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Securing the title

Secure Legal Title is confronting the challenge of Brexit by broadening the scope of its core title insurance activity and expanding into new geographic markets, according to the company's chairman and its chief executive

Sean Dalton CV

Sean Dalton is chairman and co-founder of SLT.

He is a former chief executive of Liberty Syndicates Management, one of the largest managing agents at Lloyd's, and is a former member of the Council of Lloyd's.

His experience includes the start-up of new insurance businesses, including Lloyd's syndicates and managing agents. He **has significant experience of governance matters, both as chief** executive and non-executive, having been chairman of a Lloyd's managing agent audit committee, as well as a member of the Lloyd's audit committee. During his time at Liberty Syndicates, he was responsible for the development and management of legal indemnities and title insurance.

Joel Peck CV

Joel Peck is chief executive and co-founder of SLT.

He is an attorney, with a background in real estate investment banking and insurance in the US and internationally. He practiced law in New York and then joined Lehman Brothers, where he worked for 16 years, becoming senior vice-president, real estate investment banking.

Before founding SLT in 2012, he headed the International Services division of LandAmerica Financial Group and expanded its insurance business in Canada, Mexico, Europe and Asia-**Pacific. Following the acquisition of LandAmerica by Fidelity** National Financial, he continued to be responsible for the strategic development of its international insurance business.

Rasaad Jamie
Global markets editor

These are exciting, as well as challenging, times for Secure Legal Title (SLT), a managing general agent (MGA) and one of the biggest writers of title insurance into the Lloyd's market.

Last year SLT, which writes title insurance on behalf of two of the largest syndicates in the market – XL Catlin 2003 and Sompo Canopius 4444 – concluded its biggest deal to date, a $600m policy providing bespoke title insurance to a portfolio of commercial property risks in the UK energy sector.

The firm has significantly increased both the volume and the insured value of its business over the past three years, according to Sean Dalton, its chairman and co-founder.

During this period the company has achieved Lloyd's coverholder status and expanded the scope of its core title insurance activity into other property-related areas, such as insuring shares in a company and certain kinds of property management and leasing risks.

It has also established accredited representatives in Switzerland, Poland and Romania and has expanded into Mexico, where it oversees the activities of, and operates as the reinsurer for, Armour Secure Insurance (formerly Fidelity National Title de Mexico), the biggest title insurer in Mexico, which was acquired in 2014 by the Bermuda-based Armour Group, the majority shareholder in SLT.

Bilateral trade between Mexico and the UK is enjoying double-digit growth, Dalton says. Whereas previously title insurers in Mexico tended to insure foreign investors acquiring commercial real estate, they are now also insuring Mexican investors.

"The main reason we are very interested in the market is because the rules have changed. Before, there were limitations on which assets Mexican pension funds could invest in. That has changed. The government is now encouraging pension funds to invest in real estate. Mexico is a booming economy.

"We were in Mexico City recently to attend an event at the British ambassador's residence, related to our investment in Mexico. Notwithstanding the posturing of [Donald] Trump, there are buildings going up everywhere in the city and the capital for those projects is being provided by a combination of foreign and Mexican investors," Dalton says.

Geographic expansion

In addition SLT, which operates as a direct insurer in the UK and Europe, is also looking to expand into Latin America and, potentially, into the Caribbean region. "Mexico is an obvious platform for us into Latin America and we are exploring opportunities as they develop in the region. We are also looking at Asia," chief executive and co-founder, Joel Peck, says.

The Caribbean, according to Peck, is an interesting market, not only because it is close to Mexico but also because of the legacy and influence of the French, English and Spanish legal and commercial systems in the region.

France, for example, is an increasingly important market for the company. SLT has a growing business in the country providing insurance cover to companies in the renewable energy sector against the risk of a wind farm or a solar power installation having to be forcibly dismantled because it is in breach of the country's complex zoning regulations. SLT also provides title insurance cover to property developers working on new residential developments in the urban areas of France.

But there are also signifcant challenges for SLT, not least Trump's presidency and what it means for the Mexican economy and SLT's interests in the market over the next five years. Indeed things could be turbulent if the past few months are anything to go by – the value of the Mexican peso fluctuated wildly depending upon the polls during the recent US presidential elections.

The other challenge (and cause of significant uncertainty for the company) is Brexit. SLT writes a large part of its business in Europe, particularly Poland and Romania, and is in the process of expanding into other countries in the central and eastern Europe region. Although SLT's business is growing in France, Italy and, to some extent, in Germany, title insurance is still a relatively new concept in western Europe.

