

# BERMUDA

captive

## Safe haven

Bermuda's strength remains a certainty



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### A youthful partnership

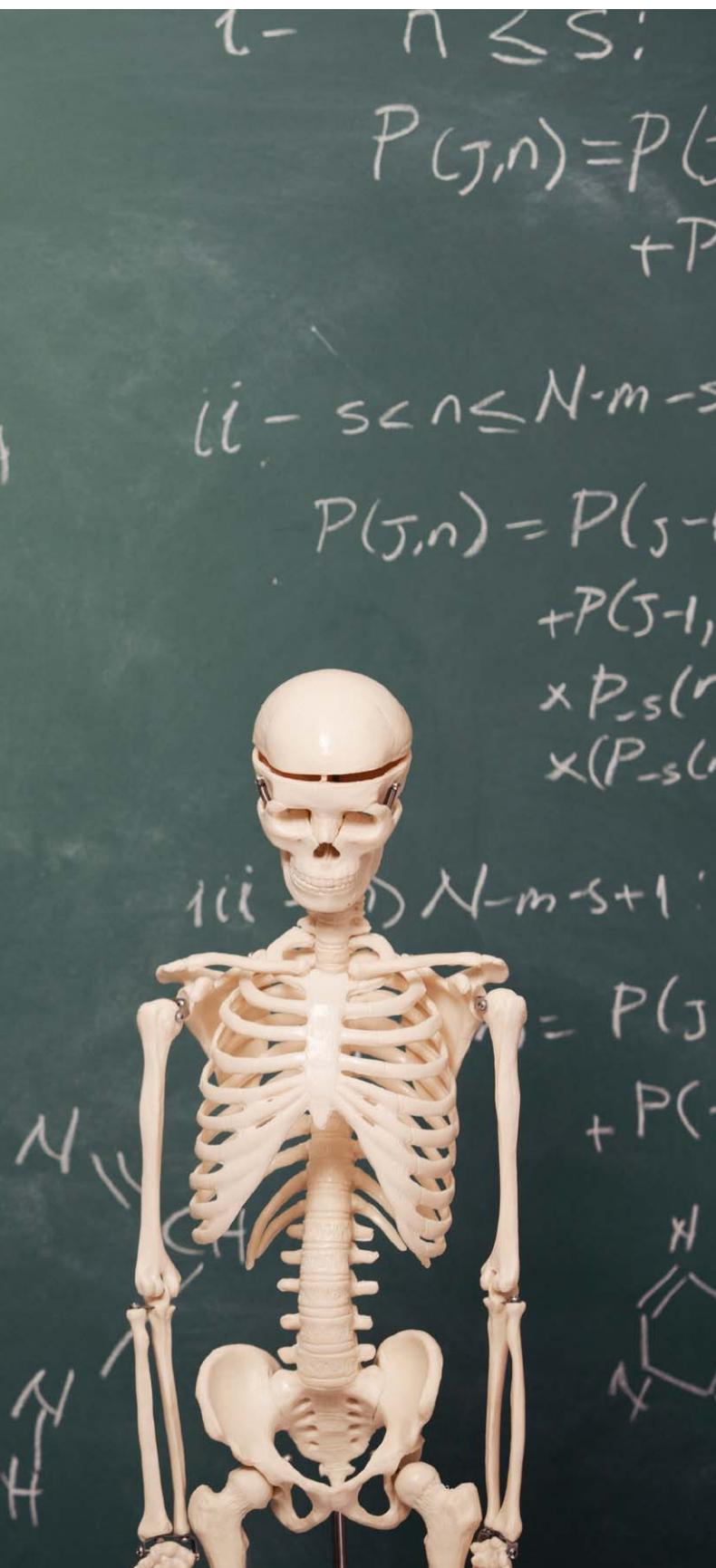
Exploring the implications of Bermuda's recent TIEA with Canada.

### Decisions, decisions

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Educated  
insights



*Bermuda Captive* spoke with Phil England, equity shareholder at Anderson Kill & Olick, about the strengths of Bermuda and how it can maintain its competitive advantage.

**E**stablished in 1969, Anderson Kill & Olick is recognised as one of the most prominent insurance coverage law firms in the US, and boasts considerable connections with Bermuda, not least through Phil England, a veteran of the insurance sector. Its insurance coverage practice was described by *The Wall Street Journal* as having 'corporate polish with the pugnacity of a plaintiff's firm', and its capabilities have proved invaluable to a host of parent companies with captives based out of Bermuda.

