



# Captives and Special Purpose Vehicles

*An NAIC White Paper*

[Date]

**DISCUSSION DRAFT**

Created by the  
NAIC Captives and Special Purpose Vehicle Use Subgroup  
Of the  
Financial Condition (E) Committee

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## **I. INTRODUCTION**

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### **A. BACKGROUND**

The Captive and Special Purpose Vehicle Use (E) Subgroup was formed under the Financial Condition (E) Committee during early 2012 given the broadened use of captives and the potential concern that a shadow insurance industry is emerging, with less regulation and more potential exposure than policyholders may be aware of as compared to commercial insurers. This potential concern becomes amplified when academics claim the shadow banking system was believed to have contributed to the recent financial crisis, thereby putting significant pressure on state insurance regulators and the NAIC to assess the merits of the aforementioned claims. As a result, the Subgroup was charged as follows:

*Study insurers' use of captives and special purpose vehicles to transfer insurance risk, other than self-insured risk, in relation to existing state laws and regulations and establish appropriate regulatory requirements to address concerns identified in this study. The appropriate regulatory requirements may involve modifications to existing NAIC model laws and/or generation of a new NAIC model law.*

To initiate this study, a regulator only request for comment was sent to all states and the District of Columbia to respond (in part or in total), as applicable, with regard to commercial insurers domiciled in their respective jurisdiction that transfer risk to captives or special purpose vehicles domiciled in the United States or elsewhere, and/or for captives or SPVs licensed in the jurisdiction that accept or cede third-party risk of commercial insurers. Thirty-five responses were received and a summary of those responses was shared publicly. The request for comment specifically addressed the following:

- State Law
- Type of Products
- Affiliate Transactions
- Retrocessions
- Business Purpose
- Solvency Standards
- Mitigation of the Risks
- Credit for Reinsurance
- Impact on Industry
- Accreditation – Regulatory Standards

A compilation of the responses helped to provide the framework for the Subgroup's subsequent discussions.

### **B. SCOPE**

The Subgroup was explicit from the beginning of the study that the following areas would not be considered under its charge:

- Pure captives or other similar structures providing self-insurance to non-insurance affiliates;
- Risk retention groups operating under captive laws.

However, the Subgroup did acknowledge that it may encounter issues throughout its study that are not related to its charge, but will refer those issues to the Financial Condition (E) Committee for

consideration (See Section XIV-Conclusions and Recommendations to the Financial Condition (E) Committee).

### Third Party Risk vs. First Party Risk

In risk-management terms, risk can be mitigated in a number of ways. These include: loss avoidance, loss control, diversification, combination, non-insurance risk transfers, insurance or retention. If a business or person decides to retain its risks rather than avoid or transfer them, then the business or person is engaging in self-insurance.

The traditional captive insurer is a regulated entity that is designed to provide a form of self-insurance program. The business entity forms the captive insurer as its wholly-owned subsidiary to accept risk transfers from the business entity, its subsidiaries and/or affiliates for a fee. The risk is transferred to the entity; however, it is the business entity and its subsidiaries and affiliates whose risk of loss is transferred and who are responsible for the premium.

The commercial insurer is an entity whose business is accepting risk transfers from other unaffiliated businesses and people for a fee. The contract affecting the risk transfer and identifying the consideration is known as an insurance policy. The businesses and people transferring risks to the insurer are known as policyholders. The risk accepted by an insurer is known as either first-party risk or third-party risk. First-party risk occurs when only the insurer and the unaffiliated business or person is involved in the risk transfer. Examples of first-party risk are a property insurance policy for a business or a homeowners' insurance policy for an individual. Third-party risk differs from first-party risk in that there is another party to the transaction. Examples include an auto liability policy where the third party is the person hit who otherwise might not have any relationship with the insurer or policyholder; a workers' compensation policy where the employer is the first party and the injured employee is the third party; or a group life policy where the employees and their relatives are third parties and the employer is the first party.

The term "third-party risk" has mistakenly been used to describe both first-party and third-party risks transferred by unaffiliated businesses and individuals to insurers. Thus, a more fitting term would be "insurance risk," where insurance risk is defined as a form of risk transfer, by a contract known as an insurance policy, of an unaffiliated business or person to an insurer for consideration known as premium. As a result, the Subgroup's charge references the word "insurance risk."

## **C. INTERNATIONAL ASSOCIATION OF INSURANCE SUPERVISORS CONSIDERATIONS**

The IAIS Insurance Core Principles (ICPs) are intended to provide a globally accepted framework for supervision of the insurance sector, and are used as the basis for assessing insurance supervisory systems under the International Monetary Fund/World Bank Financial Sector Assessment Program (FSAP). The introduction to the ICPs provides that the term "insurance" refers to the business of insurers and reinsurers, including captives. Therefore, it is understood that the framework provided within the ICPs is generally applicable to the supervision of captives, unless otherwise provided in a specific ICP. The introduction also notes it is recognized that supervisors need to tailor certain requirements and actions in accordance with the nature, scale and complexity of individual insurers. It further provides that, in this regard, supervisors should have the flexibility to tailor supervisory requirements and actions so that they are commensurate with the risks posed by individual insurers as well as the potential risks posed by

insurers to the insurance sector or the financial system as a whole. This principle of proportionality is provided within the ICPs and standards where relevant.<sup>1</sup>

There is not a specific ICP with respect to captives or captive supervision. However, in 2008, the IAIS adopted the Guidance Paper on the Regulation and Supervision of Captive Insurers in an effort to consider the application of the ICPs and standards to captive insurers, and where appropriate provide additional guidance and elaboration. The paper is currently under review by a drafting group of the IAIS Reinsurance and Other Forms of Risk Transfer Subcommittee, primarily due to the adoption of revised ICPs in 2011. The review and any resulting revisions are scheduled to be completed in 2013. While this paper provides application guidance for consideration by captive supervisors in general, two specific aspects of the paper appear to be particularly important in considering issues related to insurers' use of captives and special purpose vehicles to transfer insurance risk (other than self-insured risk):

- The IAIS has defined a captive insurer as “*an insurance or reinsurance entity created and owned, directly or indirectly, by one or more industrial, commercial or financial entities, other than an insurance or reinsurance group entity, the purpose of which is to provide insurance or reinsurance cover for risks of the entity or entities to which it belongs, or for entities connected to those entities and only a small part if any of its risk exposure is related to providing insurance or reinsurance to other parties.*” Exclusion of entities owned by insurance or reinsurance groups from the definition may imply an expectation that such entities be subject to supervision and regulatory requirements similar to traditional commercial insurers or reinsurers under the ICPs.
- With respect to entities meeting the IAIS definition of a captive insurer (i.e., not owned by insurance or reinsurance group), the paper provides that regulatory risk associated with captives varies by type, suggesting that pure captives represent the lowest risk, while captives undertaking activities that more closely resemble those of commercial insurers present the highest risk. With respect to the latter, the paper provides that supervisors should consider applying regulatory and supervisory requirements similar to those applicable to commercial insurers.

## II. STATE AUTHORITY

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### A. CAPTIVES

According to the states that responded to the Request for Comment, 26 states indicated that their respective state's laws define captives and nine states indicated that their state's laws do not define captives. With respect to the 26 states that define captives, all specifically define pure captives and association or group captives. In addition, the following types of captives are specifically defined within state's laws:

- (13) – Industrial
- (10) – Sponsored
- (8) – Special Purpose
- (5) – Branch
- (4) – Agency
- (3) – Reinsurance

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<sup>1</sup> IAIS Insurance Core Principle, Standards, Guidance, and Assessment Methodology, October 2011

- (3) – RRG
- (2) – Protected Cell
- (1) – Incorporated Cell
- (1) – Segregated Account
- (1) – Rental

### General Statutory Authority

Captives were originally created to allow non-insurance companies to set up subsidiaries to insure their company's own risk. Currently more than 30 states, the District of Columbia, and the U.S. Virgin Islands allow captives to domicile and form in the state.<sup>2</sup> Today, there are numerous types of captives. The number of captive domiciles has continued to grow over the past few years. The results of the regulator only request for comment suggest that a significant portion of this increase can be attributed to the use of captives as a means of dealing with perceived XXX<sup>3</sup> and AXXX<sup>4</sup> reserve redundancies.

State laws that allow for captive insurers generally regulate the formation of captive insurers, capital and surplus requirements, and captive investments. Captive statutes also address taxation issues and generally require annual statements and/or other reporting requirements with the state of domicile.

State laws vary as to the types of captives that are allowed to domicile in their state. Generally all of the states that allow for captive formation regulate the formation of pure captives and association or group captives. The majority of captives are formed as pure captives.

A **pure captive** is generally defined as an insurer that insures only the risks of the company's affiliates and controlled unaffiliated businesses.

An **association** or **group captive** is an insurer that insures the risks of the member organizations of the association and their affiliated companies.

Other typical types of captives include:

**Agency captive** A captive insurer that is owned by one or more business entities that are licensed as insurance producers or managing general agents or an agency and only insure risks on policies placed through their owners.

**Alien captive** An insurance company formed to write insurance business of a nature the commissioner determines is permissible and is licensed pursuant to the laws of an alien jurisdiction which imposes regulatory standards in a form acceptable to the commissioner on companies transacting insurance in such jurisdiction.

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<sup>2</sup> See Appendix A for information on the specific type of captive formations allowed in each state.

<sup>3</sup> Used to describe the actuarial reserves required to be held under the NAICs Valuation of Life Insurance Policies Model Regulation (#830) — commonly referred to as Regulation XXX, or XXX for short.

<sup>4</sup> Used to describe the actuarial reserves required to be held under the NAICs Actuarial Guidance XXXVIII—The Application of the Valuation of Life Insurance Policies Model Regulation (AG 38), or AXXX as its more commonly referred to.

**Branch captive** An alien captive insurance company that has been issued a certificate of authority to transact insurance in the state with a principal place of business in the state and has not otherwise been issued a certificate of authority by the commissioner to transact insurance.

**Incorporated cell captive** A protected cell captive that is established as a corporate or other legal entity separate from its incorporated cell that is organized as a separate legal entity.

**Industrial insured captive** Any captive insurance company that insures risks on the industrial insureds that comprise an industrial insured group and any of their affiliated companies.

**Protected cell captive** An insurer in which the minimum capital and surplus required by applicable law is provided by one or more sponsors and that insures the risks of participants through participant contracts and that segregates liability under a participant contract through one or more protected cells.

**Rental captive** A captive insurer formed to enter into contractual agreements with policyholders or associations to offer some or all of the benefits of a program of captive insurance and that only insures the risks of the policyholders or associations.

**Sponsored captive** A captive insurance company in which the minimum capital and surplus is provided by one or more sponsors, is issued a certificate of authority, insures the risks of separate participants through contract and segregates each participant's liability through one or more protected cell.

Risk retention groups also can be formed as captives in some jurisdictions.

## **B. SPECIAL PURPOSE VEHICLES AND SPECIAL PURPOSE FINANCIAL CAPTIVES**

According to the states that responded to the Request for Comment, 10 states indicated that their respective state's laws define SPVs and 25 states indicated that their state's laws do not define SPVs. With respect to the 10 states that define SPVs, the following types of SPVs are specifically defined within the state's laws, and although these definitions may differ slightly, the following summarizes the basic description of each:

(5) – Special Purpose Financial Captive (limited to issue only special purpose financial captive insurer contracts that provide reinsurance protection to the cedant/parent).

(3) – Special Purpose Reinsurance Vehicle (has limited certificate authority).

(1) – Limited Purpose Subsidiary (a domestic reinsurer that meets certain specific licensing requirements; these entities may act as a reinsurer of XXX or AXXX reserves, which can only be assumed from their affiliated life insurance companies).

(1) – Special Purpose Captive Insurer (established for one specific purpose or transaction, and where it is desirable to isolate the purpose or transaction from the other activities of a party or parties involved in the transaction, or where the transaction dictates that the vehicle should not be treated as controlled or owned by any other party to that transaction).

According to the states that responded to the Request for Comment, five states indicated that their respective state's laws define special purpose financial captives.

## General Statutory Authority

In addition to captives formed by non-insurance companies, insurers have also begun creating captives for reinsurance, securitization or reserving purposes as noted above. The majority of the transactions studied by the Subgroup were XXX and AXXX; therefore it appears the use of captives may be more common among life insurers than other lines of business. These captives are often referred to as special purpose vehicles (SPV). A special purpose vehicle, where defined under state law, is a captive licensed and designated as a special purpose captive insurance company by the commissioner. Special purpose vehicles can take several forms. Special purpose financial captives are limited to issue only special purpose financial captive insurer contracts to provide reinsurance protection to the counterparty. Special purpose reinsurance vehicles facilitate the securitization of one or more ceding insurers' risk as a means of accessing alternative sources of capital and achieving the benefits of securitization. Limited purpose subsidiaries can also be created for reinsurance purposes.

### C. OTHER TYPES OF CAPTIVES/SPVS

A significant number of captives and SPVs are formed by commercial insurers in locations outside of the United States. The use of these captives and SPVs falls under the charge of the Subgroup; however, these alien domiciles were not surveyed as U.S. insurance regulation does not apply to these countries. For solutions to any issues uncovered by the Subgroup to be effective, they must encompass solutions that can affect the use of captives and SPVs in non U.S. jurisdictions and not just in the U.S. captive states.

