



malta sees
captive
advantages

Dr Matthew Bianchi Secretary general

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EMEA Captive talks to the Dr Matthew Bianchi about the attractions of moving a captive to the jurisdiction.

How easily can existing captives be redomiciled to Malta?

Several captives have redomiciled to Malta in the past few years, and there is now a tried and tested process in place. Malta's Continuation of Companies Regulations allow captives domiciled in jurisdictions with 'exit' redomiciliation legislation to seamlessly transfer their corporate seat to Malta without any break in the company's corporate existence or the need to re-execute any insurance policies or other contracts. The Maltese regulations also give captives the opportunity to redomicile out of Malta should the need ever arise. The Malta Financial Services Authority (MFSA) authorisation and licensing process is no different to that of an ordinary captive start-up and can run in parallel with the redomiciliation process, meaning shorter time frames for the relocating captive to commence its operations in Malta.

Given Malta's relatively recent captive history, what has Malta done to ensure that its financial services infrastructure can cope with the anticipated growth?

As Malta's captive industry grows, there is an ever-present need to strengthen the captive workforce. To this end, many of the local players in the industry are looking to engage and train more local staff. Various institutes are also seeking to prevent any future shortages of specialised staff by introducing new courses specifically aimed at providing the expertise and particular skill sets required by the captive industry. In this regard, even the University of Malta has recognised the stellar growth of the captive industry here and has, with effect from the 2008 scholastic year, introduced an undergraduate degree

focusing on insurance—BCom (Hons) Insurance & Finance—which, judging by the number of applicants for the degree, should provide a healthy stream of qualified individuals in the not too distant future.

How has the global economic crisis affected captive formation in Malta?

Although it must be said that Malta was relatively unscathed by the recent economic crisis, the downturn did take its toll on captive formations by promoters both in the countries affected and other less impacted countries, particularly during the post-Lehman period until around the end of March of this year. The thawing of the credit markets and the recovery of the stock markets has, however, allowed a number of promoters, that were perhaps sitting and waiting to see how the recession would play out before committing capital to a captive project, to take the plunge. Malta has rather ambitiously seen this crisis and ensuing global recession as an opportunity to steal market share from other European Union (EU) jurisdictions and, if the renewed interest that we are witnessing of late is anything to go by, this ambition appears to be slowly bearing fruit.

Have there been any developments with double tax treaty networks in the past 12 months that have helped make Malta more competitive?

Malta has double tax treaties with more than 50 countries, including all EU member states as well as many emerging economies such as India, China, South Korea, Kuwait and Eastern European countries. Newly signed treaties are those with Singapore, the UAE, the US and Switzerland (the latter two are not yet in force). The extensive double tax treaty network together with the application of EU tax directives; the availability of imputation tax credits upon dividend distributions by Maltese companies (these result in refunds to the shareholders of the tax paid by the company), as well as the absence of withholding taxes upon repatriation of interest and royalties to non-Maltese residents, make Malta a very attractive jurisdiction for establishing captive insurance companies.

Describe Malta's protected cell company legislation.

Malta is the only full EU member state to offer protected cell company (PCC) legislation, which allows companies to establish a cell within a PCC and write risk through that cell. This allows the start-up and ongoing financial and regulatory burden of an insurance company to be spread throughout the owners of the various cells and the core of the PCC without putting any individual cell owner's assets at risk from the liabilities of the others. For this reason, cells are particularly attractive to medium-sized corporate groups wishing to establish their own insurance vehicle. The PCC structure could also be used to segregate certain high-risk lines of business written by the captive from the less risky ones.

Worth noting is that Malta's PCC legislation also allows for insurance managers and brokers to be established as PCCs. In fact, Malta has recently seen the establishment of the world's first insurance management PCC, which offers foreign insurance managers the facility to actively manage captives through one of its cells, providing

them with the opportunity of establishing a local presence within a reduced time frame and at significantly reduced costs.

What makes Malta stand out from other domiciles within the EMEA region?

Malta stands out as one of the fastest-growing captive domiciles within the EMEA region for several reasons:

Legislation

Malta's sound company law, fiscal legislation (which operates a full imputation taxation system) and insurance law are all firmly based on tried and tested UK legal principles, and implement all applicable EU legislation. Innovative legislation such as our protected cell legislation and redomiciliation regulations also add to the allure of the Maltese legal system.

Accessible regulator

The MFSA's approach is reputed to be 'firm but flexible', encouraging informal discussion at all levels with insurance company stakeholders, sponsors, managers, applicants and other interested parties. The Insurance Unit of the MFSA recognises the varying business techniques and numerous accounting conventions applicable in different countries where the parent companies of captives may be situated, and the overall approach is generally aimed at establishing acceptable requisites tailored to meet applicants' specific business requirements. The stable and consistent regulatory approach adopted by the MFSA has greatly contributed to the growth of the captive insurance industry on the Island.

EU membership

Malta's full European Union membership offers captives the right to 'passport' their licence, allowing them to carry on insurance business directly throughout the entire EEA (European Economic Area) by following a simple notification procedure to the MFSA. This is of particular advantage to those establishing a captive insurance business in Malta whose core business remains in another European jurisdiction. The Maltese insurance industry has flourished substantially since Malta's EU accession in 2004.

Although EU membership means that all European insurance companies are required to abide by a set of standard regulatory rules, in recognising the particular nature of captives, Malta offers captives a preferential regime with certain derogations and shorter application processing times.

Competent service providers

Malta boasts an impressive array of international captive managers that have set up operations on the Island, all the major audit firms, as well as a multilingual and well-educated professional workforce.

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