



# Diversity in the battle against adversity: cross-selling techniques using insurance

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## The offshore challenge

**T**he past 12 months will always be remembered in the financial world for all of the wrong reasons.

With a US government downgrade in August, UK banks being downgraded in October and continuing uncertainties relating to the potential debt default by Eurozone members, navigating the markets in 2012 could only ever be described as "challenging" at best.

As the year progresses, we continue to experience the expected pattern of uncertainty and adversity. We have seen more banking scandals, including accusations of LIBOR rate-fixing, numerous allegations of money laundering and, more recently, "rogue state" facilitation. The result is a growing and disturbing level of mistrust between the investment world and global regulators and tax authorities.

So, do these strained relationships and the stuttering global economy have a significantly detrimental affect on the offshore financial services industry? Rightly or wrongly, fairly or unfairly; the answer, sadly, is "Yes".

First of all, there is an inevitable reduction in aggregate demand for services, products and structures during an economic downturn. Some providers are better positioned to weather the storm, whereas many others may need to drastically amend their business plan.

Then comes the very predictable political rhetoric. Many politicians would happily have the public believe that their faltering economies are the direct result of unscrupulous offshore financial services providers, who enable the rich and powerful to channel their vast wealth into secret accounts without paying taxes.

Finally, there is a growing trend of governments across the world amending their tax legislation as a means of increasing their revenues. Obviously, this is an extremely difficult balancing act. What is designed to generate more revenue can actually have the opposite affect, particularly if the measures taken discourage investment.

Regardless, the common theme is that, as tax laws become more complex and sophisticated, the financial services jurisdictions and providers who fail to take note and enhance their offerings accordingly will not survive. This in itself can add to the burden of operational and regulatory costs.

In summary, the political rhetoric is more of a minor irritance than a problem. However, the over-reactive measures taken by some governments are much more damaging, not just to the offshore world, but potentially to the instigating country's economy as a consequence. The FATCA implementation in the US is a good example of this. There is absolutely nothing wrong with a country's aim to create taxation transparency, but hastily introducing an inappropriate and overly-zealous system that alienates trading partners may have serious long-term implications for the US. Only time will tell.

From an offshore standpoint, what is clear is that these problems are not sector specific. Trust companies, corporate services providers, fund administrators, captive managers, banks, lawyers, accounting firms; none are immune, albeit as a result of increased costs, decreased revenue, or both. Geographical focus can, of course, be a magnifying factor.

## Seeking sophistication

Despite these challenges, there is still much to be positive about in the offshore world, particularly in established and well-regulated jurisdictions.

To give some real examples, the Cayman Islands continues to attract new funds and other investment and insurance vehicles to the jurisdiction. The British Virgin Islands remains a leading incorporation centre. In addition to adding to its impressive active companies total, there have been a marked number of innovative trust instruments established, such as VISTA. Barbados has expanded upon its already extensive network of double tax treaties and bi-lateral investment treaties, making it a unique proposition. Anguilla has established a niche as a centre for small to medium sized captive insurance companies. The number of Panamanian foundations being formed increases each month.

So with all of the above in mind, is the offshore financial services industry doing all that is feasibly possible to sustain growth? Can we rest on our laurels and hope the business continues to flow? The answer to both questions is undeniably, "No".

There is, of course, the much talked about "New World" and "New Money" of Latin America, Africa and Asia. Many offshore services providers see these regions as the industry's saviours and openly talk about them as such. There is no doubt that they are all strategically important. However, it is also important that we remember that our adaptability and innovation will be the driving force of success, not the whereabouts of our clients.

To survive this global economic environment and plan for the long-term, the offshore world's various

sectors need to co-operate and collaborate more than ever before. We must innovate, cross-sell and seek the value added. We must strive to become an industry that understands all of its products and instruments across all industry sectors, not just those that we happen to specialise in. We must look to the future and resist the temptation to reassure ourselves that the achievements of the past will be enough.

### Cross-selling techniques: utilising insurance structures and products

As my primary area of expertise is in captives and insurance, it would seem appropriate to give some examples of insurance products and vehicles and how they can potentially complement other sectors of the financial services industry.

Insurance is clearly not the only means of cross-selling we have at our disposal. However, it does suitably highlight how we might change a client's perception of the offshore world from one of a functionary incorporation centre to one of a value-added, professional business centre that can service all of their corporate, wealth and estate planning needs.

### Captives and (re)insurance vehicles

In its simplest form, a captive is a wholly owned legal entity, purposely formed to underwrite the risks associated with its parent and/or its affiliates.

Over time, the captive industry has evolved significantly and, although the term "captive" is still predominantly used to describe collectively a plethora of insurance and reinsurance vehicles, many are sophisticated structures that bear very little resemblance to the original concept. They can be used to insure anything from an automobile manufacturer's product recall risks, to a government's exposure to natural disasters, such as hurricanes and earthquakes.

Despite a significant increase in competition onshore in recent years, particularly from Europe and the United States, offshore jurisdictions remain the world's largest and most successful captive domiciles. They combine a unique and flexible legislative framework with a pragmatic and stable regulatory environment, enabling us to offer our clients a wide range of products and structures.

From a cross-selling perspective, we must consider the other business sectors of the various jurisdictions, the

client access they provide, and who may benefit from a captive.

Firstly, we can consider the BVI's biggest and most successful export; the business company. A significant number of businesses around the world include a BVI company in their corporate structure. Whilst it would be incredibly naive to think that a sizable proportion of the users of BVI companies would also require a captive, there are certainly many that could use this vehicle.