## III. TRANSPARENCY AND CONFIDENTIALITY

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The Subgroup studied the issue of transparency and confidentiality but found differing thoughts and particularly differing legal requirements, which prevented any consensus on the subject. The Subgroup began its study discussing the transparency and confidentiality requirements of specific jurisdictions that either responded to the survey or provided information to the Subgroup noting the following:

State	Share Information with Other States	Financial Information is Public	Any Planned Changes in Legislation	Requires an NAIC Cocode	Requires Filing to NAIC
District of Columbia	Yes	No	No	No	No
Iowa	Yes	Yes	No	No	No
Nevada	Yes	No	No	No	No
South Carolina	Yes	No	No	No	No
Utah	Yes	No	No	No	No
Vermont	Yes	No	Yes	No	No
New Jersey	Yes	No	Yes	No	No

All of the captive states have some form of confidentiality requirements included in state law. Some states publish information to varying degrees but publicly available information is usually limited to the captive or SPVs' name and owner. Filing of information of captives and SPVs made with the



department of insurance are considered confidential. However, captive states generally have provisions to share information with insurance regulators and many states also allow information sharing with other federal regulators. In most cases, other regulators must agree to maintain the confidentiality of the information before it can be released. .

The Subgroup agreed that confidentiality is warranted for pure captive transactions since such coverage written is only for the parent company and its subsidiaries' and affiliates' self-insured risks and there is generally no public interest in their business plan. However, for captives and SPVs owned by commercial insurers that cede insurance risk, the Subgroup had different views on the level of confidentiality that was needed for such transactions.

Some Subgroup members indicated the confidentiality is needed, and that state laws often require it. These Subgroup members noted that captives and SPVs owned by commercial insurers typically are utilized for a single transaction and are concerned it would be relatively easy for competitors and other parties to learn the economics of the transactions from the disclosures in financial statements, which could cause harm to the ceding company and the parties in the transactions. These Subgroup members note that the typical SPV financing transaction represents a commitment from a financial institution to extend credit in unusual circumstances. The amounts involved are usually significant, and even minor variations in terms can have a material impact on the economics of the credit facility. The ceding insurer may enter into a non-disclosure agreement with the counterparty that prevents such information from being disclosed. For these reasons, these subgroup members believed it would never be appropriate to disclose information that may identify the financing counterparty, the terms of the financing transaction, including rates and repayment provisions, or other ancillary agreements. These subgroup members believed that since captives and SPVs have no contractual connection to the individual consumer or even to the third party insurance companies, the only parties that would actually benefit from public disclosure are the competitors of the ceding insurance company and the financial institution who provided the financing. These Subgroup members also noted that even if there was a consensus on additional transparency and disclosure, many states' laws would prevent such disclosure.

Some Subgroup members expressed questions about the need for confidentiality and were supportive of public disclosure of at least some level of information similar to perhaps the blue blank. These subgroup members noted that captives and SPVs owned by commercial insurers were very different than pure captives, and their financial statements should be available to the public. These subgroup members recognized the concerns noted by the other subgroup members that some very specific information may be more sensitive to insurers, but suggested that the vast majority of such information is similar to other information required by commercial insurers on other types of financial contracts. Moreover, these subgroup members suggested that most insurers desire to compete with other insurers on the basis of their overall financial strength, and that a consumer or distributor wanting to develop an assessment of such strength should have access to information about the insurer's reliance upon captives and SPVs to make informed decisions about the insurer's financial strength.

Despite these differences, there is and always will be a need for all states to have the ability to understand the transactions, and the information sharing sections in the captive laws and regulator confidentiality agreements should be utilized as needed to address this. The following discusses how the states authority in these areas help to provide the necessary information needed while also allowing for the transparency of the information to differ from commercial insurers.

## STATES' CONFIDENTIALITY PROTECTIONS

The issues surrounding regulatory access to sensitive, proprietary, confidential, or privileged information are important both to insurance regulators as well as regulated entities. In order to carry out the duties of regulating the financial solvency and market conduct of insurers, most states have adopted examination laws granting broad access to company information.<sup>5</sup> While examination laws generally give regulators extensive, and in some cases absolute, access to proprietary information, that information is protected from disclosure by various privileges, privacy laws, and confidentiality provisions.<sup>6</sup>

Regulators are charged with protecting the public interest and promoting the solvency of insurance companies which may compete with insurers' concerns to protect confidential and proprietary information from third party access while fulfilling their legal and contractual obligations and competing in the marketplace. Information in the possession of regulators may be subject to public records laws, which potentially make information accessible to third parties unless that information is specifically protected from disclosure. State confidentiality laws exist to ensure that certain items will be considered confidential and privileged and will remain confidential when in the possession of the regulator. This approach is intended to promote communication and protect against unfair treatment or exploitation of trade secrets.

The states that regulate captive insurance companies also address regulator access to information held by the captive insurer. This is true regardless of whether the state regulates captives through their general examination laws or through a separate captive chapter of the insurance code. Attached to this paper as Appendix A is a chart that outlines confidentiality provisions as they relate to captive insurers.

The majority of states include confidentiality provisions within their captive laws. In these instances, all confidentiality provisions state that information submitted to the department of insurance by the captive insurer shall be held confidential. The laws do allow for disclosure in certain circumstances such as when the information is discoverable, the company consents to the disclosure, for investigation and enforcement purposes or when the information is disclosed to another regulator who will maintain its confidentiality.

Other states regulate the confidentiality of captive insurer data under more general insurance laws. Through their version of the NAIC Model Law on Examinations (#390), the states have broad authority to gain access to an insurer's records and hold that information confidential. A few of the states specifically provide that confidentiality requirements applicable to all insurers also apply to captive insurers.

Another aspect of confidentiality that is important to consider is the ability of state insurance regulators to share information with each other as well as with law enforcement authorities. Current state information sharing laws authorize regulators to share important confidential regulatory information with each other, federal financial regulators and law enforcement agencies.<sup>7</sup> Maintaining confidentiality, while sharing information, is important because both regulators and insurance companies have an

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<sup>5</sup> See Appendix A.

<sup>6</sup> National Association of Insurance Commissioners, Regulatory Access to Insurer Information: The Issues of Confidentiality and Privilege, March 13, 2000 at 47.

<sup>7</sup> *Id* at 53.

interest in ensuring confidentiality when appropriate. State laws generally require that the receiving party verify it can maintain the confidentiality of information to be provided by the state and information sharing agreements are intended to fulfill this purpose. To achieve this result, all of the states have entered into master information sharing agreements and many of the states have entered into similar information sharing agreements with federal regulatory agencies. States interested in obtaining information about captive structures utilized by non-domestic insurers that are licensed in their state should contact the domestic regulator of that commercial insurer. The domestic regulator can then provide information and if necessary request information from the captive regulator as needed to satisfy those requests for information. Similar issues may also exist related to offshore international captives which may be more difficult to deal with, but regulators should strive to address their concerns in similar ways.

There may be a need for some additional transparency within the financial statements of the commercial ceding entity that has engaged in a transaction with a captive insurer or SPV. The ceding company is currently required to report material transactions with captives in Note to the Financials #10 and the reinsurance schedules of the annual statutory financial statement. Additionally, the ceding companies are also required to follow the *Insurance Holding Company System Model Act* and *Insurance Holding Company System Model Regulation with Reporting Forms and Instructions (as adopted in their state of domicile)*, which require disclosure and approval through the Form D of affiliated transactions that are material. However, it has been suggested that perhaps more definitive disclosures should be developed in order to increase transparency to the transactions in general. This could take the form of a further developed Note 10.M. which would provide for disclosure of basic captive information and disclosure of the overall utilization of captives. In addition, consideration should be given to developing a database including NAIC company code, name, and domiciliary information with respect to all captives in order to ensure that data on the universe of all such entities is available to allow regulators to quickly respond to questions on the same.

#### **IV. TYPES OF BUSINESS AND RISKS**

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According to the responses from the regulator request for comment, 27 states indicated that they allow insurance risks to be transferred from an insurer to a captive or SPV in their respective state. It should be noted that some of the responses provided by states as it relates to the regulator request for comment were specific to “pure captive” transactions, and therefore outside of the scope of this study. Of the states that allow the transfer of insurance risks, 12 states have limitations on the types of products that can be transferred. The following information describes some of the typical results.

##### **Products Typically Not Allowed in certain States:**

Personal Auto  
Workers’ Compensation  
Long-Term Care  
Critical Care  
Employers Liability  
Homeowners’  
Directors & Officers (D&O)

##### **Products Allowed in certain states:**

Life

Casualty  
 Marine and Transportation  
 Marine Protection and Indemnity  
 Property  
 Liability  
 Surety Title  
 Credit Life  
 Credit Disability  
 Other (As Approved)

The majority of the states that responded to the survey observed no expansion in the types of third- party products allowed to be transferred to captives or SPVs in their respective states, nor has there been an expansion in the types of third-party products actually being transferred by domestic insurers to captives or SPVs. The overwhelming majority of the transactions studied by the Subgroup were transfers of insurance risk involving XXX and AXXX life reserves that are transferred to affiliated captives, although there were some products that were intended to transfer financing risk only.

## V. CAPITALIZATION

State statutes were relatively similar in terms of capitalization standards for captives vs. commercial companies. The following table illustrates some of the requirements.

State	Minimum Capital Requirement for Captives	Allowable Assets	RBC Requirement	RBC Filing as Analysis Tool	GAAP/SAP Filing Requirement
Missouri	\$250,000	LOC*; AAA-Rated Surety Bonds; Financial Guaranty Policies	No	Yes	SAP
Texas	\$10,000,000	LOC Reinsurance Parental Guarantees	Yes	Yes	SAP**
Vermont	\$250,000	LOC	SPV – Yes Captive – No	SPV – Yes Captive – No	SPV – SAP Captive – GAAP
New Jersey	Pure Captives - \$250,000	LOC	No	No	Life/Health SAP Other GAAP (Chg. Requires Commissioner Approval)
Utah	\$250,000	LOC	No	No	Either
District of Columbia	Pure Captives/SPV – \$250,000 Other Captives –	LOC	No	No	

	\$400,000				
Hawaii	Based on Transaction	LOC			
Delaware	\$250,000	LOC	No		GAAP

\*Letters of credit (LOC): Only from qualified U.S. financial institutions. Must be irrevocable and contain an evergreen clause and must meet the LOC requirements for credit life reinsurance. If there is a draw-down on the LOC, there may be an agreement in place that requires the parent to pay back the bank immediately.

\*\*The captive can break out the excess reserves between what is SAP and GAAP and can back the excess SAP reserves by other than traditional assets, including LOCs, reinsurance and parental guarantees (limited to companies with \$100 million capital and the capital must meet or exceed the amount of the guarantee).

The Subgroup also noted the following key take-aways:

- Commercial insurers are not allowed to use LOCs as admitted assets. LOCs can be deemed admitted assets in captives as security to support statutory reserves in excess of economic reserves.
- Different scenarios appear to be used in determining the beneficiary of the LOC. In the typical pure captive scenario, the LOC is used to capitalize the captive, and as a result the beneficiary of the LOC is the commissioner. In the typical special purpose transaction, the LOC is used as security to support the reinsurance reserve credit, and as a result the beneficiary of the LOC is the ceding company. Affiliated offshore transactions are likely collateralized or subject to holding company repayment obligations. For commercial insurers, agreements that are not directly with the insurance company would not be subject to Form D filing and approval, whereas transactions with captives are required to be filed and approved. Regulators should question their companies about offshore transactions, LOC collateral, and holding company obligations as it is likely that the LOCs are part of a facility provided by the holding company.
- Any prudent bank would require collateral for the LOC. Collateral requirements depend on whether the captive parent is an insurer or private business.
- The most important aspects of the LOC for unaffiliated reinsurance transactions with annually renewable LOCs are that it is unconditional and irrevocable because of the concern of non-renewal each year. Most of the captive LOC transactions use longer-term LOCs (i.e. 5, 7, and 10+ years where the peak reserves are covered by the term of the LOC) so there is more time to react before replacement is needed.
- Some banks have placed certain restrictions on the LOC, such as making the LOC the last available funds before a draw-down can be initiated.
- Some of the states allow LOC reimbursement agreements between the bank and the parent as part of the application process. This LOC used with affiliated offshore captives may have a parental responsibility or come from a credit facility provided by the parent.
- Generally, banks rely on the credit of the holding company when issuing an LOC. There are also specific collateralization requirements, such that if the company's credit rating decreases, then it might have to post specific collateral at the bank.
- There could be differences in the level and type of review completed on the banks that issue the LOCs. This is more of a concern for local or regional banks that provide LOCs for traditional

captives as most of the transactions used by insurer-owned captive are financed by large national or international banks.

- Some of the states allow parental guarantees, rather than LOCs or other assets equal to “redundant reserves.”
- It should be noted that the minimum capital levels are generally lower for captives as compared to commercial insurers, but there are provisions to require more capital as needed based on the transaction.

## **VI. ACCOUNTING AND REPORTING**

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Captive SPV’s are generally subject to the same accounting and reporting requirements as traditional insurers, with the exception of certain permitted practices for letters of credit. Permitted practices are expressly allowed under the NAIC Accounting Practices and Procedures Manual. Generally, on an annual basis, Captive SPV’s report on the NAIC blue blank and are audited by independent auditors in accordance with NAIC standards. Those reports are filed with the Captive domicile regulator, the ceding life company state regulator, and with rating agencies, in the case of certain large, public life insurers.