Despite these encouraging developments, Brexit is a significant concern for SLT, particularly for its business in the UK. For Peck, the biggest driver of title insurance is a positive macro-economic environment.

"If people are buying and selling propertie and banks are financing those transactions, there will always be more demand for title insurance, so we worry about what will happen to the real estate markets in the UK as a result of Brexit," Peck says. "Insurance is based on the value of the asset. If property values go down 10%, premiums go down 10%. That is a concern. But one of the things we are doing is expanding the scope of our cover. We are broadening our cover and we are offering it to more parties. And, as our entry into the Mexican market suggests, we are also looking at geographic expansion."

Mitigating factors

SLT, as a Lloyd's coverholder, relies on passporting to write risks in continental Europe, an issue around which there is now significant uncertainty in the wake of the Brexit vote. However, Dalton says, there are also some mitigating factors. "The biggest is that we are part of Lloyd's, so we are not dealing with the issue of Brexit on our own. The other mitigating factor is that, as a coverholder, we don't have capital at risk. We don't have to shift capital from one jurisdiction to another. But there is no doubt that because our business is so Eurocentric, the net effect of Brexit for us will be higher costs and a more challenging operating environment."

For Peck, despite the increased cost and other challenges Brexit presents, SLT, as a Lloyd's coverholder, is better positioned than many of its competitors, particularly those which are subsidiaries of US title insurers. "They have established insurance companies in the UK and are using the EU passport to write business on the continent. Our policies are Lloyd's policies and, whatever the result of the Brexit negotiations, Lloyd's will be issuing policies in Europe. It is not so clear that some our competitors will want to incur the cost of setting up and capitalising an insurance company in another EU country if passporting is abolished, so that may represent an opportunity for us in the future," he says.

In addition, Peck says, SLT's US-based competitors are constrained by the monoline rules in their domestic market. "In the US, title insurance is a monoline business. Title insurers can only insure title to real estate. Property/

casualty insurers cannot legally write title insurance. Similarly, a title insurer cannot issue a property/casualty policy. And, of course, US title insurers writing business in Europe have to reinsure their business in the US, where a title insurer can only reinsure title insurance business. In contrast, SLT has the great advantage of being able to move beyond that at Lloyd's and bring a measure of diversification to our portfolio by writing a much broader scope of business," Peck says.

Mexico City: despite the posturing of Donald Trump, bilateral trade between Mexico and the UK is enjoying double-digit growth and offers 'an obvious platform' for SLT, according to Sean Dalton

Monoline market

In the UK, a very defined form of title insurance – a legal indemnity cover for risks mainly associated with residential property transactions – is doing very well, generating an annual premium income in the market of around £120m ($152.6m) a year, according to Dalton. This compares with a premium income of about €100m ($107.2m) for the whole of continental Europe, where the cover is structured more along the lines of the US model and almost entirely focused on commercial real estate transactions. These figures, which Dalton describes as very rough estimates, are dwarfed by those of the US title insurance market, which generated an annual premium income of $12.8bn in 2015. He warns against trying to draw comparisons between the title insurance markets in Europe and the US. In the US, where the title insurance market is more than a 130 years old, the use of the cover is so prevalent that it is more or less a compulsory insurance, which is bought as a matter of course in every real estate transaction, because US banks and mortgage companies require it. Title insurance in the US is, by law, a monoline business. When a title insurance company publicly reports its financials, according to Peck, it is, by definition, only reporting its title insurance activity, which makes tracking the progress of the sector in the US and that of the companies within it very straightforward. "Every quarter, we know exactly how much title insurance business is written in America and we know who wrote it. The same does not apply to other markets. At Lloyd's, there is not a separate publication of title insurance premiums," he says.

The significant increase in the use of warranty and indemnity insurance (W&I), covering representations and warranties in real estate M&A transactions, over the past two or three years is a trend from which SLT has benefited. "We have become very involved in that business. However, our expertise is in real estate. So, typically, we are not going to be engaged in an M&A transaction in the technology or telecoms sectors, unless a substantial part of the value of the target company is in real estate assets, as it is likely to be with a company in the property investment, hospitality or retail sectors," Peck says.

But the W&I insurance market is fundamentally different from the title insurance market, Peck says. "First, the W&I insurance focuses on the company, not the asset. Second, W&I policies cover only a rather small percentage, typically 10% to 20%, of the value of the transaction, whereas in the title insurance market, we cover 100% of the value."

Another big difference, Peck says, is that the W&I policy tracks the provisions of the sale purchase agreement. Usually, reps and warranties are outstanding for two to three years, extending to about seven years in the case of tax warranties. This inevitably means the term of a W&I policy is going be much shorter than a typical title insurance policy.