England, resident at Anderson Kill's New York office, has been working with Bermuda captives since the 1980s. He provides legal counsel to clients seeking alternative risk services and captive insurance company legal and tax advice, as well as advising both public and private corporations on the issues surrounding setting up a captive on the Island. England has worked with more than 30 Bermuda captives over the years and this experience has been invaluable in dealing with the full gamut of captive legal issues.

#### **What services do you provide to clients in Bermuda?**

As US lawyers we work in partnership with local law firms in Bermuda and provide a broad range of legal and consultative services having some type of Bermuda nexus, from handling board meetings to corporate legal work, personal estate planning, litigation and tax advice. As their US legal representation, clients rely on us to keep them up to date with legal, tax and regulatory developments and in terms of setting up captives, we have both the experience and the expertise to put our clients at ease and make sure the process of establishing a captive runs smoothly.

“IT’S TIME BERMUDA STARTED LOOKING AT THE YOUNGER GENERATION OF CONSULTANTS, ADVISERS AND LAWYERS, REACHING OUT TO THEM AND SELLING BERMUDA FOR WHAT IT IS—A WORLD-CLASS DOMICILE FOR CAPTIVES.”

**What are the key concerns of your captive clients, and what attracts them to Bermuda?**

Most of our clients have three main concerns: they’re looking for regulatory stability, established expertise and experience in handling captives. Running a captive is a long-term investment and so our clients aren’t looking for short-term profits. They want a domicile that will offer the greatest potential for future development, as well as a business-friendly environment and a depth of expertise that allows for the smooth operation of their risk. We discuss the various domiciles on offer with all of our clients, and talk at length about the benefits of where they domicile and the implications of this from a US tax perspective. In the end, the clients who opt for Bermuda do so because it meets their requirements and offers a complete array of local management services.

**How do you see Bermuda’s captive market at present? Do you think it is facing up to the competition?**

Bermuda’s captive market is strong. It remains the class act of the jurisdictions that serve as domiciles for captives and is particularly strong in reinsurance. However, I think if we had had this interview 10 years ago, certainly 15, I would have said “what competition?”. There were very few other domiciles that could even claim to be on the same level with Bermuda. In the past 10 to 15 years, sophisticated and significant jurisdictions have evolved that have invested money and human resources to make sure they are a genuine possible domicile for new captive formations, so I think Bermuda has some real competition in the US, and also in the Caribbean.

In a sense that is the price Bermuda has paid for being the leader in this industry, and for establishing the modern framework for captives. It’s natural that a country that has been the trailblazer should now have competition from other jurisdictions. I think Bermuda is certainly able to meet the competition, but Bermuda needs to be clearly aware that there are substantial jurisdictions and expertise outside of Bermuda that are also trying to get a share—a substantial share, I might add—of the captive market.

**Do you think regulation (and active implementation) is still a key strength?**

One of the things that Bermuda clearly has to offer is a very sophisticated regulatory network surrounding the creation and operation of captives. There is solid and stable expertise with respect to the implementation of the regulatory function, and quite often, that stability is a very important part of the decision-making process about which domicile to establish a captive in. That is still a key strength of Bermuda, and you can feel it when you speak with the regulators

and the people who support the captives locally, including Bermuda’s banks, managers, financial advisors, attorneys and accountants. Bermuda, I think, still leads the pack.

**What could Bermuda do better?**

Bermuda is a splendid jurisdiction but it may have grown too comfortable with itself. I think Bermuda could benefit from an aggressive campaign to make more people aware of what a fine domicile it is, and promoting the level of expertise it offers. There’s a certain reserve about Bermuda, but the days of quiet dignity only get you so far in the competitive arena in the 21st century. While Bermuda, in my view, will always be a major player, if Bermuda wants to keep its premier status, it could benefit from doing a little more advertising and being a little more aggressive.