Accounting and reporting requirements for captives and SPVs differ from commercial insurers and also may vary from state to state. Such differences exist primarily because generally the risks posed by captives and SPVs differ from commercial insurers. Consequently, U.S. regulators have generally used flexibility in dealing with these different risks. Some states require quarterly reporting on a Statutory accounting basis and require the use of the NAIC Annual Statutory Financial Statement blank. Other states have similar requirements, but only on an annual basis. Others allow generally accepted accounting principles (GAAP) reporting on an annual basis in the state prescribed format. Most of the states require audited financials and actuarial opinions. Additionally, most, if not all, states allow for some prescribed accounting for captives and SPVs, such as admittance of LOCs. Again, such allowance is generally used because the risk is perceived to be different than it is for commercial insurers. Offshore accounting was not studied, but the accounting standards are known to vary by jurisdiction.

The question that arises however is whether the accounting and reporting should differ from commercial insurers if the business that is being transacted within the captive or SPV is the assumption of commercial risk from an affiliated commercial insurer. This question is posed since the concern is that such transactions may be consummated, in part, to provide relief from statutory accounting.

As noted previously, results of the regulator only request for comment suggest that the vast majority of the transactions that are occurring that are from a commercial insurer and captive insurer or SPV are a means of dealing with perceived XXX<sup>8</sup> and AXXX<sup>9</sup> reserve redundancies. Virtually all of the regulators that have been involved in these types of transactions have indicated that they review such proposed transactions in detail to ascertain at a minimum that the transaction does in fact match its intent, which is

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<sup>8</sup> Used to describe the actuarial reserves required to be held under the NAICs Valuation of Life Insurance Policies Model Regulation (#830) — commonly referred to as Regulation XXX, or XXX for short.

<sup>9</sup> Used to describe the actuarial reserves required to be held under the NAICs Actuarial Guidance XXXVIII—The Application of the Valuation of Life Insurance Policies Model Regulation (AG 38), or AXXX as its more commonly referred to.

to transfer the redundant/non-economic reserves to the captive/SPV. Most states also determine and require that the transaction meets the credit for reinsurance requirements. To do so, the assuming captive or SPV assumes the full statutory reserve liability and secures those reserves in various manners. The economic reserves are typically the expected losses plus a small margin for adverse development and are secured by assets held by the ceding company. The redundant reserves are secured by a letter of credit (LOC) that is to the benefit of the ceding company. Therefore, the review entails agreeing that the calculation of the economic reserve is reasonable, follows actuarial principles and assumptions are reasonable. So, for these types of transactions, the belief is that the regulatory review of the transaction ultimately matches the risk posed by the transaction. However, the question that has been raised by the Working Group is whether a more appropriate treatment of such transactions would be to deal with the accounting for this transaction within the ceding company, thereby eliminating the need for the separate transaction outside of the commercial insurer.

Notwithstanding the need to address the accounting for dealing with perceived XXX<sup>10</sup> and AXXX<sup>11</sup> reserve redundancies, the Subgroup held a consensus view that it was inappropriate for Captive and SPV to be used as a means to avoid statutory accounting. Use of other means of accounting may be appropriate when risks under the entity/transaction are perceived to differ from commercial insurance risk. However, the practice of using a different entity or different structure outside of the commercial insurer to engage in a particular risk because of a perceived inadequacy of the regulatory framework to accurately capture such a risk should be discouraged. Regulators noted that any different thinking promotes the use of such entities or structures to be used for more common situations where risk was considered to be inadequately addressed in our regulatory framework. Regulators specifically mentioned that an example of where such could occur is with undiscounted property casualty insurance liabilities, where the regulatory structure clearly doesn't allow discounting. Again, the Subgroup held a consensus view that a more appropriate accounting treatment of XXX and AXXX reserves should be pursued as opposed to the use of captive insurers and SPVs thereby eliminating the need for the separate transaction outside of the commercial insurer simply to address these perceived reserve redundancies.

## **VII. CREDIT FOR REINSURANCE**

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The information below sets forth the NAIC requirements of the credit for reinsurance model act and regulation. This information is included to inform the reader of this document regarding the specific requirements of the models. As noted within the above discussion on accounting and reporting, most of the captives are being established to assume risk from commercial insurers as a means of dealing with perceived XXX and AXXX reserve redundancies. As also mentioned, most states also ensure that the transaction meets the credit for reinsurance requirements.

However, it should be noted that some XXX and AXXX transactions may not have met the requirements under the credit for reinsurance models. Specifically, conditional LOCs were accepted as collateral that define the order of a draw down on the LOC (i.e., the arrangement requires that other available collateral be exhausted before the LOC can be drawn upon), which are not otherwise

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<sup>10</sup> Used to describe the actuarial reserves required to be held under the NAICs Valuation of Life Insurance Policies Model Regulation (#830) — commonly referred to as Regulation XXX, or XXX for short.

<sup>11</sup> Used to describe the actuarial reserves required to be held under the NAICs Actuarial Guidance XXXVIII—The Application of the Valuation of Life Insurance Policies Model Regulation (AG 38), or AXXX as its more commonly referred to.

permitted. It should be noted that the credit for reinsurance models include a provision under which collateral may take the form of “any other form of security that is acceptable to the commissioner.” However, not all states have this discretionary provision.

Other XXX and AXXX transactions involved ceding business to a limited purpose insurance company that is allowed to use a parental guarantee to meet a portion of its capital and surplus requirement. These limited purpose entities are generally authorized to transact the business of insurance or reinsurance in the domestic state, and are specifically permitted to transact reinsurance with affiliated insurers.

The transactions involving conditional LOCs or parental guarantees effectively permit assets to support reinsurance recoverables, either as collateral or as capital, in forms that are otherwise inconsistent with requirements under the credit for reinsurance models or other financial solvency requirements applicable to U.S.-domiciled commercial assuming insurers. The subgroup held a consensus view that these types of transactions were not consistent with the NAIC credit for reinsurance requirements and a more appropriate way to address such concerns regarding redundancy in reserves would be through accounting for the underlying business at the primary insurer level, thereby eliminating the need for the separate reinsurance transaction. The subgroup expressed its support for the use of solutions designed to shift risk to the capital markets or provide alternative forms of business financing and believes the NAIC should consider developing a uniform framework for the implementation of such alternative market solutions.

#### **COMPARISON OF REGULATORY REQUIREMENTS FOR U.S. PROFESSIONAL REINSURER VS. A CAPTIVE ASSUMING REINSURANCE FROM AN INSURER**

If the captive/SPV seeks to be accredited by a non-domestic state, then it would be required to meet the same capital and reporting requirements that any accredited reinsurer would be required to meet. However, questions have been raised as to whether it is appropriate for a captive to be granted accredited reinsurer status, and specifically whether a captive can meet the requirements under the credit for reinsurance models in order to be accredited. Specifically, issues were raised as to whether 1) captive licensure is equivalent to commercial insurance licensure for accredited status; 2) a captive can submit to the jurisdiction of a non-domestic state; and, 3) in some cases an LOC or parental guarantee is considered acceptable for meeting the \$20 million minimum capital and surplus requirement. It is important to note that if a captive is granted accredited reinsurer status under the credit for reinsurance models, it would not be required to provide collateral for the benefit of the ceding insurer as security for amounts recoverable under the reinsurance contract.

Most of the captives are used for one transaction to finance a particular risk within the insurance holding company system whereas a professional reinsurer is in the business of reinsuring multiple unaffiliated companies. Typically a domestic regulator would review an affiliated reinsurance agreement before approving the use of such agreement by the ceding company. This prior approval is typically required by statute/regulation consistent with the U.S. windows and walls approach to group regulation. Typically, the domestic regulator would not review a reinsurance agreement with an unaffiliated reinsurer unless it met certain materiality standards. It should be noted that some of these agreements noted within the study by the Subgroup were larger and more complex than a typical reinsurance agreement with an unaffiliated company and would typically result in a more detailed review of various aspects of the proposed transaction before being approved. In addition to the reinsurance agreement, all ancillary agreements to the transaction are reviewed, including management, investment and tax sharing



agreements with affiliates and non-affiliates, and all agreements with counterparties, such as the letter of credit facility agreement and reimbursement agreements. Regardless, regulators need to be able to logically conclude that transactions for products that transfer to the alternative risk transfer market are sound as well as permissible under current statutory accounting guidelines and insurers should be able to articulate these items to regulators; these points should be emphasized within the *Financial Analysis Handbook*.

### Summary of Requirements under NAIC Credit for Reinsurance Models

Under the *Credit for Reinsurance Model Law* (#785) and *Credit for Reinsurance Model Regulation* (#786), credit for reinsurance may be allowed to a U.S. ceding insurer when the reinsurance is ceded to an assuming insurer that meets the specific criteria for the appropriate category provided below. The credit for reinsurance requirements are applicable to transactions with both affiliated and non-affiliated assuming insurers. However, neither model provides a specific definition of the term “assuming insurer.” Therefore, it is not explicitly clear whether this term was intended to include captives. While the models are not specific with respect to this definition, it was noted that reinsurance captives appear to have originally been used for fronting arrangements, under which a commercial insurance company issues a direct policy to an insured for some type of mandatory insurance coverage (e.g., workers’ compensation or medical professional liability) and then transfers the risk through a reinsurance agreement to a captive insurance company that is owned by the insured.

#### **Assuming Insurer is Licensed in the Ceding Insurer’s Domiciliary State**

Credit is allowed when the reinsurance is ceded to an assuming insurer that is licensed to transact insurance or reinsurance in the ceding insurer’s domiciliary state. An assuming insurer that meets this classification must have obtained its licensure status at the time the statutory financial statement credit for reinsurance is claimed or when financial statements reflecting the credit have been filed by the ceding insurer. The assuming insurer then must continue to maintain compliance with the licensure status at all times after the credit has been taken.

#### **Assuming Insurer Has Obtained Reinsurer Accreditation**

Credit is allowed when the reinsurance is ceded to an assuming insurer that is accredited by the ceding insurer’s domestic commissioner as a reinsurer in that state. An assuming insurer must have obtained reinsurance accreditation in the domiciliary state of the ceding insurer at the time the financial statement credit is claimed in order for the domestic insurer to receive a credit for reinsurance. In order to obtain the status of an accredited reinsurer, the assuming insurer must file: 1) a Form AR-1 (Certificate of Assuming Insurer) that grants specific authority to the ceding insurer’s domiciliary insurance commissioner; 2) documentation of licensure to transact insurance or reinsurance, and 3) annual statements with the domiciliary insurance commissioner. In addition, the assuming insurer must maintain a surplus level of \$20 million.

#### **Assuming Insurer is Domiciled in a State with Substantially Similar Credit for Reinsurance Laws**

Credit is allowed when the reinsurance is ceded to an assuming insurer that is domiciled in a state with substantially similar credit for reinsurance laws as the ceding insurer’s domiciliary state. The assuming insurer must be domiciled (and licensed) in a substantially similar state that has adopted Model #785 or substantially similar law and, therefore, is subject to that state’s credit for reinsurance standards at the time the financial statement credit for reinsurance is claimed. The assuming insurer must also maintain a surplus of at least \$20 million and file a Form AR-1 with the insurance commissioner.

## **Assuming Insurer Maintains Trust Funds**

Credit is allowed for reinsurance ceded to an assuming insurer that maintain trust funds for a requisite amount in a qualified U.S. financial institution for the payment of the valid claims of its U.S. ceding insurers, their assigns and successors in interest. The assuming insurer is required to annually report to the insurance commissioner for determination of the sufficiency of the trust fund. The classifications of assuming insurers are as follows:

- Single Assuming Insurer – Trust funds must equal or exceed the assuming insurer’s liabilities attributable to ceded reinsurance by U.S. domiciled insurers. In addition, the assuming insurer shall maintain trusteed surplus of at least \$20 million.
- Incorporated and Unincorporated Group Underwriters – For reinsurance ceded under reinsurance agreements dated after January 1, 1993, trust funds must equal or exceed the group’s liabilities for business ceded by U.S. domiciled ceding insurers. For reinsurance agreements dated before December 31, 1992, trust funds must at least equal the insurance and reinsurance liabilities attributable to business written in the United States. In addition to these trusts, the underwriters must maintain \$100 million in surplus for the benefit of U.S.-domiciled ceding insurers. The incorporated members of the group are prohibited from engaging in auxiliary business, other than underwriting as a member of the group, and must be subject to the same regulation and control of the group as the unincorporated members. The group is also required to annually file either a certification of solvency for each underwriter member or independently prepared financial statements for each underwriter to the insurance commissioner.

Credit for reinsurance will not be granted for an assuming insurer that maintains trust funds, unless the insurance commissioner of the state where the trust is domiciled has approved the form of the trust. An insurance commissioner from another state may approve the trust if the commissioner has accepted responsibility for the regulatory oversight of the trust. The form of the trust is required to be filed with the insurance commissioner in every state in which ceding insurer beneficiaries of the trust are domiciled.

## **Certified Reinsurers**

In November 2011, the NAIC adopted revisions to the Model #785 and Model #786 to allow credit for reinsurance ceded to a certified reinsurer. These revisions effectively reduce the collateral requirements for non-U.S. licensed reinsurers meeting certain criteria that are domiciled and licensed in qualified jurisdictions, and that have been certified in the ceding insurer’s domiciliary state and secures its obligations in accordance with the requirements of the models.

## **Credit for Reinsurance Required by Law**

For those jurisdictions in which reinsurance is required by law, the domestic ceding insurers may take a credit for reinsurance, even though the assuming insurer does not meet the requirements set forth in the above sections. Examples of the assuming insurers for which credit may be allowed include state-owned or controlled insurance or reinsurance companies, guaranty organizations and residual required market mechanisms.

