MALTA: A FIRM CAPTIVE DOMICILE

Joe Bannister, of the MFSA, reflects on the reasons for Malta's recent awards success and the interest in flexible structures within the region

Captive Review (CR): Malta was recently recognised as the best EU domicile for captive insurance in the European & UK Captive Awards 2017 – what are the key reasons for this accolade?

Joe Bannister (JB): There are a number of benefits associated with setting up an insurance business in Malta. Significant advantages lie in having a knowledgeable and accessible regulator, the Malta Financial Services Authority (MFSA), coupled with a very experienced professional workforce. From an operational perspective, Malta has a comparatively lower cost base when compared to other EU domiciles. The country has an excellent business infrastructure with good telecommunications and a sophisticated European business environment. Malta's legislative framework is also innovative in that it caters for insurance set-up options considered to be relatively new and alternative in the context of the rest of the EU, such as the creation of protected cell companies (PCCs). Additionally, and similar to other EU jurisdictions, insurance companies incorporated in Malta can passport directly, either through freedom of establishment or services to carry out cross border activities in other member states.

Joe Bannister

Joe V Bannister is chairman of the Malta Financial Services Authority, a position he has held since 1999. From 1990 to 1994, he was chairman of Malta's inward investment authority (Malta Development Corporation). After graduating in science from the Universities of Malta and Oxford (UK), he held positions at both Universities and also at the Cranfield Institute of technology (UK) and was Pro-Rector at the University of Malta from 2002 to 2006

As part of the process to introduce innovation within the existing EU legislation, the MFSA has, over the years, been consistently reviewing the insurance regulatory framework. The concept of cell companies was first introduced in Malta in 2004, when specific legislation was put in place to cater for the use of PCCs by insurance and reinsurance entities (including captives) as well as by insurance management companies and insurance broking companies.

Malta's legislative framework contemplates the establishment of PCCs. With the introduction of Subsidiary Legislation 386.10 of 2004, Companies Act (cell companies carrying on business of insurance) regulations, Malta became the only EU member state to incorporate PCC legislation into its financial legal framework. The PCC Regulations define a cell company as a "company... creating within itself one or more cells for the purposes of segregating and protecting the cellular assets of the company". A company may be formed or constituted as a cell company to carry on business of insurance. Alternatively, a company carrying on business of insurance may, if so authorised by its memorandum and articles of association, be converted into a cell company.

A PCC is a single legal entity. It is structured in two parts, namely a non-cellular part (the core) and an unlimited number of cells. Despite the segregation of assets and liabilities that exists between cells and the core and among the cells themselves, a cell has no separate legal identity. Within a PCC structure, the cells are approved to write insurance. The core may or may not be authorised to write insurance. The core maintains and controls all the activities of the PCC. A PCC has one board of directors which has ultimate responsibility for the company, and its cells.

The cell concept has since been developed into a number of different types of cell company structures catering for the insurance and investment fund sectors. More recently as part of Malta's drive to introduce capital markets activity, legislation for re-insurance special purpose vehicles was enacted and the PCC concept was extended to the reinsurance special purpose vehicles. The new regulations – the Securitisation Cell Companies Regulations (S.L.386.16), continue to build on the protected cell concept by adapting and extending the protected cell company structure to cater for securitisation activity.

The legislation leverages on Malta's experience in legislating for cells in other sectors including the investment funds and insurance sectors, where dedicated cell legislation notably contributed to Malta's growth in financial services. These regulations set out a framework for a new type of cell company acting as a reinsurance special purpose vehicle in Malta – the Securitisation Cell Company (SCC) – through fusing the highly sophisticated frameworks provided in the Securitisation Act and the Reinsurance Special Purpose Vehicle Regulations with the cell company concept.

> "Malta has a comparatively lower cost base when compared to other EU domiciles"

The Regulations now provide a legally entrenched framework for segregation of different sets of assets and risk instruments within a single special purpose vehicle, the SCC, thereby allowing for the launch of multiple insurance-linked securities without incurring any risk of cross-contamination between the different sets of creditors and investors. This is a first in securitisation vehicle structures as these are normally set up with compartments in other jurisdictions. The SCC is also applicable as a vehicle for all types of securitisation transactions.

There are a number of benefits, particularly for captives, to set up a PCC or a cell within an existing PCC. These include the possibility of different shareholders across cells, economies of scale as well as ring-fencing of each cell's assets and liabilities. The PCC has proved particularly attractive for run-off companies.

CR: Where have recent registrations been coming from?

JB: There are currently 63 companies licensed to carry out insurance business, which include eight captives and 14 PCCs which additionally host a total of 34 cells between them. Of these 47 are non-life undertakings; eight life undertakings; two composites and six reinsurance companies. The licensed entities carry out various classes of insurance of insurance business. Use of the PCC structure has been more of a recent trend. Ownership of licensed entities comes from a variety of jurisdictions but predominantly from EU jurisdictions.

CR: What are the likely impacts of Brexit on Malta's insurance sector?

JB: Brexit has its threats and opportunities for Malta's insurance sector. Malta, particularly because of the benefits outlined above, is proving attractive to UK companies particularly small and medium-sized companies which have significant business in the EU. However, a number of Malta licence business that mainly carry out business in the UK are expected to be affected by loss of passporting rights. The MFSA is reviewing the situation which will affect all EU insurance companies currently passporting into the UK.

CR: How do you foresee Malta's insurance sector developing into 2018?

JB: Insurance is developing into one of the fastest growing financial services sector and is expected to continue doing so.