Treaty and facultative reinsurance are the traditional methods of transferring the risk of loss. But many risks – because of their size, profile or uncertain nature – cannot easily be transferred to the conventional market. Alternative Risk Transfer (ART) products are increasingly being used to provide capacity to (re)insurers, to even out balance sheet fluctuations and to exploit the opportunities provided by the convergence of the reinsurance and capital markets.

Ince & Co is able to advise in relation to a wide range of ART arrangements from both a contentious and non-contentious perspective. Whilst ART means different things to different people, we think it useful to break down our expertise into three areas:

**Captive insurance arrangements**
We advise both (re)insureds and (re)insurers on captive arrangements intended to:

> provide insurance cover for risks that are otherwise uninsurable or premiums prohibitive;

> facilitate retention of profits (technical and investment) within a group rather than with third parties;

> reduce premiums by removing third party profit requirements; and

> obtain flexibility to retain different levels of risk depending on market appetite (hard or soft market).

We are able to advise on a wide range of structures and features including:

> locally admitted captives, reinsured by an external reinsurer;

> non-admitted captives, reinsuring an external locally-admitted front;

> claims management arrangements ensuring proper control of claims in a way that is transparent to regulators;

> management agreements and procedures that meet risk management and corporate governance objectives; and

> captive reinsurers set up by an insurer in order to obtain favourable investment control and regulatory capital treatments.

**Recent experience**
We continue to advise a long-standing FTSE 100 client on its insurance and reinsurance global programme. This involves working with the client’s captive programme to enable it to manage both the costs and rewards of risk transfer. We have put in place new management and claims handling arrangements, in particular ensuring that the client and its captive have the appropriate level of claims control when needed in order to satisfy their own internal requirements and those of the local regulator. A key concern has been to ensure that monies to pay claims are protected while in the hands of service providers. Our work has also been aimed at ensuring that conflicts of interest within service providers (such as brokers) are minimised. Given that our client is a listed entity, we have also advised on appropriate reporting and governance requirements for local captive managers.

Our (re)insurance litigation expertise has been deployed on a number of matters involving the captive’s inwards and outwards claims and subrogated recoveries. These issues have arisen in a cross-border context (often in developing countries) under the client’s global programme, and within the client’s structure of local fronts, captives in jurisdictions including Bermuda and Ireland and external reinsurers.

**Structured reinsurance**
Ince & Co is able to advise reinsurers, cedants and service providers on structured reinsurance solutions that:

> meet specific risk management objectives, for example in relation to exposures across multiple lines;
> deal with timing of loss issues in relation to particular classes of risk;
> address multi-trigger risk (for example, insurance and non-insurance trigger);
> achieve specific accounting or regulatory capital objectives;
> appropriately limit counterparty risk; and
> achieve insolvency-remote outcomes.

Our team is familiar with a wide range of solutions to achieve clients’ objectives including:

> reinsurance sidecars;
> reinsurance-based structures that remove interest, investment and longevity risks from life insurers;
> reinsurance structures that allow underlying assets to be more aggressively managed while at the same time ensuring adequate protection for those assets;
> the use of quasi-reinsurance structures, such as swaps, to allow a life insurer to release assets; and
> structured quota share arrangements.

In particular the team is able to advise on:

> industry loss warranty contracts;
> catastrophe bonds;
> swaps, including longevity swaps;
> transformer structures necessary to enable the issue of ILS;
> the efficacy of security arrangements holding underlying assets;
> agreements with investment banks, custodians and service providers; and
> correct classification of any given instrument for regulatory purposes.

Recent experience
Our team has advised reinsurers offering a bespoke multi-year multi-line contract providing support to a new line of business for an existing Lloyd’s syndicate. The cedant’s underwriting team was new and they had no existing claims team to deal with the potential claims from this new class, thus our client required more than the usual claims controls provisions in place. We helped the reinsurer to develop a bespoke solution covering both the capacity required (and ensuring this met the relevant solvency criteria) with trust and security deeds, as well as a solution for the management of claims (with a claims fund being secured in advance). We utilised the expertise of our reinsurance, regulatory and corporate lawyers to bring together the solution, which the reinsurers continue to use as a blueprint to support other cedants.

Insurance-linked securities
We are able to offer advice on the wide range of products that are available to:

> offer insurers the ability to access capital markets and investment banks for capital; and
> provide investors with the opportunity to gain exposure to insurance risks.

Recent experience
We advised a transformer provider on the terms and conditions of the transactional documentation required for an ISDA traded catastrophe swap. On the contentious side, we have represented clients in disputes concerning the trigger provisions in industry loss warranty contracts and the appropriate classification of the insured market losses.
Jan Heuvels  
Partner, Head of Insurance – Europe

Jan's expertise includes complex dispute resolution (litigation, arbitration and ADR) as well as non-contentious advice in conjunction with our corporate and regulatory insurance lawyers. He regularly advises on ‘corporate risk’ issues representing corporates, captives, insurers and reinsurers, and advises clients on issues arising from Industry Loss Warranty contracts.

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Johanna Ewen  
Partner

Johanna specialises in complex technical reinsurance matters. She has experience of complex multi-party dispute resolution involving direct, facultative and treaty reinsurance coverage issues, and regularly advises captives on both contentious and non-contentious matters. She also advises clients on issues arising from ART transactions, including financial risk products, and Industry Loss Warranty contracts.

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Chris Jefferis  
Partner

Chris’s practice focuses on reinsurance dispute resolution; mirroring this on the non-contentious side, his practice encompasses policy drafting and agency matters. He frequently advises clients on disputes and corporate issues arising out of ART transactions.

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Stephen Marais  
Partner

Stephen specialises in banking and asset finance. He represents leading financial institutions and companies in domestic and cross-border structured transactions, both leasing and debt based. He has experience of most transaction structures, including export credit-backed, government guaranteed debt facilities, tax-based lease structures, off-balance sheet and defeased structures, Islamic finance structures, sale and leaseback facilities and non-tax based leases.

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Kiran Soar
Partner

Kiran’s practice covers a variety of contentious and non-contentious insurance and reinsurance matters for clients based in the London market, the US, Bermuda and Europe. He has long advised on issues arising from ART transactions, including the notorious film finance banking/insurance convergence disputes of the early 2000s, finite reinsurance arrangements, bespoke trust and security arrangements with respect to multi-year, multi-line excess of loss reinsurances and credit derivatives product insurance, including structuring, tax and other associated issues.

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George Kennedy
Consultant

George is a licensed Insolvency Practitioner, with over 40 years’ experience in the field. His particular expertise is advising companies in financial difficulties and in transactional work involving the acquisition and disposal of companies, businesses and joint ventures.

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