### **Assuming Insurer Does Not Meet Any of the Previous Categories**

Credit for reinsurance may also be granted to the ceding insurer when the assuming insurer does not meet any of the above credit-permitted categories. In these instances, if the ceding insurer holds funds or is exclusively entitled to funds held in a U.S. institution provided as security for reinsurance obligations, the ceding insurer is permitted to take a reduction of liability or record an asset for the reinsurance ceded. The reduction is not permitted to exceed the liabilities carried by the ceding insurer.

The funds held may take the form of cash, qualifying admitted asset securities as indicated by the NAIC Securities Valuation Office, LOCs and any other security that has been approved by the insurance commissioner. The NAIC models provide that an LOC must be clean, irrevocable, unconditional, and issued or confirmed by a qualified U.S. financial institution. In addition, the LOC must have an “evergreen” clause that indicates it cannot expire without 30-day advance notice, and provide notice on what laws the letter of credit is governed by (e.g., state law, Uniform Customs and Practice for Documentary Credits of the International Chamber of Commerce, or any other publication).

In addition to the categories addressed above, the ceding insurer may take credit for unencumbered funds withheld by the U.S. ceding insurer that are under the exclusive control of and subject to sole withdrawal by the ceding insurer.

### **Dodd-Frank Wall Street Reform and Consumer Protection Act Considerations**

On July 21, 2010, the federal Dodd-Frank Wall Street Reform and Consumer Protection Act was signed into law. Title V of this legislation includes the Nonadmitted and Reinsurance Reform Act (NRRA). The NRRA includes **Section 533. Definition of “reinsurer.”** Section 532 reserves to a reinsurer’s domiciliary state sole responsibility for regulating the reinsurer’s financial solvency. Section 533(5)(A) defines “reinsurer” to mean an insurer that 1) is principally engaged in the business of reinsurance; 2) does not conduct significant amounts of direct insurance as a percentage of its net premiums; and 3) is not engaged in an ongoing basis in the business of soliciting direct insurance. Section 533(5) (B) goes on to provide that the determination of whether an insurer is a reinsurer shall be made under the laws of the state of domicile in accordance with this paragraph. Congress was very clear that the definition of reinsurer is not to be construed narrowly, thereby limiting or avoiding the intent of Congress.

The NRRA delegates to the state of domicile the determination of what is a reinsurer. Current NAIC model laws or guidance do not define the term “reinsurer” for purposes of this NRRA. The NAIC may develop a standard definition of reinsurer for the purposes of this NRRA in an effort to promote uniformity for the application of the NRRA through all member jurisdictions. The following terms need to be interpreted in order to develop an appropriate definition of the term reinsurer: 1) “principally engaged in the business of reinsurance”; 2) “significant amounts of direct insurance as a percentage of net premiums”; and 3) “engaged in an ongoing basis in the business of soliciting direct insurance.”

## **VIII. HOLDING COMPANY ANALYSIS CONSIDERATIONS**

The difficulty with trying to apply standards for captive insurance specific to captive states is that no matter what rules or requirements are placed upon U.S. captive states, a significant portion of captive transactions occur outside the United States. The more onerous and costly the requirements make these transactions; the more likely it is that companies will choose jurisdictions that are not as transparent and that are outside of U.S. regulation. Through proper use of the insurance holding company system laws

and regulations, these transactions can effectively be monitored such that they do not pose a threat to the policyholders while still allowing for the approval of transactions with valid business purposes.

As previously mentioned, a majority of the most recent increase in captive insurers and SPV activity can be attributed to an intent to finance perceived redundant reserves without actually transferring the risk outside of the insurance holding company system. Notwithstanding the working group's recommendation to develop more appropriate accounting for such transaction within the ceding company, thereby potentially eliminating the need for the separate transaction outside of the commercial insurer, the most effective method to monitor all captive transactions is through insurance holding company system analysis. In this way, the risk to the insurance holding company system can be appropriately assessed, and improper transactions should be prohibited, regardless of the Captive/SPV jurisdiction. Consequently, regardless of the approach taken to deal with the XXX and AXXX reserves, it is recommended that the holding company analysis procedures of the *Financial Analysis Handbook* be amended to include a section on alternative risk transfer arrangements. It would also be prudent to develop ceding company procedures for alternative risk transfer arrangements similar to other holding company procedures to help document the review and approval of the transaction. The intent of the *Financial Analysis Handbook* and its procedures are to provide an assessment on the overall materiality of such arrangements, the exposure to the insurance holding company system regarding parental guarantees and reimbursement obligations, and other unique exposures retained within the insurance holding company system that present risk associated with the use of captives, SPVs and/or other such vehicles.

In connection with the procedures used to analyze holding companies, it was noted that a robust holding company analysis can determine the amount of risk involved as well as determine the ability of the parent to meet obligations pertaining to reimbursing LOCs, parental guarantees, or other similar arrangements. Specific issues expected to be encountered for transactions that have occurred in the past include the need to 1) encourage communication and coordination between captive regulators and ceding company regulators; 2) request on an annual basis from the company actuary comments on where there may be significant or adverse differences from original projections; 3) ensure that under stress, the entities are able to meet the guarantees. Also worth considering is that ongoing analysis and stress testing for changing economic environments and assumptions that may affect the business. States should be conducting an enterprise risk management analysis of the holding company to see if they are assessing and measuring the risk on an enterprise-wide basis and to see if they are keeping up with their obligations in addition to requiring results of stress tests.

## **IX. TAKEAWAYS FROM CASE STUDIES (NOT COMPANY SPECIFIC)**

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- The majority of the transactions identified by the Subgroup were related to life insurance products, primarily due to XXX and AXXX reserve requirements.
- Use was primarily limited to affiliated captive reinsurers and SPVs.
- Domestic regulators have approval authority over these transactions.
- Domestic captive regulators coordinate with the ceding company regulators and in most cases hire third party consultants to examine the merits of each captive transaction.
- Credit for reinsurance requirements for some transactions were met with some commissioner discretion for some ceding company states that allow discretion within their law.
- Most non-XXX/AXXX transactions reviewed were conducted for various business purposes to access the capital markets to provide alternative financing to certain business risks for better cost and use of capital than retaining the risk or reinsuring the risk.

## **X. CONCLUSIONS AND RECOMMENDATIONS TO FINANCIAL CONDITION (E) COMMITTEE**

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Commercial insurers cede business to captives for a variety of business purposes. Generally, the Subgroup determined cessions to unaffiliated captives operating similar to pure or agency captives was not an area of concern given state regulators' long history of experience with such transactions. The Subgroup also considered the question of whether captives are competing with professional reinsurers and determined, that while such a development would be cause for concern, nothing today suggests captives are directly competing with professional reinsurers within the U.S.

Thus the primary focus of the Subgroup was upon U.S. commercial insurers use of affiliated captives or SPVs. The use of captives outside the U.S. was not studied, but is considered to be significant. The Subgroup is aware that its recommendations regarding domestic captive regulation will not apply to captives outside the United States. Further, the Subgroup is keenly aware that onerous requirements placed on U.S. captive domiciles may lead to increased use of non-U.S. captives, where transparency may be even more limited. However, U.S. regulators exercise of their authority to thoroughly analyze and comprehend the risks of cessions to captives located outside the U.S. should mitigate the concern. The Subgroup determined that the majority use of captives/SPVs by commercial insurers was related to the financing<sup>12</sup> of XXX and AXXX reserve redundancies. Various structures have been utilized to finance these reserves, such as:

- Captives as a conduit to securitizations that provide capital market financing of reserves
- Captives capitalized by letters of credit accounted for as assets in support of redundant reserves
- Captives/SPVs capitalized by parental guarantees accounted for as assets in support of redundant reserves

The creation and maintenance of these structures comes at a cost however, from the burden of operating and reporting on another legal entity to the cost of financing reserves through securitizations or letters of credit. Even parental guarantees may impact assessments of leverage and reduce financial flexibility of the parent.

The Subgroup identified other affiliated captive/SPV transactions, more limited in number, that were not related to perceived reserve redundancies. In some of these transactions, one indirect effect, intended or not, was to provide relief from what was perceived as overly conservative requirements of statutory accounting, and in some instances by allowing a captive/SPV to account for letters of credit or parental guarantees as assets, something not permitted in the current statutory accounting framework. The Subgroup acknowledges there are business reasons other than statutory accounting relief for the use of a captive or SPV, such as financing; however, the Subgroup would prefer that there be alternatives that are more transparent than the solutions to the issues captives/SPVs were designed to address.

The implementation of Principles Based Reserving (PBR) may ultimately reduce the desire of commercial insurers to create new captives and SPVs to address perceived reserve redundancies, but

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<sup>12</sup> The term "financing" as used herein includes transferring risk to other non-insurance members of the holding company system.

existing captives and SPVs are likely to remain in existence for several years or decades until the existing blocks of business are run-off. Therefore, there is a need to improve the regulation and transparency of these existing transactions. Regulators need to be aware of and monitor the risks that captives/SPVs may pose to the holding company system as well as to the legal entity insurer. With the proper tools and communication regulators can adequately analyze past transactions to ensure the proper protection for policyholders are included.

In transactions reviewed by the Subgroup, regulators of the ceding company and captive worked together to ensure alternative assets, such as letters of credit or parental guarantees, were used to support only those reserves considered redundant. Regulators require the companies engaging in these transactions to support economic reserves, plus some margin, with investment grade, liquid assets. The net result of the transactions is that collectively the ceding insurer and the captive have liquid assets supporting GAAP equivalent reserves plus a margin for reasonably adverse development.

The Subgroup offers the following recommendations to address the issues presented in this paper.

## 1. Accounting Considerations

As noted throughout this paper, captives/SPVs have often been a means of dealing with XXX and AXXX perceived reserve redundancies. The Subgroup believes that a more appropriate treatment of such transactions should be to deal with the accounting and reserving issues within the ceding company, thereby eliminating the need for the separate transaction outside of the commercial insurer. Regulators noted that any different thinking could promote the use of such entities or structures to be used for more common situations where risk was considered by industry to be inadequately addressed. Specifically, the Subgroup held a consensus view that the Financial Condition (E) Committee should form a separate subgroup to develop possible solutions for addressing the remaining XXX and AXXX perceived redundancies. Possible solutions could include changes similar to the AG 38 solution, or disclosed prescribed or permitted accounting practices. The NAIC should also consider modifications to the statutory accounting framework to recognize, in strictly limited situations, alternative assets, such as “tier 2” type assets” to support specific situations (e.g. less likely to develop liabilities), thereby eliminating the need for the separate transaction outside of the commercial insurer.

The Subgroup held a consensus view that captives and special purpose vehicles should not be used by commercial insurers to avoid statutory accounting prescribed by states. They noted that to the extent affiliated captives may be created in the future for unseen purposes, additional guidance should be developed by the NAIC to assist states in a uniform review of transactions, including recommendations for minimum analysis to be performed, as well as on-going monitoring of the ceding insurer, the captive and the holding company. Once developed, the guidance should be considered to be added to the accreditation standards to ensure consistency and uniformity among states.

## 2. Access to Alternative Markets

The Subgroup supports the use of solutions designed to shift risk to the capital markets or provide alternative forms of business financing. The NAIC’s Special Purpose Reinsurance Vehicle Model Act (#789) was developed to provide a uniform framework for the implementation of capital market securitizations of commercial insurers’ reserves. However,

securitization solutions allowed for within the model are no longer being utilized as other solutions are preferred today. The NAIC should consider re-evaluating the model and updating it as necessary to reflect alternative markets solutions acceptable to state regulators to ensure there is a uniform framework for the implementation of alternative market solutions. The NAIC should further encourage states to adopt the model and should consider making the model and accreditation standard in those states that have an active captive and SPV market. This should be referred to the appropriate working group for consideration.

### 3. IAIS Standards

The Subgroup supports the IAIS Guidance Paper on the Regulation and Supervision of Captive Insurers which states in summary that insurer or reinsurer owned or common controlled captives/spv, that are not otherwise self-insurance, should be subject to a similar regulatory framework as commercial insurers. The Subgroup believes that the use of captives should generally follow the international views contained within this guidance paper.

### 4. Credit for Reinsurance Model Enhancements/Added Reinsurance Disclosure/Transparency

Notwithstanding the Subgroup's support the IAIS Guidance Paper on the Regulation and Supervision of Captive Insurers, they recognize that there will be situations where movement of the reinsured risk outside of the group may not be feasible, or practical. For such situations, consideration should be given for ways to a referral to study of the effects of and potential limits on the variability in qualified LOCs or any other security that may not provide the intended protections provided within the NAIC Credit for Reinsurance Model Law.

With respect to existing captive/SPV transactions, the Subgroup recommends enhanced disclosure in ceding company statements regarding the impact of the transactions on the financial position of the ceding insurer. Development of Note 10 M should be made to provide for disclosure of non-trade secret captive information and disclosure of the overall utilization of captives.

### 5. Confidentiality

The Subgroup recommends that the Financial Condition (E) Committee study the issue of confidentiality related to commercially owned captive and SPVs more closely. Such study would pursue greater clarity regarding the specific reasons for and against the use of confidentiality for such entities. The Subgroup believes it may be necessary to develop a framework that would provide greater uniformity in this area. More specifically, it may be appropriate to consider the type of information that should and should not be held confidential. This outcome may be more easily achieved in the context of a new framework for alternative market solutions as discussion within recommendation two.