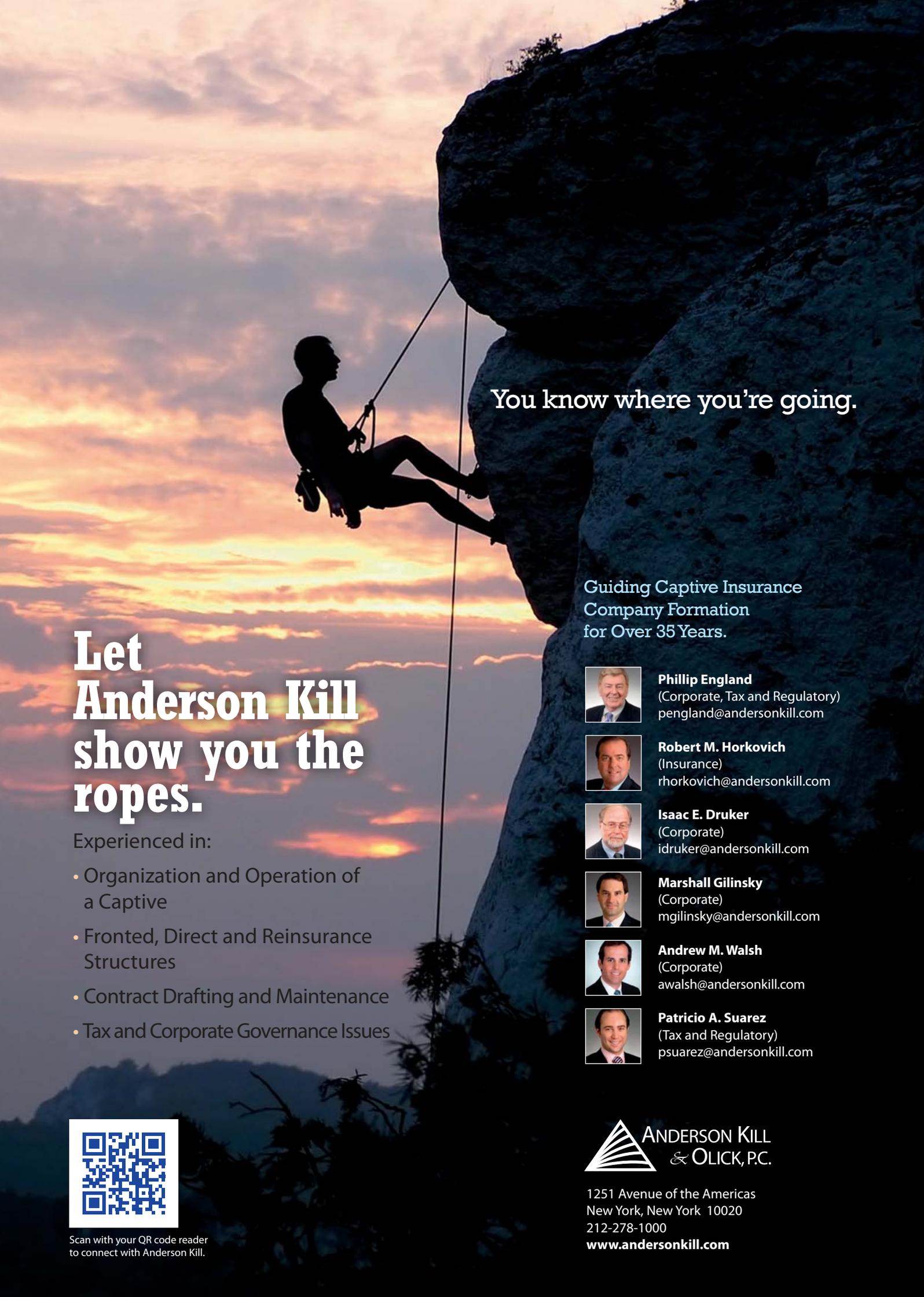
Bermuda has a strong, seasoned following in the US, but it’s time Bermuda started looking at the younger generation of consultants, advisers and lawyers, reaching out to them and selling Bermuda for what it is—a world-class domicile for captives.

**Where do you see the greatest opportunities for captive development going forward?**

Captives are a flexible entity. Perhaps the best opportunities are going to be in employee benefits and the types of coverage that captives write. Financial risk may also be the subject of more captive planning. The days (if they ever existed) when people thought about captives as largely a tax planning opportunity for accelerating deductions are over. Today’s opportunities are in the establishment of strong, solid captives that cover coverages that are duplicative and at lower cost than those offered by third party insurers. There are also opportunities for the investment of capital surplus, but the lead area of opportunity is in the growth and expansion of coverage areas a captive offers. The world of captives is still growing. I might note that Bermuda can still be, as it has always been, an innovative force in the world of captives. It has the intellectual horsepower to develop new structures and coverages, and it should be noted that Bermuda (unlike US jurisdictions) has a clear link to international insurance planning and clients. All in all, I think I can look forward, with my colleagues, to working with Bermuda and its captive industry for many years to come. ●

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*Phillip England (pengland@andersonkill.com) is a shareholder in the New York office of Anderson Kill & Olick, P.C. Mr. England, chair of the firm’s captive insurance services group, provides counsel and advice to clients seeking alternative risk transfer services and captive insurance company legal and tax advice. He advises on a variety of issues that arise in the formation of captives for clients in a variety of industry sectors.*



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