Presentation for Slovenian Prospects

Captives in Switzerland
Regulatory and Fiscal Aspects

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Key features of a domicile

- Based on our experience, the following features are the most important to look for in a domicile:
  - Captive environment and infrastructure.
  - Licensing abilities.
  - Insurance regulatory framework.
  - Capital and solvency.
  - Fiscal aspects.
  - Exit options.

Captive environment of Switzerland

- **Reputation:**
  - Switzerland is a well-established and highly reputable domicile.
- **Regulator:**
  - Swiss Financial Market Supervisory Authority (Finanzmarktaufsicht FINMA) is regarded as a forerunner and one of the top regulators worldwide.
- **Captive infrastructure:**
  - Switzerland is a global banking and insurance hub.
  - Access to services providers such as law-firms, tax consultants, actuarial services providers.
  - Qualified personnel speaking several languages.
- **Estimated current number of captives:**
  - 50

Insurance regulatory framework (1)
Licensing abilities

- **Insurance / Reinsurance:**
  - With a direct insurance licence for a specific line of business a captive can only underwrite the same line of business on the reinsurance side.
- **Direct insurance into EU:**
  - Bilateral treaty between EU and Switzerland in the field of direct, non-life insurance - enabling to establish a branch.
  - EU principle of freedom to establishment.

Insurance regulatory framework (2)
Licensing abilities

- **Reinsurance into EU:**
  - Within EU the reinsurance directive applies „pass porting rights“.
  - Currently there is no agreement between Switzerland and EU in the field of reinsurance which ensures such pass porting rights for Swiss reinsurers.

- The possibility to write reinsurance business depends on the way in which the company wishes to operate:
  - Writing business from Switzerland.
  - Local branch.

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Insurance regulatory framework (3)
Licensing abilities

- **Developments within EU in the field of reinsurance:**
  - AIM has been in touch with the supervisory authorities in several EU countries.
  - They signalise that it would not be a problem for Swiss reinsurers to establish a branch on the basis of the Swiss license.
  - The Swiss regulator FINMA is working to enter into a bilateral agreement in the field of reinsurance.

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Insurance regulatory framework (3)
Investment restrictions

- **Insurance and reinsurance companies:**
  - Only equalization reserves and free reserves can be lent back at up to 1/3 of the total balance sheet.
  - If more (up to a max of 50% of the total balance sheet), a bank guarantee (minimum rating of AA) required.
  - Share capital and equity in CHF.
- **Reinsurance companies:**
  - No explicit restrictions on the investment policy, but the investment policy must be approved by FINMA.
  - Company should ensure investments according to prudent investment principles, an adequate mix of security, liquidity and return.
- **Direct insurance companies:**
  - Bound to restrictions for tied assets.

Insurance regulatory framework (4)
Other requirements

- **Local representation requirements:**
  - For signatory purposes one representative with sole signatory rights, or two representatives with collective signatory rights (Swiss resident).
  - Only one Board Director is required by law.
  - The member(s) of the board must have sufficient insurance knowledge.
  - No requirements as to Swiss or EU nationality.
- **Appointed actuary:**
  - All insurance companies must have a appointed actuary approved by FINMA.
- **Internal audit office:**
  - All insurers are required to have an internal audit office. Captives can be exempted from this duty upon written application to the regulator.

Insurance regulatory framework (5)
Other requirements

- **Regulatory reporting requirements:**
  - Changes in the business plan must be reported.
  - Derivatives report.
  - Tied assets report (only for direct insurers).
  - Solvency report.
  - Annual report.

Capitalisation and solvency (1)
Capital requirements and organisational fund

- The capital requirements are based on risks and exposure. The following minimum capital requirements applies:
  - Reinsurance captives: CHF 3m (about EUR 2m).
  - Reinsurance companies: CHF 10m (about EUR 6.6m).
  - Direct insurers: CHF 8m (about EUR 5.3m).
- Organisational fund:
  - to cover the costs of establishment and extraordinary business development.
  - 20% of the minimum capital.
  - For reinsurance captives, the minimum amount is CHF 300k.
  - After 3 years, the fund can be used for other purposes with the approval from FINMA.

Capitalisation and solvency (2)
Solvency requirements

- **For all captives:**
  - Solvency I applies. Similar to the EU solvency model.
  - For Solvency I the solvency needed is based on the total of the equity (solvency available) of the captive in comparison with earned premiums, paid claims and change in claims reserves (average of the past 3 years).
- **For professional reinsurers and complex captives:**
  - Swiss Solvency Test (SST) is required which is an equivalent of Solvency II.
  - The SST requires to define a target capital based on the company‘s exposure to various risks.
- **For small captives:**
  - Risk Bearing Capital Model (RBC) replaces SST.

Fiscal efficiencies (1)
Tax ruling

- During establishment the tax authorities shall be approached in order to negotiate an individual tax ruling.
- The ruling is a binding agreement between the captive and the tax authorities on the taxation of the captive.
  - Favourable tax rates.
  - To build equalisation reserves.

Fiscal efficiencies (2)
Corporate and capital tax rates

- **Income tax:**
  - Federal income tax is levied at a flat rate of 8.5%.
  - The federal tax rate is generally non negotiable.
  - An individually negotiated tax ruling can reduce the overall tax rate for both federal and cantonal tax to about 9-16% (canton Zug).
- **Capital tax:**
  - Depending on the Canton, i.e. the capital tax in Zug is approximately 0.015%, in Zurich it is 0.035%.
  - There is no federal capital tax rate.

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Fiscal efficiencies (3)
Other taxes

- **Stamp duty:**
  - Issue and increase of equity: 1%.
  - Transfer of securities: 0.15% – 0.3%.
- **VAT:**
  - 7.6%.
- **Tax treaties:**
  - Switzerland has double tax treaties with Slovenia.
  - Swiss / EU Savings treaty: This reduces the standard Swiss withholding tax on dividends of 35% to 0% for Slovenia.
- **CFC legislation:**
  - No CFC legislation exists for Slovenia or Switzerland.

Fiscal efficiencies (4)
Equalization reserves

- **Equalisation reserve build up:**
  - Equalization reserves can be built up without limit.
- **Equalisation reserve release:**
  - Release according to method outlined in business plan.
  - Generally when there is an actual net operating loss.
  - Release without loss might have implications for income taxation.

Fiscal efficiencies (5)
Substance

- Economic substance is a basic requirement for any captive as this prevents uncertainty as to where the captive is to be taxed.
- Facilities at the domicile.
- Board and shareholders' meetings.

Exit options (1)

- If the captive for some reason wishes to exit Switzerland, there are the main possibilities:
  - Transfer of the company.
  - Portfolio transfer.
  - Liquidation/run-off.