



Bermuda Corporate Update
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FIRM'S SENIOR COUNSEL APPOINTED ACTING DPP

On the 28th February 2003, this firm's Senior Counsel and Head of the Commercial Litigation Department, Mr. Kulandra Ratneser, accepted a temporary appointment as Acting Director of Public Prosecution in Bermuda when asked by Governor Sir John Vereker to do so.

Mr. Ratneser has broad legal experience within Government having worked throughout the British Commonwealth in various legal positions. He served as DPP in Belize, Fiji and Western Australia and held numerous other legal posts in Sri Lanka, London and Australia.

Mr. Ratneser plans to use the temporary post to mentor younger prosecutors and improve the quality of investigation and prosecution in Bermuda.



Kulandra Ratneser

BERMUDA CAPTIVES: STILL RELEVANT IN TODAY'S MARKET

BACKGROUND

Bermuda is the domicile of choice for the vast majority of Captive insurance companies established around the world. The term "Captive" refers to insurance companies formed primarily to insure the risks of their parents or affiliates. This concept of 'self-insurance' was first developed in Bermuda in the early 1960's and although there are multiple types of captives, this facility is more popular today than it has ever been.

Reasons for Incorporating in Bermuda

- Respected International Business jurisdiction (built on the principle of “know your customer”);
- Tax Neutral Business Environment (no income, capital gains, transfer or withholding taxes);
- Business sensitive and well established Legal System (based upon English common law);
- Minimal Government Annual Reporting except for Restricted Businesses;
- Access to Capital Markets (through Bermuda Stock Exchange listings);
- Access to one of the most successful Insurance/Reinsurance Markets in the world;
- Reliable Banking System;
- Efficient Support Services (legal, accounting, management, corporate and trust services);
- State-of-the-Art Global Internet Services and Telecommunications (connecting Bermuda to the world); and
- Friendly yet efficient business environment for holding Company Meetings.

The contents of this newsletter are not intended to be a complete statement of the law on any subject and should not be used as a substitute for legal advice in specific fact situations. If you require more detailed information or advice concerning a specific fact or situation, you are invited to contact one of the above named for that purpose. Lynda Milligan-Whyte & Associates cannot accept any liability or responsibility for loss occurring as a result of anyone acting or refraining from acting in reliance on any material contained in this newsletter.

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Bermuda dominates the captive insurance market with some 30% of the world's captives now on its register representing net annual premiums of US\$28 billion and total assets of US\$138 billion. Captive insurance business represents approximately 75% of the Bermuda insurance register.

In 2002, the Registrar of Companies in Bermuda recorded the formation of 94 new insurance companies of which 35 were new Class 1 companies (up more than 52% from 2001). Captives in Bermuda are 62% owned by American interests, 18% by European, 10% by British, 2% by Far Eastern, 2% by Canadian and 6% by other countries. Class 1 insurers are single-parent captives insuring only the risks of their owners or affiliates.

In soft markets as well as hard, risk managers and others continue to regard captive solutions as highly effective risk management tools. Captives are considered to represent a significant and permanent alternative to the commercial market.

THE CAPTIVE CONCEPT

A Captive insurance company is a company generally established in a tax neutral or low tax jurisdiction that offers insurance to its parent or affiliates in return for premiums. It is a closely held insurance company whose business is primarily supplied by and controlled by its owners. Captives are insurers that are owned by insureds and organized for the main purpose of self-funding the owner's risks. The insured participates in influencing the underwriting, operation, and investment of a captive insurer.

Captives can be structured as single parent or group associations. Group or association captives may be owned by a number of companies with similar exposures. For example, trade or professional associations may operate their own group or association captive.

TYPES OF CAPTIVE

Bermuda has seen the development and proliferation of five (5) types of captives, all of which serve a different clientele and purpose.

There are multiple reasons why corporations form Captives ranging from the market conditions to the situation with the insured itself, including a general dissatisfaction with existing insurance coverage or costs. The advantages in establishing a Captive continue to be in these areas: Insurance, Commercial, Financial, and Tax.