We should also not forget the other financial services sectors. The Cayman Islands offshore fund industry offers another excellent cross-selling opportunity. In a turbulent trading environment, both captives and special purpose vehicles (SPVs) can offer useful risk management and investment diversification tools to fund managers and investment advisors. Private equity and venture capital funds are other potential beneficiaries for a variety of reasons, as are life and viatical settlement funds.

Similarly, captives are often used as estate planning and asset protection mechanisms, hence providing a useful link to trust structures. These can be business related, investment related or family related (life, health and disability).

The key is not necessarily to focus on the ultimate end users of a business company when selling other services. However, we must collectively do our utmost to ensure that related business introducers (law firms, accounting practices, banks etc.) are fully aware of our added ability to these other products to clients using offshore jurisdictions.

### Specialty insurance

Another important aspect of complementary services is the provision of insurance solutions to the financial services industry. These include the procurement of products specifically designed to protect the likes of law firms, trust companies, fund managers, administrators and independent directors and officers.

In these uncertain times, there are few assurances provided by the wounded financial markets. However, if we can guarantee nothing else, it is that the current economic downturn will proliferate one already worrying trend; the threat of litigation from investors against financial institutions and investment managers.

A greater focus on corporate governance and corporate responsibility, coupled with the escalating costs associated with defending lawsuits, means that the

sourcing of protection against a number of risks is now an essential part of any fund manager's business plan.

With increased concerns relating to and the transparency of investment exposures, many investors are now taking a far greater interest in the insurance limits purchased by fund managers prior to their commitment to any investment. Investors' need for retribution in the event of adversity is a clear reminder that internal controls and the purchase of adequate insurance coverage can no longer be overlooked, regardless of the size and investment strategy of a fund.

A wide range of ideas, solutions and innovative policy wordings have been developed to provide the most effective possible insurance cover for complex financial and professional firms. It is important not simply to offer insurers "off-the-shelf" policies (which are generally drafted with the insurers' interests as paramount), but to engage with the client to understand their business, culture, concerns and priorities, and then design and negotiate cover accordingly.

Jurisdictions such as the British Virgin Islands offer locally based companies with expertise in this area. If a fund manager chooses to establish a fund structure offshore rather than in New York or London, it is important that they are aware that there are specialist offshore providers that can facilitate both the primary and secondary functions and product needs of the manager, the regulators and the investors

Furthermore, these services are not limited to lines of business such as directors and officers liability insurance. For example, a mining corporation can be assisted with expropriation and conflict concerns in Africa with political risk exposure. An international oil exploration company purposely based offshore can be assisted with insurance products to meet their risks and exposures. In fact, by doing so, a further layer of "mind, management and control" that is often sought by those forming an offshore business company can be created.

As previously indicated, not all companies incorporated in the BVI are suited to this type of service. But it's important for all users, either direct or third-party service providers, to understand that the BVI has the expertise and resources in place for those that do.

### Life insurance products

The use of trust instruments by both high-net-worth individuals (HNWIs)

and businesses is a growing global industry.

From a family estate planning and wealth management viewpoint, life insurance often forms a significant part of any overall structure, offering the beneficiaries a means of settling any estate taxes and other associated liabilities and expenses in the event of a death.

Trusts also offer a useful segue into the similarities and possible synergies with life insurance products. For example, one of the unique features of a BVI "VISTA" trust is its ability to disengage the trustees' management responsibilities for the underlying businesses held by the trust (i.e. bypassing the "prudent man of business rule").

In summary, this allows the directors of a business held by a trust to continue to make the key decisions to allow the business to be maintained without unnecessary and unqualified involvement from a trustee. Unfortunately, what the trust may not be able to do is completely circumvent other estate and liquidity issues that arise as a result of the death of a shareholder.

However, were we to introduce a life insurance into the equation, we may be able to create a means of providing a fair and suitable payment to the

shareholders' family that simultaneously results in the shares of the business transferring to the other shareholders.

Again this provides a great example of not only cross-selling, it clearly demonstrates our ability actually to enhance further established and successful products.

### **Future growth: working together**

So, how can we ensure that the cross-selling concept grows and evolves? There are no simple answers - but the continued collaboration of the private and public sector is imperative.

The private sector's primary responsibility is to make sure that the public sector is aware of our target markets. We now operate in a changing environment that is dependent on global tax co-operation, revolving around tax treaties and the signing of "Tax Information Exchange Agreements" (TIEAs). These are simply a sign of progress and are not something to be feared. However, we must work together to ensure that there is long-term benefit afforded to the offshore world by signing such agreements.

It is also important to remember that our products are merely our tools. The best way to create a legacy and viable future in financial service is to make sure we know how to ably use

and adapt those tools. The future generations of the related populations may depend on it. There are educational initiatives in place in certain parts of the offshore world - there are just not enough of them. It is not something that can be immediately resolved by the respective governments or the private sector alone. The continued success of the offshore world relies on a continued partnership.

One of the most precious and sometimes under-utilised resources we have is a wealth of international experience of offshore practitioners. This does not just solely relate to business experience, it relates to all manner of cultural and other qualities. In my opinion, the multi-cultural diversity of the offshore world is one of its biggest strengths. This must form the very basis of securing a prosperous future in these difficult economic times.

To use the famous words of John Donne, "No man is an island.". However, it is certainly possible for a diverse group of islands to remain truly global.



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