

JURISDICTIONAL REQUIREMENTS: MALTA

Joe Bannister, chairman of the Malta Financial Services Authority, talks to *Captive Review* about challenges facing international insurance programmes and how Malta has developed as an attractive jurisdiction for captives to operate in

Captive Review (CR): What do you see as the most significant challenges facing global insurance programmes?

Joe Bannister (JB): From a regulatory perspective, currently, a significant challenge facing global insurance programmes is the preparatory phase for alignment with the three pillars of Solvency II in a timely manner for when it comes into effect in January 2016. The concept of proportionality is fundamental to Solvency II and increasingly smaller captives housing global insurance programmes may be concerned that the compliance burden may be too onerous, whether this is looked at from a capital, governance or reporting standpoint.

The Solvency II framework promotes a strong risk culture which needs to be embedded in the insurers' organisation and nurtures strong risk management capabilities – two elements that are key for the effective operation of any global risk management programme. Indeed, against this backdrop, some captive managers have focused on turning these challenges into opportunities for the optimisation of global insurance programmes.

CR: How will regulatory developments on both sides of the Atlantic impact the role of captive managers in the years ahead? What should Captives be doing to prepare for these changes?

JB: The high level of integration of financial markets globally does not allow us to focus on any one side of the Atlantic. Many international insurance

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Joe Bannister is chairman of the Malta Financial Services Authority, a position he has held since 1999. He also held the post of chairman of its predecessor, the Malta Financial Services Centre between 1995 and 1997. From 1990 to 1994 he was chairman of the Malta's inward investment authority (Malta Development Corporation).

programmes already have a significant presence worldwide. At the same time, risks arising from emerging markets are

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also increasing and in order to identify and mitigate those risks, there is a growing need of risk-based supervision with risk-based capital requirements, stronger emphasis on good governance and risk management and improvements in public disclosure.

The EU-US dialogue is ongoing to reinforce the mutual understanding of the solvency regimes on both sides of the Atlantic, to promote more effective supervision.

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Obviously this impending European regulatory legislation differs from the American model and other various models throughout the world. However, many non-European jurisdictions are implementing models similar to that of Solvency II. Bermuda, for example, is a jurisdiction implementing a Solvency II equivalent within the EU. They are excluding certain captives, particularly US captives, because they have no business in Europe. This is a trend we will probably see for some time. But, ultimately, I believe all models will converge.

CR: How much of a consideration should transparency be for a global insurance programme?

JB: Good corporate governance emphasises the need for transparency and



accountability and captives are no exception. New regulation dictates that there must be much more transparency from captives, particularly in terms of board decisions and reporting to enhance the effectiveness of a global programme.

CR: How has Malta acted to become an attractive jurisdiction out of which captives can operate?

JB: Upon joining the EU, Malta recognised there was a need for companies to start migrating into the EU. It was this recognition that led to the launch of redomiciliation programme. This programme was utilised frequently when it was conceived and it is still used occasionally now. The redomiciliation programme allows companies to relocate without having to go into wind-down or similar procedural situations they may ordinarily have to do, which can be very costly.

Another important aspect of Malta's position as an attractive place for captives to operate out of is the introduction of the protected cell company. This was not identical to the Guernsey

model, but was based upon it. This has been very successful as we have seen more and more companies become cells since the model was implemented. As a result of this success, we have taken the model further. We have developed

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the concept through to the special purpose vehicle and the reinsurance special purpose vehicle, which has led to risk transfer and securitisation. We have also developed securitisation vehicles, where we have introduced the cell concept. The cell company gives better clarity and ring-fencing that compartments, where you have crossover.

In terms of flexibility, the law is the law. But in the development of our regulations we have been communicating with industry members. We are always happy to sit down and discuss with operators what their requirements are.

Our approach has been successful and we have developed a reputation as a jurisdiction where the regulator is happy to interact with companies. In this way, companies understand the processes involved what the regulator wants and ultimately it has helped us to avoid problems with regulators in the past and hopefully it will continue to do so in the future. Inevitably, problems will sometime occur. But this is certainly not due to a lack of regulatory involvement. ☾