins joined the Vermont Department of Economic Development as its new captive insurance economic development director in September. Nevins replaced Ian Davis, who had left to join People's United Bank as captive insurance relationship manager in May. Nevins is now responsible for the marketing and business development of Vermont's captive insurance industry and moved back to her home state from a role as Community and Economic Development Specialist for Travis County, Texas. "The captive insurance industry is a model for economic development in the state, bringing in clean, high paying jobs, significant tax revenue, and supports the tourism industry all at the same time," said Nevins. "I'm humbled and thrilled to be coming back to my home state of Vermont to promote Vermont's best-in-class captive insurance status and help grow its presence and stature throughout the world." Vermont is the largest captive domicile in the United States and its latest expansion plans include attracting more captives from Europe and Central and Latin America. Rich Smith, president of the Vermont Captive Insurance Association (VCIA), welcomed Nevins to the post saying: "We are excited about Brittany's international experience as Vermont seeks to expand further into the Latin American markets."

**JOSHUA CLARK**

**Director of Business Development for the Insurance Division
Tennessee Department of Commerce & Insurance**

Tennessee appointed its first business development director focused on promoting captive insurance in July when Joshua Clark joined the state's Department of Commerce & Insurance. Clark's role is a new one and will focus on expanding the use of captives as a risk management solution for businesses and building relationships with the captive insurance market. "I am honoured to join the incredible team at TDCI as the new Director of Business Development for the Insurance Division, and I am excited to contribute to Tennessee's continued success and growth in the industry," said Clark. "Additionally, I look forward to the opportunity to be a part of maintaining Tennessee's status as a top tier domicile for captives."

**FENHUA LIU**

**Director, Captive Insurance Division
Connecticut Insurance Department**

Commissioner Andrew Mais named Fenhua Liu as Connecticut's new director of captive insurance in August. Liu was promoted from within the Department after the sad passing of Janet Grace, who had held the role from 2015 and overseen the state's captive growth during her five years there. Commenting on Liu's appointment, Commissioner Mais said: "Fenhua Liu has more than 25 years of broad global experience in insurance and risk management and that will serve us well as we continue to see captive insurance growth." Since 2015 a number of large corporates have re-domesticated or formed new captives in the state, including the BIC Corporation, Star Group and Charter Communications. Mais added: "As one of the top domiciles in the U.S. in premium dollars in 2019, Connecticut has a portfolio with a number of large captives. The Department is working to make Connecticut the domicile of choice for captive insurance companies."

**MATTHEW LATHAM**

Listen to Matt Latham in this GCP Short



**Chief Underwriting Officer, Global Programmes and Captives
AXA XL**

AXA XL undertook a substantial restructuring at the end of 2020 which included the departures of Philippe Gouraud, global head of strategic distribution, and Kelly Lyles, who led the global programme and captive centres of excellence, among other roles. Matthew Latham, who



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