"And this is where we come in. What tends to happen is the buyer of the company identifies that there is a greater risk which is not being covered by the W&I policy, a risk which relates to the full value of the property which is normally not covered under the W&I policy. There is often also concern about the title to the shares of the company itself and because, unlike our US competitors, we are not a monoline title insurer, we don't just cover title to the property or real estate assets of the target company but also the title to its shares," Peck says.

Italian job

A particularly important development for SLT's European business is that, over the past three years, working with its broker partner, Besso and with Aon's office in Genoa, the company pioneered a new web-based title insurance product, Donazione Sicura (donation insurance), in Italy. The cover insures policy holders against what was previously an uninsurable risk inherent in certain Italian real estate transactions related to property donated for tax or succession planning purposes.

According to the Italian Civil Code, all children are entitled to inherit a fixed proportion of their parents' estate after death, a provision which can make it very difficult to dispose of a property without a bank guarantee or clear proof there are no other ownership claims on that property. In developing the product, SLT worked with a group of notaries who had previously advised people against buying these "donated" properties. Banks would not lend against a donated property because of the risk of someone else laying claim to it, Dalton says. "But we were able to persuade them that our policy provides cover against that contingent risk, which opened up all sorts of doors for us. We learnt a lot from that experience. Initially, sales of the policy were pretty static. But eventually, as our message got across and the market became more comfortable with the product, sales increased slowly at first and then quite steeply."

Removing the title risks facilitates subsequent sales, purchases, and mortgage financing of the property and, thereby, greatly enhances the level of liquidity in certain parts of the Italian property market, Dalton says.

This is a critical development for SLT which, until 18 months ago, only wrote bespoke title insurance policies for big commercial real estate deals. The new platform enables the company to handle more residentially orientated and volume-based property transactions. "We had been looking to diversify the business beyond the bespoke, one off transactions we specialised in. We developed this quite unique online platform, with all the appropriate checks and balances, through which we currently write more than 200 policies a month."

SLT's roots, according to Peck, go back to the days before the financial crisis when US title insurers had global ambitions and were writing business all around the world. However, by 2012, many US title insurers had ceased to write international business, particularly in Europe and Asia and quite a few are still in the process of disposing of their international operations. Indeed, Fidelity National's sale of their Mexican insurer, which was a very profitable business, according to Peck, was a dramatic example of this trend.

Another US title insurer, First American, although they continue to operate their subsidiary, First Title in the UK, has sold its Mexican business and has withdrawn from other international markets. "The question is why would they sell a profitable business? Why did Fidelity also sell their operation in Malta? What is happening here?

What is happening is that, even though some of these businesses have been quite profitable, they are very small compared with the massive premium revenues that the US title insurers have in their domestic market. "Fidelity had a 33% share of the US market in 2015. You compare that revenue with that of the title insurance market in Mexico or in Europe where, in addition, companies now have to contend with the complexities and challenges of Brexit. That means the management time and expense involved in the running of a foreign business is very high when revenues are relatively small. That, in my view, has a lot to do with US title insurers' withdrawal from the international market," Peck says.

Growing market

But the title insurance market in Europe, including in the UK, is growing. There is increasing interest shown in the cover by international banks and investment funds, according to Peck. While title insurance provides protection against defects in land title, it also can mitigate the risks relating to planning and building permissions and zoning regulations in a real estate transaction, a significant problem for investors in Central and Eastern Europe. Even in a relatively mature market such as Poland, investors continue to be concerned about two issues: restitution of assets, including properties, and negligent or improperly executed privatisations.

Institutional investors have a fiduciary responsibility, Peck says. "They are not speculative investors. And the burden of responsibility on fiduciaries under recent legislation in Europe and the UK has increased significantly, and the risk to the institution which is investing clients' money is much higher these days than it used to be. So there is a natural inclination to be risk averse. We see the increased regulatory burden and liabilities on fiduciaries as very positive for the long-term prospects of the title insurance market throughout Europe."

The collapse of the European real estate securitisation market during the financial crisis hit the regional title insurance market quite hard. Indeed, the securitisation market which was expected to recover as a result of the wider economic recovery of the eurozone since 2012, has yet to do so. But, according to Peck, while banks are not exactly in a rush to get back to underwriting public placements of securitised property portfolios, SLT is insuring a number of private placements of portfolios of mortgages as well as portfolios of the underlying properties. "These mortgage portfolios are securitised but these are private and not public placements. The private property securisation market is ticking along nicely," he says.