Further work should also be done to insure the state or other functional regulator of a group obtains additional information from the captive regulator on a confidential basis to understand the details of captive/SPV transactions, both for U.S and non U.S captives... This may be in addition to any changes made to the Financial Analysis Handbook that may suggest specific considerations when performing holding company analysis on groups that utilize such

arrangements. One recommendation in this regard is that each state that has a domestic insurer in the holding company structure should be notified of a transaction of an affiliate that involves captives or special purpose vehicles, even if that state's domestic insurer is not a party to the transaction. Additionally, the ability to ensure future communication of information through Supervisory Colleges should be addressed.



## XI. APPENDIX A - TYPES OF CAPTIVE INSURERS DEFINED

### TYPES OF CAPTIVE INSURERS DEFINED

Citation	Type of Captive	Summary
<b>Alabama (07/12)</b>		
§27-31B-2	Pure captive	Any company that insures risks of its parent and affiliated companies or controlled unaffiliated business.
	Association captive	Any company that insures risks of the member organizations of the association, and their affiliated companies.
	Industrial captive	Any company that insures risks of the industrial insured that comprise the industrial insured group, and their affiliated companies.
	Sponsored captive	Any captive insurance company that has minimum capital and surplus that is provided by one or more sponsor, is formed and licensed, insures the risks of separate participants through participant contracts, and funds its liability to each participant through protected cells and segregates the assets of each cell from the assets of other cells and separate from the sponsored captive's general account.
	Branch captive	Any alien captive insurance company licensed by the commissioner to transact business of insurance in this state through a business unit with its principal place of business in this state.
	Protected cell	A separate account established by a sponsored captive in which assets are maintained for one or more participants in accordance with the participant contracts to fund the liability of the sponsored captive to the participants.
§27-31B-3	Confidentiality	Information shall be and remain confidential except in certain circumstances such as when information is discoverable, or when the information is disclosed to a public officer who shall maintain its confidentiality.
<b>Alaska (07/12)</b>		
§§21.06.150; 21.06.060	Confidentiality	Information relating to an examination obtained by the director is confidential and may not be published unless the matter is of public concern; examination synopses submitted to the director by the NAIC are confidential. Director may disclose confidential information to the legislature, state, federal, or international regulatory or law enforcement agencies, and the NAIC provided these recipients will maintain confidentiality.
<b>Arizona (07/12)</b>		
§20-1098	Pure captive	A captive insurer that insures only the risks of its affiliates and controlled unaffiliated business.
	Group captive	Any of the following: (a) a risk retention group; (b) an industry group captive insurer; or (c) an association captive insurer.
	Association captive	A captive insurer that is completely under the direct or indirect voting control of an association.
	Agency captive	A captive insurer that is owned by one or more business entities that are licensed in any state as insurance producers or managing general agents and that only insure risks on policies placed through their owners.
	Protected cell captive	A captive insurer: (a) in which the minimum capital and surplus required by applicable law is provided by one or more sponsors; (b) that is formed and licensed under this article; (c) that insures the risks of participants through participant contracts; and (d) that segregates liability under a participant contract through one or more protected cells.
	Industry group captive	Captive insurer that is completely under the direct or indirect voting of control of an industry group (two or more business entities or persons that are engaged in business or activities related with respect to the liability they are exposed to by virtue of common business, trade, practice, service, product, etc.).
	Branch captive	An alien captive that is licensed to transact business of insurance through a business unit with its principal place of business in this state.
	Risk retention	Captive insurer that is organized pursuant to 15 U.S.C. §§3901-02.

Citation	Type of Captive	Summary
	group	
§ 20-1098.23	Confidentiality	Information submitted is confidential. Shall not provide the information without the permission of the captive insurer, or unless the information is submitted for regulatory purpose, due to subpoena, is discoverable, or is disclosed to a public official.
<b>Arkansas (07/12)</b>		
§23-63-1601	Pure captive	A company that insures risks of its parent and affiliated companies or controlled unaffiliated business.
	Association captive	A company that insures risks of the member organizations of the association and their affiliated companies.
	Industrial captive	A company that insures risks of the industrial insured and their affiliated companies.
	Sponsored captive	Captive in which the minimum capital and surplus required is provided by one or more sponsors. Captive must be licensed, must insure the risks of sponsors through contracts, and must segregate each participant's liability through one or more protected cell.
	Special purpose captive	A captive insurer that does not meet the definition of any other type of captive insurer defined in this section.
	Branch captive	An alien captive licensed by the commissioner to transact business of insurance through a business unit with its principal place of business in this state.
	Protected cell	Separate account established and maintained by a sponsored captive for one participant, or by a producer reinsurance captive insurer.
§23-63-1602	Confidentiality	Information submitted is confidential and may not be made public without written consent of company unless; the information is discoverable, or is disclosed to a public official who shall maintain its confidentiality.
<b>California (07/12)</b>		
Ins. §735.5	Confidentiality	All information obtained by or disclosed to the commissioner or any other person in the course of an examination shall be given confidential treatment and not be made public. The commissioner may disclose information to other insurance departments, law enforcement officials, state or federal agencies, and the NAIC provided these recipients will maintain confidentiality of information.
<b>Colorado (07/12)</b>		
§10-6-103	Pure captive	Any domestic insurance company licensed under the provisions of this article for the purpose of making insurance and reinsurance. Such insurance and reinsurance shall be limited to the risks, hazards, and liabilities of its parent and affiliated entities along with employee benefits coverages.
	Group captive	Any domestic insurance company licensed under the provisions of this article for the purpose of making insurance and reinsurance, including any company organized under the federal "Liability Risk Retention Act of 1986," as amended, 15 U.S.C. §3901-3905.. Such insurance and reinsurance shall be limited to the risks, hazards and liabilities of its group members and employee benefits coverages.
§§10-3-807, 10-6-130	Confidentiality	All information obtained during an examination or investigation and all information disclosed to commissioner is confidential and shall not be made public without consent of insurer unless commissioner, after notifying insurer, deems it appropriate to disclose; Applies to captive insurers per §10-6-130.
<b>Connecticut (07/12)</b>		
§38a-91aa	Pure captive	Any company that insures risks of its parent and affiliated companies or controlled unaffiliated business.
	Association captive	Any company that insures risks of the member organizations of the association and their affiliated companies.
	Industrial captive	Any company that insures risks of the industrial insured and their affiliated companies.
	Risk retention group	Captive insurer organized under 15 U.S.C. §§3901-02, as a stock or mutual corporation, a reciprocal or other limited liability entity.

<b>Citation</b>	<b>Type of Captive</b>	<b>Summary</b>
§ 38a-91bb	Confidentiality	Information submitted is confidential and shall not be made public without written consent of company, unless the information is discoverable or the information is disclosed to a public official who shall maintain its confidentiality.
<b>Delaware (07/12)</b>		
18 §6902	Pure captive	Any captive insurance company that insures risks of its parent and any of such parent's affiliated companies and any controlled unaffiliated business.
	Association captive	Any captive insurance company that insures risks of the association members of the association and any of their affiliated companies.
	Agency captive	An insurance company described in paragraphs a and b of this section: a. An insurance company that is owned or controlled by an insurance agency, brokerage or reinsurance intermediary, or an affiliate thereof, or under common ownership or control with such agency, brokerage or reinsurance intermediary, and that only insures the risks of insurance or annuity contracts placed by or through such agency, brokerage or reinsurance intermediary; or b. An insurance company that is owned or controlled by a marketer or producer of service contracts and/or warranties, and that only insures or reinsures the contractual liability arising out of such service contracts or warranties sold through such marketer or producer.
	Branch captive	Any alien captive insurance company that has been issued a certificate of authority to transact the business of insurance through a business unit with its principal place in this state.
	Industrial captive	Any captive insurance company that insures risks of the industrial insured and their affiliated companies.
	Protected cell	Separate and distinct account established and maintained by or on behalf of a sponsored captive in which assets are accounted for and recorded for one or more participants in accordance with the terms of contracts to fund the liability of sponsored captives.
	Risk retention group	A risk retention group formed pursuant to the federal Liability Risk Retention Act of 1986, 15 USC §3901 et seq.
	Special purpose financial captive	Any person that is licensed under this chapter and designated as a special purpose captive insurance company by the commissioner.
	Sponsored captive	A captive insurance company, including a special purpose financial captive, of which the minimum capital and surplus is provided by one or more sponsors, is licensed, insures the risks of its participants through separate contracts, and funds its liability to participants through one or more protected cells and segregates the assets of the protected cells from each other and from the company's general account.
18 §6920	Confidentiality	Information submitted is confidential and shall not be made public or disclosed to another person unless it is disclosed to the insurance department of any state or to a law enforcement official as long as official will maintain its confidentiality.
<b>District of Columbia (07/12)</b>		
31-3931.01	Pure captive	A captive insurer that only insures or reinsures risks of its parent and affiliated companies or controlled unaffiliated business. The parent of a pure captive insurer includes an employee benefit plan or trust.
	Association captive	A captive insurer that only insures risks of the member organizations of an association and the affiliated companies of those members and the employee benefit plans or trusts of such organizations or companies.
	Agency captive	A captive insurer that is owned by an insurance agency or brokerage and that only insures risks of policies that are placed by or through the agency or brokerage.
	Branch captive	Any alien captive licensed by the commissioner to transact the business of insurance through a business with its principal place of business in the District.

Citation	Type of Captive	Summary
	Rental captive	A captive insurer formed to enter into contractual agreements with policyholders or associations to offer some or all of the benefits of a program of captive insurance and that only insures risks of the policyholders or associations.
	Segregated account	Separate account established and maintained by a captive in which the minimum capital and surplus required is provided by one or more persons, is licensed under this chapter, insures the risks of separate participants through contracts, is comprised of one or more participants authorized to act on matters relating to segregated account, and that segregates each participant's liability through one or more segregate accounts.
31-1404; 31-3931.14(c)	Confidentiality	All information disclosed to the mayor or commissioner in the course of an examination shall be treated as confidential and privileged. Commissioner may share information with other state, federal, or international regulatory agencies, the NAIC, and with law enforcement authorities provided these individuals will maintain confidentiality of information. Applied to captive insurers per 31-3931.14(c).
<b>Florida (07/12)</b>		
§628.901	Captive	A domestic insurer established under this part. A captive insurance company includes a pure captive insurance company, special purpose captive insurance company, or industrial insured captive insurance company formed and licensed under this part.
	Captive reinsurance	A reinsurance company that is formed and licensed under this part and is wholly owned by a qualifying reinsurance parent company. A captive reinsurance company is a stock corporation and may not directly insure risks. A captive reinsurance company may reinsure only risks.
	Industrial captive	A captive insurance company that provides insurance only to the industrial insureds that are its stockholders or members, and affiliates thereof, or to the stockholders, and affiliates thereof, of its parent corporation. An industrial insured captive insurance company can also provide reinsurance to insurers only on risks written by such insurers for the industrial insureds that are the stockholders or members, and affiliates thereof, of the industrial insured captive insurer, or the stockholders, and affiliates thereof, of the parent corporation of the industrial insured captive insurer.
	Pure captive	A company that insures risks of its parent, affiliated companies, controlled unaffiliated businesses, or a combination thereof.
	Special purpose	A captive insurance company that is formed or licensed under this chapter that does not meet the definition of any other type of captive insurance company defined in this section.
§§624.82, 624.319; §628.909	Confidentiality	All information in possession of the insurance department that relates to the supervision of any insurer is confidential. Information may be disclosed to another insurance department, agency, or instrumentality of this or another state or the United States if disclosure is deemed necessary and proper. Examination and investigative reports are confidential until the case ceases to be active, and portions of such reports may remain confidential even after the examination or investigation ceases. These provisions apply to captive insurers.
<b>Georgia (07/12)</b>		
33-41-2	Pure captive	Any domestic insurance company granted a certificate of authority under this chapter to insure or reinsure the risks of its parent and affiliates of its parent.
	Association captive	Any domestic insurance company granted a certificate of authority under this chapter to insure or reinsure the similar or related risks of members and affiliates of members of its association.
	Industrial captive	Any domestic insurance company granted a certificate of authority to insure or reinsure the risks of industrial insureds and their affiliates and which has as its shareholders or members only industrial insureds that are insured or reinsured by the industrial insured captive or which has as its sole shareholder or sole member a corporation whose only shareholders are industrial insureds that are

