

ILS EXPANDS INTO NEW JURISDICTIONS

John Dykstra, of Maples Group, assesses the resilience and growth of the ILS market

Over the past two decades, the ILS market has proven to be very resilient. During the financial crisis, new ILS transactions continued while most other capital markets products stagnated and, despite the headwinds of record insurance claims over the past couple of years, the ILS market is nevertheless forecast to continue growing over 2019. This market has convincingly demonstrated its staying power. Investor demand for ILS products continues to outstrip what the market is able to supply. This has not gone unnoticed by the world's financial centres, which are actively competing with each other to win over a share of this market.

In the early days of the ILS market, catastrophe bond transactions were set up in a variety of jurisdictions, with the very first 144A deals being set up in the Cayman Islands. Other jurisdictions were either not interested in the product or they lacked an appropriate regulatory framework for these types of transactions. Within just a few years, most of the deals were being set up with a Cayman Islands company as the issuer. A few European deals were run through Ireland, but otherwise the Cayman Islands quickly became the dominant jurisdiction for cat bond transactions.

This was not surprising, as the Cayman Islands is well-recognised as a leading international financial centre for securitisations and other structured finance products, as well as being one of the world's leading offshore insurance centres. With expertise in both areas, the jurisdiction is well-suited for a hybrid product such as catastrophe bonds, which are structured as a securitisation but with an overlay of insurance licensing and regulatory oversight. It has also been helpful that the Cayman Islands has always been welcoming

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to innovative new structures, particularly when other financial centres were unsure of what to make of ILS.

As markets ran into challenges around the financial crisis, other potential domiciles took note that capital was continuing to flow through ILS while the rest of the capital markets seized up. Suddenly everyone was pitching to win a piece of this market. Bermuda, which initially missed out on the burgeoning cat bond market, overhauled its insurance laws to create a regulatory regime that targeted ILS products and launched a marketing campaign that successfully played off its deep connections in the global insurance community to draw transactions to its shores. A number of other jurisdictions jumped into the fray with their attempts to win over a segment of this market.

The result has been a marked shift in where these transactions are done. Bermuda has become the leading domicile for 144A cat bond transactions, while the Cayman Islands has dropped back into second place. Ireland has also seen its share of the market fall over time and, after a flurry of interest from several others, two jurisdictions have emerged as potential new finan-

cial centres for ILS products – the UK and Singapore.

It remains an open question how successful the UK and Singapore will be with their new ILS regimes. Currently, the UK faces the very significant challenge of selling its new ILS regime in the face of tremendous uncertainty around Brexit. There are open questions around how efficiently transactions can be structured and regulated under the UK's ILS regime, but for now the challenges posed by Brexit overshadow all other issues.

Singapore is offering significant financial incentives to transactions that are established with a sufficient nexus to Singapore. This is generating quite a bit of interest and Singapore looks promising as another possible future hub for ILS activity.

Maples and 144A

The Maples Group has legal and/or fiduciary operations in all the key domiciles for 144A cat bond transactions – Bermuda, the Cayman Islands, Ireland, Singapore and the UK – and we are seeing activity in all of them. Our legal advisory and fiduciary services divisions have acted on Cayman Islands and Irish transactions for many years since the first transaction in the 1990s. Our fiduciary service divisions in Bermuda, Singapore and the UK are actively assisting with potential new transactions in each of those three jurisdictions.

There has been a great deal of commentary about the growth of this market in terms of issuance levels, covered perils and geographical coverage. There has not been much focus on the significant growth in the number of jurisdictions actively seeking to participate in this market, which demonstrates confidence that this is a valuable and growing market that will be around for the long term.



A number of jurisdictions have put into place legislation and regulations designed to create a framework that will appeal to ILS products, but this has not always generated any noticeable traction for those ILS regimes. To attract this business takes more than having the right legislative regime in place. It is also necessary to have a regulator and service providers who understand this market. Even jurisdictions with well-developed ILS regimes and extensive experience in this market have found that it can be a daunting task to maintain their market position.


To take the Cayman Islands as an example, the Cayman Islands sit behind Bermuda in the current list of leading ILS domiciles. It was only a few short years ago that the Cayman Islands enjoyed a near monopoly on this product. The ILS regulatory regimes of Bermuda and the Cayman Islands are very similar in substance. The Cayman Islands is more open to innovations in transaction structures and more flexible with respect to understanding and accommodating new

transaction features. However, Bermuda has applied significantly more resources to marketing their offering, and this has enabled Bermuda to take the top spot from the Cayman Islands.

“The Cayman Islands has always been welcoming to innovative new structures, particularly when other financial centres were unsure of what to make of ILS”

The Cayman Islands has traditionally kept a low profile with regards to their long-standing position as a leading off-shore insurance domicile, second only to Bermuda. Over the past few years, the Cayman Islands has seen their market share for other insurance products grow. For example, the number of reinsurers

has grown in the past few years from just one to more than half a dozen reinsurers, with several more in the process of setting up. The insurance industry in the Cayman Islands is clearly growing and innovating, but historically there has not been a sustained marketing effort to capitalise on the good news. With new competition emerging, the incumbents need to stay on their toes and remain innovative and nimble.

As more jurisdictions look for ways to participate in the ILS market, offering financial incentives and crafting new legislation tailored to meet the particular needs of the ILS market, the increased competition amongst financial centres is a positive development for the ILS market. Providing the ILS market with a wider array of jurisdictional options will add to the robustness of the ILS market as it continues to evolve and mature. 

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