Single Parent Captive

Often described as ‘pure captives’, these are the companies with a single owner, usually the Parent Company. The Single Parent Captive writes the risks of its Parent Company and its affiliates. Generally, these Captives are managed by professional managers that provide management and underwriting capability in Bermuda for the Captive.

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Association Captive

Formed by the pre-existing associations (trade or professional associations) to provide insurance coverage for members. Ownership rests with the association or individual members. They too usually have a financial expert at the association level with prime responsibility. However, not all associations have actual insurance specialists on their payroll. When they do not, much more responsibility is given to the Bermuda management company, broker and other consultants. There is usually some form of surplus allocation method agreed upon by members. When captive boards of directors invoke this, it can become the single most time-consuming duty performed by the management company.

Agency Captive

The Agency Captive was very popular in the insurance days of the mid 1980's. Brokers or intermediaries formed these captives along with their clients. This gives advantages difficult to obtain in the open market. It is a strong marketing tool to reinsurers as it demonstrates that the Agent is prepared to join them on the risk insured by the Captive.

Industry Captive

Owned by the companies within the same industry, which have come together solely to solve an insurance coverage problem. The stockholders appoint a Board of Directors to whom the Bermuda management company reports. This type of captive usually places a substantial responsibility on the management company, which makes the important decisions. Industry Captives are usually work-intensive due to the need for detailed and regular reporting to stockholders. There is usually some form of surplus allocation method agreed upon by members. When captive boards of directors invoke this, it can be the single most time-consuming duty performed by the management company.

Rent-a-Captive

Rent-a-Captives allow organizations to obtain the benefits of a captive without the upfront costs and capital investment required to form a captive. This is usually an interim step utilized by companies prior to forming their own captives.

The rent-a-captive companies are generally operated in Bermuda as Class 3 insurers that 'rent' their surplus to entities wishing to establish a self-insurance program.

Not all Bermuda management companies have in-house 'rent-a-captive' facilities. If you are interested in obtaining further information on Rent-a-Captives, please contact Lynda Milligan-Whyte at LMW@milligan.bm

RICHMOND GROUP LIMITED AND ITS AFFILIATES

Richmond Corporate Services Limited - provides corporate administration and compliance services to Bermuda companies, partnerships and trusts.

Richmond Managers (Bermuda) Ltd. - provides a wide range of management services to its clients. It can also assist in advising insurance professionals on the Bermuda regulatory environment, particularly the capital requirements, solvency margins and liquidity ratios.

Richmond Investments (Bda) Limited - provides investment advisory services to clients of the Richmond Group of Companies who are institutional and high net worth clients.

Richmond Trust Company Ltd. - provides private trustee and protector services to a select group of private trusts.

(N.B. formerly operated under the name of Richmond Private Trustee Limited).

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CORPORATE GOVERNANCE UPDATE

- **CONSEQUENCES OF 'STRIKING OFF' COMPANY FROM THE COMPANY REGISTER IN BERMUDA**

If a Company is 'Struck Off' the Company Register by the Registrar of Companies for non-payment of annual government fees, it may at any time up to a period of 20 years be re-instated to the Register by Court Order by any Director, Member or Creditor of the Company.

Another consequence of the 'Strike Off' is that all of the assets of the Company escheat to the Crown (belong to the Crown).

Directors do not finally extinguish potential liability until the 20 year period elapses, if the Company is 'Struck Off' the Register.

- **RESIDENT REPRESENTATIVE REQUIREMENTS FOR BERMUDA EXEMPTED COMPANIES**

Every Exempted company in Bermuda is required to meet the requirements for officers or representatives in Bermuda and the Companies Act provides for the following options:

- i) A minimum of two directors who are ordinarily resident in Bermuda; or
- ii) A Director and a Secretary who are ordinarily resident in Bermuda; or
- iii) A Resident Representative and a Secretary who are ordinarily resident in Bermuda; or
- iv) If the exempted company is a listed on an appointed stock exchange, then such company may have a Resident Representative who is ordinarily resident in Bermuda.

A Resident Representative of a company (other than a listed company) shall be an individual ordinarily resident in Bermuda. An exempted company may also appoint an assistant or deputy Resident Representative.