Citation	Type of Captive	Summary
		insured or reinsured by the industrial insured captive.
	Risk retention group	Any pure, association or industrial captive that has been granted a certificate of authority under this chapter and determined by the commissioner to be established and maintained as a “risk retention group” as defined under the federal Liability Risk Retention Act of 1986.
33-13-7; 33-41-16	Confidentiality	All information obtained by or disclosed to the commissioner in the course of an examination or investigation shall be given confidential treatment and may not be made public without consent of insurer. Commissioner may, after giving notice, disclose information to public if deemed appropriate.
<b>Hawaii (07/12)</b>		
431:19-101	Pure captive	Any company that only insures or reinsures risks of its parent and affiliated entities.
	Association captive	Any company that insures risks of the member organizations of the association, and their affiliated companies.
	Sponsored captive	Any captive insurance company in which the minimum required capital and surplus is provided by one or more sponsors and is formed or licensed under this article. A sponsored captive insurance company insures the risks only of its participants through separate participant contracts and may fund its liability to each participant through one or more protected cells. A sponsored captive insurance company segregates the assets of each protected cell from the assets of other protected cells and from the assets of the sponsored captive insurance company’s general account.
	Branch captive	An outside captive licensed under this article by the commissioner to transact the business of insurance in this state through a business unit that has its principal place of business in this state.
	Risk retention group	A captive that is formed as a “risk retention group.”
	Protected cell	Separate account established by a sponsored captive in which assets are maintained for one or more participants in accordance with the terms of one or more participant contracts to fund the liability of the sponsored captive insurance company assumed on behalf of the participants as set forth in the participant contracts.
	Outside captive	An insurance company licensed under the laws of a jurisdiction other than this State and not otherwise admitted to do business as an insurance company in this state that insures the risks of its parent or any affiliated companies.
431:19-101.2	Confidentiality	Information submitted shall be treated as confidential and not disclosed to the public. Commissioner shall give captive insurer three days’ notice before disclosing any information commissioner deems necessary to make public. Commissioner may disclose information to court official, regulatory agencies and/or insurance departments without giving such notice.
<b>Idaho (07/12)</b>		
§41-227, 41-249,	Confidentiality	All information obtained by or disclosed to the director during the course of an examination shall not be made public. The director may provide any information to any federal, state, or foreign regulatory or law enforcement agency, or to the NAIC, as long as such entity maintains confidentiality.
<b>Illinois (07/12)</b>		
215 ILCS 5/123C-1	Pure captive	Any company that insures only risks of its parent or affiliated companies or both.
	Association captive	Any company that insures risks of (i) the member organizations of an association; and (ii) their affiliated companies.
	Industrial captive	Any company that insures risks of industrial insureds that are members of the industrial insured group, and their affiliated companies.
215 ILCS 5/132.5; 5/123C-10	Confidentiality	All information obtained by or disclosed to commissioner in the course of an examination must be given confidential treatment and shall not be made available to the public. Access may be made available for the insurance

Citation	Type of Captive	Summary
		department of any other state or country, law enforcement officials, agencies and NAIC as long as these individuals agree to maintain confidentiality. Applies to captive insurers pers 5/123C-10.
<b>Indiana (07/12)</b>		
27-1-3.1-14	Confidentiality	Content of an examination report shall be held confidential for a period of 30 days and thereafter the report will be made public. Information obtained during the course of the examination shall be confidential. The commissioner may share this information with the NAIC, the insurance department of any other state or country, or law enforcement officials of any state or the federal government as long as the agency receiving the information agrees to keep it confidential.
<b>Iowa</b>		
508.33A	Limited purpose subsidiary	A person as defined in §521A.1 who directly or indirectly through one or more intermediaries wholly owns the organizing life insurance company.
507.14	Confidentiality	All information obtained by or disclosed to the commissioner in the course of examination shall be privileged and confidential. This information can be disclosed to regulatory officials, federal agencies, other countries, and the NAIC provided these individuals maintain confidentiality of information.
<b>Kansas (07/12)</b>		
40-4301	Pure captive	Any company that insures risks of its parent and affiliated companies.
	Aircraft captive	Any pure captive insurance company which is formed under the provisions of this act by a corporation or an affiliated company of a corporation engaged in the manufacture of aircraft and having its principal place of business within the state of Kansas and that insures only risks in the same corporate system.
	Industrial captive	Any company that insures risks of the industrial insureds that comprise the industrial insured group, and their affiliated companies.
40-3308	Confidentiality	All information obtained by or disclosed to the commissioner in the course of examination or investigation shall be given confidential treatment and not made public. Commissioner may disclose to public officials, after giving insurer notice, if such disclosure is deemed appropriate.
<b>Kentucky (07/12)</b>		
304.49-010	Pure captive	Any company that insures risks of its parent and affiliated companies or controlled unaffiliated business.
	Agency captive	A captive insurer that is owned by one or more business entities that are licensed insurance producers and that only insure risks on policies placed through their owners.
	Branch captive	Any foreign captive insurer issued a certificate of authority by the commissioner to transact the business of insurance in Kentucky through a business unit with a principal place of business in Kentucky.
	Foreign captive	Any insurer formed to write insurance business for its parents and affiliates and licensed pursuant to the laws of any state other than Kentucky which imposes statutory or regulatory standards in a form acceptable to the commissioner on companies transacting the business of insurance in that jurisdiction.
	Industrial captive	Any company that insures risks of the industrial insureds that comprise the industrial insured group, and their affiliated companies.
	Special purpose captive	Any person that is licensed and designated as a special purpose captive insurer by the commissioner. A person may be designated if it is established for one specific purpose or transaction, and where it is desirable to isolate the purpose or transaction from the other activities of a party or parties involved in the transaction, or where the transaction dictates that the vehicle should not be treated as controlled or owned by any other party to that transaction.
	Sponsored captive	Any captive insurer in which the minimum capital and surplus is provided by one or more sponsors, is issued a certificate of authority, insures the risks of separate participants through contract, and segregates each participant's liability

Citation	Type of Captive	Summary
		through one or more protected cell.
304.49-020	Confidentiality	Information submitted shall be given confidential treatment and shall not be made public or disclosed to another except when it is disclosed to a state's insurance department, or to a law enforcement agent who shall maintain its confidentiality.
<b>Louisiana (07/12)</b>		
22:550.2	Pure captive	A captive insurer that insures only the risks of its parent and affiliated companies.
	Association captive	Any company that insures only the risks of the member organizations of the association, affiliated companies of the member organizations, and the risks of the association itself.
22:550.7	Confidentiality	Information submitted shall be treated as confidential and may not be made public without written consent of insurer unless such information is discoverable or is disclosed to a public official who shall maintain its confidentiality.
<b>Maine (07/12)</b>		
Tit. 24-A §6701	Pure captive	Any company that insures risks of its parent and affiliated companies or controlled unaffiliated businesses but does not include those insurers that otherwise qualify for and elect to hold a certificate of authority as an insurer under §414.
	Association captive	Any company that insures risks of the member organizations of the association and their affiliated companies.
	Industrial captive	Any company that insures risks of the industrial insureds that comprise the industrial insured group and their affiliated companies.
24-A §6715	Confidentiality	Information submitted is confidential and shall not be made public unless information is disclosed to a public official who shall maintain its confidentiality.
<b>Maryland (07/12)</b>		
Ins. §2-209	Confidentiality	Information obtained or generated in the course of an examination is confidential and privileged. Information may be disclosed to state, federal, or international regulatory and law enforcement agencies and the NAIC provided these entities agree to maintain confidentiality of information.
<b>Massachusetts (07/12)</b>		
Ch. 175 §4	Confidentiality	Information pertaining to any examination or inspection shall be confidential and not open to the public. Access to confidential information may be granted to the NAIC, the insurance department of any state, or to law enforcement officials of this or any other state or agency of the federal government, so long as the agency receiving the information agrees to hold such information confidential.
<b>Michigan (07/12)</b>		
§500.4601	Pure captive	A company that insures risks of its parent, affiliated companies, controlled unaffiliated business, or a combination of its parent, affiliated companies, and controlled unaffiliated business.
	Association captive	A company that insures risks of the member organizations of the association and their affiliated companies.
	Alien captive	An insurer formed to write insurance business for its parents and affiliates and licensed pursuant to the laws of a country other than the United States or any state, district, commonwealth, territory or possession of the United States.
	Branch captive	An alien captive insurance company authorized by the commissioner to transact the business of insurance in this state through a business unit with a principal place of business in this state.
	Industrial captive	A company that insures risks of the industrial insureds that comprise the industrial insured group and their affiliated companies.
	Protected cell	A segregated account established and maintained by a sponsored captive insurance company for one participant.
	Special purpose	A captive insurance company that is authorized under this chapter that does not

<b>Citation</b>	<b>Type of Captive</b>	<b>Summary</b>
	captive	meet the definition of any other type of captive insurance company defined in this section.
	Sponsored captive	A captive insurance company in which the minimum capital and retained earnings required by applicable law is provided by one or more sponsors, is authorized under this chapter, insures the risks of separate participants through the participant contract, and segregates each participant's liability through one or more protected cells.
§500.4609	Confidentiality	Information submitted is confidential and shall not be made public without written consent from company or unless the information is disclosed to the governor or attorney general, any relevant regulatory agency, law enforcement officials, or persons authorized by courts to receive such information.
<b>Minnesota (07/12)</b>		
§60A.031	Confidentiality	All information obtained by or disclosed to the commissioner in the course of an examination must be given confidential treatment and not be made public. Access may be granted to the insurance department of any state, law enforcement officials of this or any state or agency of the federal government, the NAIC, FINRA, any national securities association, so long as the receiving agency agrees to keep the information confidential.
<b>Mississippi (07/12)</b>		
§83-6-29	Confidentiality	Any information obtained by or disclosed to the commissioner in the course of an examination or investigation may be designated as confidential. Any information designated confidential shall not be made public, except that it may be disclosed to other insurance departments.
<b>Missouri (07/12)</b>		
§379.1300	Pure captive	Any company that insures risks of its parent and affiliated companies or controlled unaffiliated business.
	Alien captive	Any insurance company formed to write insurance business for its parents and affiliates and licensed under the laws of an alien jurisdiction that imposes statutory or regulatory standards in a form acceptable to the director on companies transacting the business of insurance in such jurisdiction.
	Association captive	Any company that insures risks of the member organizations of the association and their affiliated companies; except that, association captive insurance company shall not include, without limitation, any reciprocal insurer that has not chosen to apply for and is not licensed as a captive insurance company under §379.1302..
	Branch captive	Any alien captive insurance company licensed by the director to transact the business of insurance in this state through a business unit with a principal place of business in this state.
	Industrial captive	Any company that insures risks of the industrial insureds that comprise the industrial insured group and their affiliated companies.
	Special Purpose Life Insurance Captive	A captive insurance company that has received a license from the director for the limited purposes provided for in sections 379.1353 to 379.1421.
§379.1302	Confidentiality	Information submitted is confidential and shall not be made public without written consent of company, or unless information is discoverable, or is disclosed to a public officer who shall maintain its confidentiality.
<b>Montana (07/12)</b>		
33-28-101	Pure captive	Any company that insures risks of its parent and affiliated companies and controlled unaffiliated business entities.
	Association captive	Any company that insures risks of the members and the affiliated companies of members.
	Branch captive	Any foreign captive insurance company licensed by the commissioner to transact the business of insurance in this state through a business unit with a principal place of business in this state.
	Foreign captive	Any captive insurance company formed under the laws of any jurisdiction other



Citation	Type of Captive	Summary
		than this state.
	Incorporated cell captive	A protected cell captive insurance company that is established as a corporate or other legal entity separate from its incorporated cell that is organized as a separate legal entity.
	Protective cell captive	Any captive insurance company: (a) in which the minimum capital and surplus required by applicable law are provided by one or more sponsors; (b) that is formed or licensed under the provisions of this chapter; (c) that insures the risks of separate participants through participant contracts; and (d) that funds its liability to each participant through one or more protected cells and segregates the assets of each protected cell from the assets of other protected cells and from the assets of the protected cell captive insurance company's general account.
	Risk retention group	A captive insurance risk retention group formed under the laws of this chapter and pursuant to Title 33, chapter 11.
	Special purpose captive	A captive insurance company that is formed or licensed under this chapter that does not meet the definition of any other type of captive insurance company defined in this section.
33-28-102; 33-28-108	Confidentiality provisions	Information submitted or obtained during an examination shall be and remain confidential, and may not be made public by the commissioner without the written consent of the company, except that such information may be discoverable by a party in a civil action or contested case to which the captive insurance company is a party, provided that the information sought is necessary for the furtherance of such action or case, is unavailable elsewhere, and has been subpoenaed. The commissioner may disclose such information to a public officer having jurisdiction over the regulation of insurance in another state, provided that such public official shall agree in writing to maintain the information's confidentiality and the laws of the state in which such public official serves require such information to remain confidential.
<b>Nebraska (07/12)</b>		
§44-5906	Confidentiality	All information obtained by or disclosed to the director in the course of an examination shall be confidential and may not be made public. The director may disclose the information to the NAIC, and to state, federal, or foreign regulatory or law enforcement agencies, as long as recipient agrees to maintain confidentiality.
<b>Nevada (07/12)</b>		
§694C.120	Pure captive	A captive insurer that only insures risks of its parent and affiliated companies or controlled unaffiliated businesses and, unless otherwise provided by the commissioner, includes a branch captive insurer.
§694C.050	Association captive	A captive insurer that only insures risks of the member organizations of an association and the affiliated companies of those members, if: 1. The association or the member organizations of the association: (a) Own, control or hold with the power to vote all the outstanding voting securities of the association captive insurer, if the association captive insurer is incorporated as a stock insurer; or (b) Have complete voting control over the captive insurer, if the captive insurer is formed as a mutual insurer; and 2. The member organizations of the association collectively constitute all the subscribers of the captive insurer, if the captive insurer is formed as a reciprocal insurer.
§694C.035	Alien captive insurer	Any insurer that is formed to write insurance business for its parents and affiliates and is licensed pursuant to the laws of an alien jurisdiction which imposes statutory or regulatory standards acceptable to the commissioner on companies transacting the business of insurance in such jurisdiction.
694C.030	Agency captive	A captive insurer that is owned or directly or indirectly controlled by an insurance agency or brokerage and that only insures risks of policies which are placed by or through the agency or brokerage.
§ 694C.055	Branch captive	An alien captive insurer licensed pursuant to this chapter to transact the business

