

Captives and Special Purpose Vehicles

An NAIC White Paper

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**Created by the
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of the
Financial Condition (E) Committee**

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I. INTRODUCTION

A. EXECUTIVE SUMMARY

The Captive and Special Purpose Vehicle (SPV) Use (E) Subgroup studied the use of captives and SPVs formed by commercial insurers. The Subgroup concluded that commercial insurers cede business to captives for a variety of business purposes. The Subgroup determined that the main use of captives and SPVs by commercial insurers was related to the financing of XXX¹ and AXXX² perceived reserve redundancies. The implementation of principle-based reserving (PBR) could reduce the need for commercial insurers to create new captives and SPVs to address perceived reserve redundancies; however, existing captives and SPVs are likely to remain in existence for several years or decades, until the existing blocks of business are run-off. Regulators need to be able to assess and monitor the risks that captives and SPVs may pose to the holding company system, and the current regulatory process should be enhanced to provide standardized tools and processes to be used by all regulators when reviewing such transactions. Commercial insurer-owned captives and SPVs should not be used to avoid statutory accounting. To the extent that insurer-affiliated captives and SPVs may be created in the future for unforeseen purposes, additional guidance should be developed by the NAIC to assist the states in a uniform review of transactions.

The Subgroup offers the following recommendations to the Financial Condition (E) Committee for their consideration and or/further possible study:

1. Accounting Considerations

The NAIC should form a separate subgroup to develop possible solutions for addressing any remaining XXX and AXXX perceived redundancies prior to the effective date of PBR. Such issues should be addressed directly, as opposed to through the use of captives and SPVs. Possible solutions could include changes similar to the solution provided by *Actuarial Guideline XXXVIII—The Application of the Valuation of Life Insurance Policies Model Regulation* (AG 38), 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.

¹ Used to describe the actuarial reserves required to be held under the NAIC *Valuation of Life Insurance Policies Model Regulation* (#830), which is commonly referred to as Regulation XXX (or, more simply, XXX).

² Used to describe the actuarial reserves required to be held under the NAIC *Actuarial Guidance XXXVIII—The Application of the Valuation of Life Insurance Policies Model Regulation* (AG 38), which is more commonly referred to as AXXX.

2. Confidentiality

The Subgroup recommends that the NAIC study the issue of confidentiality related to commercially owned captives and SPVs more closely. This 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 discussed in recommendation #3 below.

3. Access to Alternative Markets

The Subgroup supports the use of solutions designed to shift risk to the capital markets or that provide alternative forms of business financing. The NAIC should consider re-evaluating the *Special Purpose Reinsurance Vehicle Model Act* (#789), and updating it as necessary to reflect alternative markets solutions acceptable to state insurance regulators, to ensure there is a uniform framework for the implementation of alternative market solutions. The NAIC should further encourage the states to adopt Model #789 and should consider making the model an accreditation standard.

4. International Association of Insurance Supervisors (IAIS) Principles, Standards and Guidance

The Subgroup recommends that the NAIC closely monitor the ongoing developments with respect to IAIS principles, standards and guidance, and consider, if appropriate, enhancements to the U.S. captive and SPV regulatory framework in preparation for future International Monetary Fund/World Bank Financial Sector Assessment Program (FSAP) reviews.

5. Credit for Reinsurance Model Enhancements

Transactions involving conditional letters of credit (LOCs) or parental guarantees effectively permit assets to support reinsurance recoverables, either as collateral or as capital, in forms that may be otherwise inconsistent with requirements under the *Credit for Reinsurance Model Law* (#785) and the *Credit for Reinsurance Model Regulation* (#786) or other financial solvency requirements applicable to U.S.-domiciled commercial assuming insurers. The Subgroup recommends consideration be given to study further the effects of, and potential limits on, the variability in qualified LOCs or any other security that might not provide the intended protections provided within Model #785 and Model #786.

