



Malcolm Cutts-Watson, chairman of Willis International Captive Practice, takes issue with perceptions of broker-owned captive management firms

INDUSTRY COMMENT

Malcolm Cutts-Watson

JOSH GOLD, IN HIS recent article (The coverage tower, *Captive Review* Issue 73, November 2009), is to be applauded for highlighting the need for robust captive contractual arrangements, but he makes a number of assertions that cannot be left unchallenged. In particular his comments regarding so called 'non-independent' managers not acting in their clients' best interests are naïve, disingenuous and not based on fact.

As a captive manager which is part of a global insurance broker, I would say that wouldn't I? However I do not accept that insurance industry managers (whatever this defines) are beholden to the insurance market and would put the interests of the market before their clients.

I'm sure the leaders of all the broker and insurance company captive management companies (and clients thereof) would vouch for the professionalism of their teams and the absence of any interference from their shareholder. It is these managers that have invested in the operational, compliance and audit infrastructure necessary to meet the highest level of corporate stewardship.

In today's business environment, potential conflicts of interest are inevitable and are resolved by transparency and appropriate governance. I would contend that managers that are part of larger regulated entities will be more aware of these issues and will have taken the necessary structural, cultural and compliance actions to eliminate them (this issue was covered by the article 'Walking the tightrope', *Captive Review* Issue 66, April 2009).

These are serious times for the captive industry and we need serious captive representatives to address items of substance. The industry is currently tackling a range of challenges including Solvency II (and equivalence), tax challenges and so on.

Who is best positioned to deal with the capital modelling associated with risk-based solvency; a manager with access to actuarial

resource within an insurance entity or an independent? Who has access to the full range of risk-financing options and the broadest selection of captive domiciles? Who has the greatest ability to undertake claims audits to ensure fronting companies are performing properly? Who is more likely to adopt the principles of contract certainty that are now enshrined in the insurance industry?

Many of the so-called conflicts raised by Gold are eliminated by observing sound corporate governance (which many managers including Willis have been promoting and implementing for some time). It should be remembered that the manager reports to the directors of the captive and it is the board that is the decision maker (another reason why members of managers should not sit on the boards of captives under management!). The board should ensure a full set of operational procedures and a governance regime are in place to respond to the various scenarios that Gold describes.

The situation of a captive being sued by its insured/owner in respect of coverage matters is not uncommon. We have developed a governance model to ensure the captive remains independent of the influences of the owner and the open (re)insurance market, in part through the creation of a claims committee composed of independent directors and claims experts.

I suspect the crux of my disagreement with Gold's comments is our differences as to the status of a captive. I view it as a true (re)insurance company that should follow industry best practice with regard to governance and operation. The references in Gold's article to "seeming advisable to observe formalities by actually preparing policies" and "making sense to handle claims in the ordinary course" imply a lower level of management is acceptable.

By all means let's have a debate on raising captive management standards but let's stick to the issues and not get drawn into subjective opinions. **CR**

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