Brexit and Guernsey's captive insurance industry

The outcome of the UK referendum on 23 June 2016 to leave the EU was both shocking and unprecedented but Guernsey is well positioned to meet any challenges. Richard Sharp, a partner with Bedell Cristin explains.

As we know, Guernsey's status as a Crown Dependency gives it the right to make its own laws, including those concerning taxation and Brexit does not put Guernsey's tax neutrality under threat.

Guernsey's closest trading relationship is with the UK, but over the years, the island has successfully negotiated its own access to EU financial markets and there is no indication that Brexit will impact such access directly.

The UK government formally notified the European Council of its decision to leave the EU on 29 March 2017 by triggering Article 50 of the Lisbon Treaty. The exit period is expected to last at least two years while the UK negotiates the terms of its exit.
Adding to the complexity of the outcome is the recent general election result in which the conservatives failed to obtain the majority and mandate anticipated, making the process for and outcome of Brexit even more uncertain. Nevertheless, regardless of that election result, the following are amongst some of the expected effects on the European captive industry:

Uncertainty

Without doubt the first and most significant effect on captives will be the period of uncertainty while the UK negotiates the terms of its exit. Until the terms are settled, many businesses that operate captives will need to wait and monitor developments closely so that they are ready to adapt to the outcome. Any extension of the transition period will only be possible if all remaining EU member states agree to it. It is entirely possible, although not expected, that the negotiations might take less than two years, in which case businesses with captives may need to adapt that bit sooner.

Currency

Following the Brexit decision, an initial consequence for insurers was an immediate fluctuation in exchange rates which affects companies operating in sterling or euros.
It is expected that captives will continue to experience exchange rate volatility that may have knock-on effects on solvency and credit ratings could also ultimately be affected.

Passporting

The current EU passporting regime allows insurers that are authorised to provide financial services in one EU member state to also provide such services in other member states without having to be authorised to do so in the other jurisdictions. A passport allows an insurer to provide insurance services across borders or to establish a presence in other jurisdictions. Until negotiations have been concluded it remains to be seen whether insurers will continue to benefit from a replacement system that will allow similar access. This is important not just to UK insurers but also to EU insurers, who might particularly miss access to the global insurance centre that is London.

Regulation

In the absence of passporting many see an increase in regulation as inevitable which will have a cost at a jurisdictional level and also a detrimental effect on the efficiency with which insurers can operate.

At this stage, we are not yet seeing any noticeable trends, as the industry waits to see how the exit negotiation progress. Perhaps one immediate effect during this period may be the use of captives to insure against loss that might flow from the shock of Brexit and the difficulties of the negotiation process, such as more pronounced exchange fluctuations.

The consensus appears to be that Brexit is not expected to have a detrimental effect on offshore captive domiciles and in fact it could prove to be an opportunity. Once Brexit is complete, companies could be making different choices about where they locate their captives. In a situation where there is no replacement for the current passporting system, captives that may have previously been established in the UK or EU may now consider Guernsey. In the interim, the fact that Brexit itself will not have any impact on its regulatory landscape means that Guernsey continues to be seen as a stable jurisdiction offering certainty in uncertain times.

The outcome and knock on effects of Brexit for the European captive industry remain to be seen and whether or not this represents an opportunity for Guernsey, the island will continue to look at other areas for future growth such as China. There has already been interest in Guernsey captives from two Chinese operations, a healthcare management firm, DINGTAI Health, and a film industry guarantee company, HLCG Film Guarantors, both of whom looked at various captive domiciles before settling on Guernsey. They provide just one example of the potential for Guernsey's captive business to continue to develop its worldwide footprint.