<b>Citation</b>	<b>Type of Captive</b>	<b>Summary</b>
	insurer	of insurance through a business unit with a principal place of business in this state.
§694C.117	Protected cell	A separate account established by a sponsored captive insurer in which assets are maintained for one or more participants in accordance with the terms of one or more participant contracts that fund the liability of the sponsored captive insurer assumed on behalf of the participants as set forth in the participant contracts.
§694C.140	Rental captive	A captive insurer formed to enter into contractual agreements with policyholders or associations to offer some or all of the benefits of a program of captive insurance and that only insures risks of such policyholders or associations.
§694C.147	Sponsored captive insurer	Any captive insurer In which the minimum capital and surplus required by applicable law is provided by one or more sponsors; That is formed or licensed pursuant to this chapter; That only insures the risks of its participants through separate participant contracts; and That funds the liability for each participant through one or more protected cells where the assets of each protected cell are segregated from the assets of other protected cells and the assets of the general account of the sponsored captive insurer.
§694C.410	Confidentiality	The provisions of NRS 679B.230 to 679B.287, inclusive, apply to examinations conducted on captive insurers.
§679B.285 (West)	Examination confidentiality	All information obtained by or disclosed to the commissioner or any other person during an examination made under this chapter are confidential, are not subject to subpoena, and may not be made public by the commissioner or any other person, except as necessary. A person to whom information is given must agree in writing before receiving the information to provide to it the same confidential treatment, unless the prior written consent of the insurer to which it pertains has been obtained.
<b>New Hampshire (07/12)</b>		
§400-A:37	Confidentiality	All information obtained by or disclosed to the commissioner in the course of an examination or investigation shall be treated as confidential and shall not be made public. The commissioner may disclose information to the insurance department of this or any other state, to law enforcement official of this or any other state agency of the federal government, or to the NAIC so long as the office receiving the report agrees to hold it confidential.
<b>New Jersey (07/12)</b>		
17:47B-1	Pure captive	A company that insures risks of its parent and affiliated companies or controlled unaffiliated businesses.
	Association captive	A company that insures risks of the member organizations of the association and their affiliated companies.
	Alien captive insurance company	Insurance company formed to write insurance business for its parents and affiliates and licensed pursuant to the laws of a jurisdiction other than this state which imposes statutory or regulatory standards in a form acceptable to the commissioner on companies transacting the business of insurance in that jurisdiction.
	Industrial insured captive	A company that insures risks of the industrial insureds that comprise the industrial insured group, and their affiliated companies.
	Branch captive	An alien captive insurance company licensed by the commissioner to transact the business of insurance in this state through a business unit with a principal place of business in this state.
	Protected cell	A separate account established and maintained by a sponsored captive insurance company for one participant.
17:47B-2; 17:47B-6; 17:47B-7	Confidentiality	Information submitted regarding the formation or redomestication of a captive insurance company and any annual financial report(s) of the captive insurance company submitted to the commissioner, including any additional information required by the commissioner, shall be and remain confidential and shall not be

Citation	Type of Captive	Summary
		<p>made public by the commissioner without the consent of the company, except that such information may be discoverable by a party in a civil action or contested case to which the captive insurance company is a party, provided the information sought is necessary for the furtherance of such action or case, is unavailable elsewhere, and has been subpoenaed. The commissioner may disclose such information to another state's insurance regulator if the regulator agrees in writing to maintain the confidentiality of the information and the laws of the states require the information to remain confidential.</p> <p>Information obtained or submitted during an examination of the captive insurance company by the New Jersey Department of Banking and Insurance is confidential and not subject to subpoena and shall not be made public by the commissioner without the written consent of the company, except the commissioner may grant access to the information to insurance regulators from other states or countries or to law enforcement officers of this State, any other state or agency of the federal government, so long as the officers receiving the information agree in writing to hold it confidential.</p>
<b>New Mexico (07/12)</b>		
§§59A-4-11, 59A-4-7, 59A-4-13	Confidentiality	All information obtained by or disclosed to the superintendent in the course of an examination shall remain confidential and not be made public. Access to information may be granted to NAIC on the condition that information remains confidential. Superintendent may disclose information to further any legal or regulatory action as the superintendent deems appropriate. Superintendent may disclose confidential information to this or any state's insurance department, law enforcement officials or regulatory agencies of this or any state, or federal government, so long as the agency maintains confidentiality.
<b>New York (07/12)</b>		
Ins. Law §7002	Pure captive	Any company that: (1) is a subsidiary of an industrial insured which is one hundred percent owned by or is a statutory subsidiary of the industrial insured; and (2) is licensed under the provisions of this article for the primary purpose of providing insurance or reinsurance covering the risks of its parent and affiliated companies.
	Group captive	Any domestic insurance company licensed under the provisions of this article for the primary purpose of providing insurance or reinsurance covering the risks of the industrial insureds that comprise the industrial insured group.
Ins. Law §7003	Confidentiality	Any material filed with the superintendent in the course of applying for a license to do business as a captive insurer shall be given confidential treatment and shall not be subject to public inspection, or to discovery, except to the extent the superintendent finds release of information necessary to protect the public or necessary to initiate any proceeding or action or except where a court of competent jurisdiction in an action involving a private litigant and a captive insurer finds that discovery of same should be allowed upon a showing that such information is essential to the establishment of the claim or defense brought or asserted and the party seeking discovery has demonstrated to the satisfaction of the court that such party is unable to otherwise obtain the substantial equivalent of the material.
<b>North Carolina (07/12)</b>		
§58-2-132	Confidentiality	All information obtained by or disclosed to the commissioner in the course of an examination shall be given confidential treatment and not be made public. The commissioner may share information with other state, federal, or international regulatory agencies; state, federal, or international law enforcement agencies; and the NAIC as long as the receiving agency agrees to maintain confidentiality.
<b>North Dakota (07/12)</b>		
§26.1-03-19.2	Authority to examine	The commissioner or any of the commissioner's examiners may conduct an examination of any company whenever the commissioner in the commissioner's

Citation	Type of Captive	Summary
		sole discretion deems appropriate but shall at a minimum, conduct an examination of every insurer licensed in this state not less frequently than once every five years.
§26.1-03-19.4 (West)	Confidentiality	All working papers, recorded information, documents, and copies thereof produced by, obtained by, or disclosed to the commissioner or any other person in the course of a financial examination made under this chapter must be given confidential treatment and are not subject to subpoena and may not be made public by the commissioner or any other person.
<b>Ohio (07/12)</b>		
Ohio Rev. Code Ann. §3901.48 (West)	Confidentiality	The work papers of the superintendent or of the person appointed by the superintendent, resulting from the conduct of an examination made pursuant to §3901.07 of the Revised Code or from the conduct of a financial analysis of any entity subject to examination by the superintendent, including but not limited to any insurance company, health insuring corporation, fraternal benefit society, or multiple employer welfare arrangement, are confidential and privileged and are not a public record as defined in §149.43 of the Revised Code. The original work papers and any copies of them are not subject to subpoena and shall not be made public.
§3901.07	Authority to examine	“Insurer” means any person doing or authorized to do any insurance business in this state. Before issuing any license to do the business of insurance in this state, the superintendent of insurance, or a person appointed by him, may examine the financial affairs of any insurer or as often as he considers it desirable, the financial affairs of the insurer or to the examination.
<b>Oklahoma (07/12)</b>		
36 §6470.2	Pure captive	A company that insures risks of its parent, affiliated companies, controlled unaffiliated business, or a combination thereof.
	Association captive	A company that insures risks of the member organizations of the association and their affiliated companies.
	Alien captive insurance company	An insurance company formed to write insurance business for its parents and affiliates and licensed pursuant to the laws of an alien jurisdiction that imposes statutory or regulatory standards in a form acceptable to the insurance commissioner on companies transacting the business of insurance in such jurisdiction.
	Branch captive	An alien captive insurance company licensed by the insurance commissioner to transact the business of insurance in this state through a business unit with a principal place of business in this state.
	Captive reinsurance company	A reinsurance company that is formed or licensed pursuant to the Oklahoma Captive Insurance Company Act and is wholly owned by a qualifying reinsurance parent company. A captive reinsurance company is a stock corporation.
	Industrial insured captive	A company that insures risks of the industrial insureds that comprise the industrial insured group and their affiliated companies.
	Protected cell	A separate account established and maintained by a sponsored captive insurance company for one participant.
	Special purpose captive	A captive insurance company that is formed or licensed under the Oklahoma Insurance Code that does not meet the definition of any other type of captive insurance company defined in this section.
Sponsored captive	Means a captive insurance company in which the minimum capital and surplus required by applicable law is provided by one or more sponsors, that is formed or licensed under the Oklahoma Captive Insurance Company Act, that insures the risks of separate participants through the contract, and that segregates the liability of each participant through one or more protected cells.	
36, §§6470.3; 6470.13;	Confidentiality	Information submitted or obtained during an examination shall be and remain confidential, and may not be made public by the commissioner without the written consent of the company, except that such information may be

Citation	Type of Captive	Summary
		discoverable by a party in a civil action or contested case to which the captive insurance company is a party, provided that the information sought is necessary for the furtherance of such action or case, is unavailable elsewhere, and has been subpoenaed. The commissioner may disclose such information to a public officer having jurisdiction over the regulation of insurance in another state, provided that such public official shall agree in writing to maintain the information's confidentiality and the laws of the state in which such public official serves require such information to remain confidential.
<b>Oregon (07/12)</b>		
Uncodified SB 1547 §2 (2012)	Branch captive	An alien captive insurer that holds a certificate of authority from the director of the Department of Consumer and Business Services to transact insurance in this state through a business division with a principal place of business in this state.
	Association captive	A business entity that insures the risks of a member organization of the association, an affiliate of a member organization of the association, or the association.
	Captive reinsurer	A reinsurer that is formed or holds a certificate of authority under §2-22 of this 2012 Act, wholly owned by a qualifying reinsurer parent company; and a stock corporation.
	Pure captive	A business entity that insures risks of a parent or affiliate of the business.
Uncodified SB 1547 §5 (2012)	Confidential documents	All documents, materials and other information in the possession of the Department of Consumer and Business Services under §2-22 of this 2012 Act are confidential and subject to public disclosure only as provided in ORS 705.137.
<b>Pennsylvania (07/12)</b>		
40 Pa. Stat. Ann. §323.3	Authority to examine	The department or any of its examiners shall examine any company once every five years. The department may examine or investigate any person or the business of any person insofar as such examination or investigation is, in the sole discretion of the commissioner, necessary or material to the examination of the company.
40 Pa. Stat. Ann. §323.5 (West)	Confidentiality	The department shall hold the content of the examination report as private and confidential information for a period of 30 days except to the extent provided in subsection (b). Thereafter, the department may open the report for public inspection. All information produced by, obtained by or disclosed to the department or any other person in the course of an examination made under this article shall be given confidential treatment and are not subject to subpoena and may not be made public by the department or any other person except to the extent provided in subsection.
<b>Rhode Island (07/12)</b>		
27-43-1	Association captive	Any company that insures risks of the member organizations of the association, and their affiliated companies.
	Industrial insured captive	Any company that insures risks of the industrial insured that comprise the industrial insured group, and their affiliated companies.
27-43-3	Confidentiality	Information submitted shall be and remain confidential, and may not be made public by the commissioner without the written consent of the company, except that such information may be discoverable by a party in a civil action or contested case to which the captive insurance company is a party, provided that the information sought is necessary for the furtherance of such action or case, is unavailable elsewhere, and has been subpoenaed. The commissioner may disclose such information to a public officer having jurisdiction over the regulation of insurance in another state, provided that such public official shall agree in writing to maintain the information's confidentiality and the laws of the state in which such public official serves require to remain confidential.
<b>South Carolina (07/12)</b>		
38-90-10	Pure captive	A company that insures risks of its parent, affiliated companies, controlled unaffiliated business, or a combination thereof.

