EXPERT VIEW

ARE PROTECTED CELL COMPANIES TAKING OFF?

MICHAEL ASHTON
SENIOR FINANCE CENTRE EXECUTIVE, HM GOVERNMENT OF GIBRALTAR

The uncertainties surrounding the implementation of Solvency II and a soft reinsurance market have certainly affected the formation of new captives within the EU in 2012. The lower growth in captive formations has continued for the past three years. There is a view that for large European companies the captive market is mature and those businesses that need a captive have already established them. In addition, a challenging European economy since 2008 has failed to produce as many growing businesses that historically would have looked to form a captive. Looking at the statistics, it would appear that the European offshore centres have also experienced a tough time with the number of captives remaining flat in 2012 compared to 2011.

Is the picture about to change? Certainly, with respect to protected cell companies (PCCs), the climate has been more positive, with the number of cells increasing in recent years in certain European jurisdictions. Gibraltar was the first EU jurisdiction to enact PCC legislation in 2001, and has the largest EU PCC company that over the past 10 years has established more than 50 cells.

Marsh Risk Management Research published a report entitled *Discovering Opportunity in a Shifting Captive Landscape* in May 2013. The report states that "the emergence of new low income tax rate EU domiciles – such as Gibraltar, Ireland, and Malta – and legal precedence supporting the "freedom of establishment is a development that continues to fuel interest". The report goes on to state that "formation of new captives is trending toward onshore domiciles", and that "the premium spend required to support a captive is attainable by small, mid-size, and large organisations".

In January 2013, PwC published its *Unlocking value in run off* report, in which the firm estimates that the market for discontinued insurance liabilities in Europe exceeds €220bn (£186.52bn). If European insurers determine that long-term run off is not a viable option for certain books of business, particularly ahead of Solvency II, then restructuring activity is likely to increase over the next few years.

Gibraltar has an attractive fiscal environment and generally investment income is not taxable in Gibraltar. This offers an opportunity for Gibraltar to attract more run-off business. PCCs provide an interesting and secure structure into which smaller books of run-off business could be transferred.

There are signs that the number of PCC cells to be established in Gibraltar is set to increase and Gibraltar is aiming to increase its share of the EU captive market over the next few years.

Michael Ashton has worked in insurance for 20 years in several senior roles, including ACE Global Markets chief operating officer. Currently working for HM Government of Gibraltar, he is also a chartered accountant.