Citation	Type of Captive	Summary
	Association captive	A company that insures risks of the member organizations of the association and their affiliated companies.
	Special purpose captive	A captive insurance company that is formed or licensed under this chapter that does not meet the definition of any other type of captive insurance company defined in this section.
	Protected cell	Separate account established and maintained by a sponsored captive insurance company for one participant.
	Branch captive	Alien captive insurance company licensed by the director to transact the business of insurance in this state through a business unit with a principal place of business in this state.
	Captive reinsurance company	Reinsurance company that is formed or licensed pursuant to this chapter and is wholly owned by a qualifying reinsurance parent company. A captive reinsurance company is a stock corporation.
	Industrial insured captive	Company that insures risks of the industrial insureds that comprise the industrial insured group and their affiliated companies.
38-90-420	Special Purpose Financial Captive	"SPFC" or "Special Purpose Financial Captive" means a captive insurance company which has received a certificate of authority from the director for the limited purposes provided for in this article.
38-90-25	Confidentiality for captive reinsurers	Information submitted pursuant to this section is confidential, except that information is discoverable by a party in a civil action or contested case to which the captive is a necessary party to the action and not joined only for the purposes of evading the confidentiality provisions of this chapter and the information sought is relevant, material to, and necessary for the prosecution or defense of the claim asserted in litigation and the information sought is not available through another source.
38-90-35; 38-90-80; 38-90-70; 38-90-20, 38-90-560, 38-90-610	Confidentiality	Information submitted or obtained during an examination pursuant to this section is confidential, except that information is discoverable by a party in a civil action or contested case to which the captive is a necessary party to the action and not joined only for the purposes of evading the confidentiality provisions of this chapter and the information sought is relevant, material to, and necessary for the prosecution or defense of the claim asserted in litigation and the information sought is not available through another source. This does not apply to final reports produced by the director examining a captive insurance company formed as a risk retention group. The director or his designee may use and, if appropriate, make public a preliminary examination report, examiner or insurer work papers or other documents, or other information discovered or developed during the course of an examination in the furtherance of a legal or regulatory action.
<b>South Dakota (07/12)</b>		
58-46-1	Pure captive	Any company that insures risks of its parent and affiliated companies or a controlled unaffiliated business.
	Group captive	Any company that insures the risks of the member organizations of the group, the risks of the affiliated companies of the member organizations, or the risks of the association.
58-3-1.1; 58-3-14; 58-3-21.	Confidentiality	The director shall hold the content of the examination report as confidential information for 30 days. The director may disclose the contents of an examination report, preliminary examination report or results, or any matter or documentation relating thereto, to the insurance department of this or any other state or country, or to law enforcement officials of this or any other state or agency of the federal government at any time, if the agency or office receiving the report or matters relating thereto agrees in writing to hold it confidential and in a manner consistent with this chapter. Any examination report, preliminary examiners report or results or any material or documentation relating thereto received by the director from another jurisdiction is confidential unless otherwise indicated by that jurisdiction.
§58-46-6	Applicability to	The provisions of chapter 58-3 apply to examinations, investigations, and

Citation	Type of Captive	Summary
	Captives	processing conducted on a captive insurer.
<b>Tennessee (07/12)</b>		
56-13-102	Pure captive	Any company that insures risks of its parent and affiliated companies or a controlled unaffiliated business or businesses.
	Association captive	Any company that insures risks of the member organizations of an association, and that also may insure the risks of affiliated companies of the member organizations and the risks of the association itself.
	Incorporated cell captive insurance company	Protected cell captive insurance company that is established as a corporation or other legal entity separate from its incorporated cells that are also organized as separate legal entities.
	Incorporated cell	Protected cell of an incorporated cell captive insurance company that is organized as a corporation or other legal entity separate from the incorporated cell captive insurance company.
	Industrial insured captive insurance company	Any company that insures risks of the industrial insureds that comprise the industrial insured group, and that may insure the risks of the affiliated companies of the industrial insureds and the risks of the controlled unaffiliated business of an industrial insured or its affiliated companies.
	Risk retention group	A captive insurance company organized under the laws of this state pursuant to the federal Liability Risk Retention Act of 1986, as amended, compiled in 15 U.S.C. §3901 et seq., as a stock or mutual corporation, a reciprocal or other limited liability entity. Risk retention groups formed under this chapter are subject to all applicable insurance laws including, but not limited to any applicable provisions in chapters 1, 2, 5, 6, 11 and 45 of this title.
56-13-109; 56-13-103; 56-13-404	Confidentiality provision	Information submitted or obtained during an examination shall be and remain confidential, and may not be made public by the commissioner without the written consent of the company, except that such information may be discoverable by a party in a civil action or contested case to which the captive insurance company is a party, provided that the information sought is necessary for the furtherance of such action or case, is unavailable elsewhere, and has been subpoenaed. The commissioner may disclose such information to a public officer having jurisdiction over the regulation of insurance in another state, provided that such public official shall agree in writing to maintain the information's confidentiality and the laws of the state in which such public official serves require such information to remain confidential.
<b>Texas (07/12)</b>		
Tex. Ins. Code Ann. §401.051 (West)	Authority to examine insurers	The department or an examiner appointed by the department may visit the carrier at the carrier's office for the purpose of investigating the carrier's affairs and condition. The department or an examiner appointed by the department shall examine the carrier's financial condition and ability to meet the carrier's liabilities and compliance with the laws of this state.
Tex. Ins. Code Ann. §401.058	Confidentiality	A final or preliminary examination report and any information obtained during an examination are confidential and are not subject to disclosure under Chapter 552, Government Code.
Tex. Ins. Code Ann. Ch. 823 Subchapter H	Authority to Examine Insurers or Affiliates	The commissioner may order an insurer that is a member of an insurance holding company system required to be registered in Texas registered to produce information in its possession, or in the possession of an affiliate, necessary to determine the financial condition of the insurer.
Tex. Ins. Code Ann. § 823.011	Confidentiality	Information obtained under Ch. 823, Subchapter H is confidential and privileged.
Tex. Ins. Code Ann. Ch. 841, Subchapter I	Limited Purpose Subsidiary Life Insurance Companies	A life insurance company licensed in Texas may organize a limited purpose subsidiary life insurance company; the LPSLIC requires a certificate of authority. The only business which the LPSLIC may engage in is reinsuring the risks of the organizing entity, which must also be its affiliate. Applies only for business sold until January 1 of the year in which principle-based reserve

Citation	Type of Captive	Summary
<b>Utah (07/12)</b>		
31A-37-102	Pure captive	A business entity that insures risks of a parent or affiliate of the business entity.
	Association captive	A business entity that insures risks of: (a) a member organization of the association; (b) an affiliate of a member organization of the association; and (c) the association.
	Branch captive insurance company	Alien captive insurance company that has a certificate of authority from the commissioner to transact the business of insurance in this state through a business unit with a principal place of business in this state.
	Captive reinsurance company	Reinsurer that is formed or has a certificate of authority pursuant to this chapter; wholly owned by a qualifying reinsurer parent company; and a stock corporation.
	Industrial insured captive insurance company	A business entity that insures risks of the industrial insureds that comprise the industrial insured group; and may insure the risks of: an affiliated company of an industrial insured; or a controlled unaffiliated business of: an industrial insured; or an affiliated company of an industrial insured.
	Protected cell	A separate account established and maintained by a sponsored captive insurance company for one participant.
§31A-37a-102	Special purpose financial captive insurance company	A captive insurance company has a certificate of authority under this chapter from the commissioner to operate as a special purpose financial captive insurance company pursuant to this chapter.
31A-37-202	Captive insurer applicants	Information submitted to the commissioner is classified. The commissioner may disclose information submitted to a public official having jurisdiction over the regulation of insurance in another state If the public official agrees in writing to maintain the confidentiality of the information the laws of the state in which the public official serves require the information to be confidential. This does not apply to information provided by an industrial insured captive insurance company insuring the risks of an industrial insured group.
31A-37-602	Confidentiality	Information submitted shall be and remain confidential, and may not be made public by the commissioner without the written consent of the company, except that such information may be discoverable by a party in a civil action or contested case to which the captive insurance company is a party, provided that the information sought is necessary for the furtherance of such action or case, is unavailable elsewhere, and has been subpoenaed. The commissioner may disclose such information to a public officer having jurisdiction over the regulation of insurance in another state, provided that such public official shall agree in writing to maintain the information's confidentiality and the laws of the state require such information to remain confidential.
<b>Vermont (07/12)</b>		
8 §6001	Pure captive	Any company that insures risks of its parent and affiliated companies or controlled unaffiliated business.
	Association captive	Any company that insures risks of the member organizations of the association, and that also may insure the risks of affiliated companies of the member organizations and the risks of the association itself.
8 §6048c	Special purpose financial captive	A captive insurance company that has received a license from the commissioner to operate as a special purpose financial captive insurance company pursuant to this subchapter.
8, §6002	Confidentiality	Information submitted shall be and remain confidential, and may not be made public by the commissioner without the written consent of the company, except that such information may be discoverable by a party in a civil action or contested case to which the captive insurance company is a party, provided that the information sought is necessary for the furtherance of such action or case, is unavailable elsewhere, and has been subpoenaed. The commissioner may



Citation	Type of Captive	Summary
		disclose such information to a public officer having jurisdiction over the regulation of insurance in another state, provided that such public official shall agree in writing to maintain the information's confidentiality and the laws of the state in which such public official serves require such information to remain confidential.
<b>Virgin Islands (07/12)</b>		
§1314 Definitions, 22 V.I.C. §1314	Alien captive insurance company	An insurance company formed to write insurance business for its parents and affiliates and licensed pursuant to the laws of an alien jurisdiction, a non-United States domicile, which imposes statutory or regulatory standards in a form acceptable to the SAM (superintendent of alternative markets) on companies transacting the business of insurance in such jurisdiction.
	Branch captive insurance company	An alien captive insurance company licensed by the SAM to transact the business of insurance in this territory through a business unit with a principal place of business in this territory.
	Protected cell	A separate account established and maintained by a protected cell insurance company for one or more participant.
	Protected cell insurance company	A company that has been approved by the SAM to maintain segregated accounts and to segregate each participant's assets, liabilities, and activities from each other and whose owner meets appropriate capital and surplus(C & S) requires appropriate C & S and reinsurance from each participants [sic].
	Special purpose financial captive co.	A captive insurance company that is formed or licensed under this chapter which does not meet the definition of any other type of captive insurance company defined in this chapter.
22 V.I.C. §1333	Confidentiality	All examination reports, preliminary examination reports or results, working papers, recorded information, documents and copies of documents produced by, obtained by, or disclosed to the SAM or any other person in the course of an examination made under this section are confidential and are not subject to subpoena and may not be made public by the SAM or an employee or agent of the SAM without the prior written consent of the company, except to the extent provided in this subsection.
<b>Virginia (07/12)</b>		
38.2-1101	Pure captive	Any domestic insurer transacting the business of insurance and reinsurance only on risks, hazards and liabilities of its parent, subsidiary companies of its parent, and associated and affiliated companies.
	Association captive	Any domestic insurer transacting the business of insurance and reinsurance only on risks, hazards, and liabilities of an insurance association.
§§38.2-1317.1	Confidentiality	All information produced by, obtained by, or disclosed to the commissioner or any other person in the course of an investigation shall be given confidential treatment, is not subject to subpoena, and may not be made public.
Code Ann. §38.2-1109	Applicability to captives	This title applies to insurers writing the same classes of insurance that captive insurers are permitted to write, shall apply in every respect to captive insurers.
<b>Washington (07/12)</b>		
§48.03.010	Examinations generally	The commissioner shall examine the affairs, transactions, accounts, records, documents and assets of each authorized insurer every five years.
§48.03.040	Confidentiality	The commissioner shall hold the content of the examination report as private and confidential for a period of five days. Thereafter, the commissioner may open the report for public inspection so long as no court of competent jurisdiction has stayed its publication. The commissioner may disclose an examination report, preliminary examination report or results, or any matter relating thereto, to the insurance department of any other state or country, or to law enforcement officials of this or any other state or agency of the federal government at any time, so long as the agency or office receiving the report or matters relating thereto agrees in writing to hold it confidential and in a manner consistent with this chapter.
<b>West Virginia (07/12)</b>		

Citation	Type of Captive	Summary
33-31-1	Pure captive	Any company that insures risks of its parent and affiliated companies or controlled unaffiliated business.
	Association captive	Any company that insures risks of the member organizations of the association, and their affiliated companies.
	Branch captive insurance company	Any alien captive insurance company licensed by the commissioner to transact the business of insurance in this state through a business unit with a principal place of business in this state.
	Industrial insured captive	Any company that insures risks of the industrial insureds that comprise the industrial insured group and their affiliated companies.
	Risk retention group	A captive insurance company organized under the laws of this state pursuant to the federal Liability Risk Retention Act of 1986, 15 U.S.C. §3901, et seq., as amended, as a stock or mutual corporation, a reciprocal or other limited liability entity.
§§33-31-2; 33-31-8	Confidentiality	Information submitted or obtained during an examination shall be and remain confidential, and may not be made public by the commissioner without the written consent of the company, except that such information may be discoverable by a party in a civil action or contested case to which the captive insurance company is a party, provided that the information sought is necessary for the furtherance of such action or case, is unavailable elsewhere, and has been subpoenaed. The commissioner may disclose such information to a public officer having jurisdiction over the regulation of insurance in another state, provided that such public official shall agree in writing to maintain the information's confidentiality and the laws of the state in which such public official serves require such information to remain confidential.
<b>Wisconsin (07/12)</b>		
Wis. Stat. Ann. §601.43 (West)	Examinations generally	Whenever the commissioner deems it necessary to inform himself or herself about any matter, the commissioner may examine the affairs and condition of any licensee or permittee or applicant for a license or permit, of any person or organization of persons doing or in process of organizing to do an insurance business in this state, and of any advisory organization in this state.
601.465; Wis. Admin. Code Ins §50.50	Confidentiality	The office may refuse to disclose and may prevent any other person from disclosing testimony, reports, records and information that are obtained, produced or created in the course of an inquiry under an investigation or examination of an insurer.
<b>Wyoming (07/12)</b>		
Wyo. Stat. Ann. §26-2-116 (West)	Examinations generally	The commissioner or any of his examiners may examine any insurer as often as he, in his sole discretion, deems advisable. He shall examine each insurer licensed in this state not less frequently than every five years.
Wyo. Stat. Ann. §26-2-121 (West)	Confidentiality	All working papers, recorded information, documents and copies thereof produced by, obtained by or disclosed to the commissioner or any other person in the course of an examination made under W.S. §26-2-116 through §26-2-124 shall be given confidential treatment and are not subject to subpoena and shall not be made public by the commissioner or any other person.
Blue Cells	Indicate that the state has an explicit confidentiality provision within the captives provisions	
Yellow Cells	Indicate that the state does not mention confidentiality within the captives provisions, but states elsewhere that the general confidentiality provision within the Insurance code applies to captives	
Green Cells	Indicate that the state does not mention captives or what provisions apply directly to captives, but has a general confidentiality provision that applies to any insurer	