6. Disclosure and Transparency

The Subgroup recommends enhanced disclosure in ceding company statements regarding the impact of the transactions on the financial position of the ceding insurer. Enhancement of Note to Financial Statement 10M should be made to provide for disclosure of non-trade-secret captive information and disclosure of the overall utilization of captives.

7. Financial Analysis Handbook Guidance

The Subgroup recommends the development of guidance in the *Financial Analysis Handbook* for the states' review and ongoing analysis of transactions involving captives and SPVs, including specific considerations of such transactions when performing holding company analysis. The guidance should be developed for the perspectives of the ceding state, the captive state and the lead state.

Each of these items is discussed in more detail within the remainder of this white paper.

B. BACKGROUND AND SCOPE

The Captive and Special Purpose Vehicle (SPV) Use (E) Subgroup was formed under the Financial Condition (E) Committee in early 2012 and was given the following charge:

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.

The Subgroup was formed based upon the need to study whether policyholders of commercial insurers that had formed captives and SPVs could be subject to risk because of the differences in the regulation of such entities compared with the regulation of commercial insurers. The Subgroup was explicit from the beginning of the study that the following areas would *not* be studied:

- Pure captives or other similar structures providing insurance against risks of the parent or its subsidiaries only (see Section IV – Types of Business and Risks for further discussion).
- Risk retention groups (RRGs) operating under captive laws.

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

To initiate this study, a confidential regulator-only request for comment was sent to all of the states and the District of Columbia to respond (in part or in total), as applicable, with regard to commercial insurers domiciled in their respective jurisdictions that transfer risk to captives or SPVs 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.

II. STATE AUTHORITY

A. CAPTIVES

Captives were originally created under state statutes to allow corporations to set up subsidiaries to insure their company's own risk. Therefore, it seemed appropriate that the Subgroup study a summary of such laws to determine the extent to which such laws provide insight into the use of captives by commercial insurers. The following summarizes the most relevant information from this study, including, among other things, the extent to which such laws address the establishment of captives or SPVs by commercial insurers.

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 respective state's laws do not define captives. The Subgroup noted in its study that the number of captive domiciles has appeared to grow over the past few years. 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 the state laws:

- (13) – Industrial
- (10) – Sponsored
- (8) – Special Purpose
- (5) – Branch
- (4) – Agency
- (3) – Reinsurance
- (3) – RRG
- (2) – Protected Cell
- (1) – Incorporated Cell
- (1) – Segregated Account
- (1) – Rental

The Subgroup focused on identifying transactions that involved commercial insurers transferring risk to captives or SPVs to study and understand the motivation for using captives and SPVs. The vast majority of the transactions studied by the Subgroup were transactions used as a means of dealing with perceived XXX³ and AXXX⁴ reserve redundancies; however, the Subgroup did study a limited number of non-XXX and non-AXXX transactions.

General Statutory Authority/Definitions

The following information on general statutory authority is included as a way to summarize some of the responses to the survey.

³ Used to describe the actuarial reserves required to be held under the NAIC *Valuation of Life Insurance Policies Model Regulation* (#830), which is commonly referred to as Regulation XXX (or, more simply, XXX).

⁴ Used to describe the actuarial reserves required to be held under the NAIC *Actuarial Guidance XXXVIII—The Application of the Valuation of Life Insurance Policies Model Regulation* (AG 38), which is more commonly referred to as AXXX.

State laws on captive insurers generally address 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.

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

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 that imposes regulatory standards in a form acceptable to the commissioner on companies transacting insurance in such jurisdiction.

Branch captive – A captive insurance company that is domiciled in an alien jurisdiction and has been issued a certificate of authority to transact insurance through a business unit with a principal place of business in the state

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 – A captive insurance company that insures risks of business entities belonging to a group organized under federal law as a risk retention group, or otherwise authorized as an industrial insured group under state law.

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 segregates each participant's liability through protected cells or separate accounts where those assets are not subject to the liabilities of the other 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 that is issued a certificate of authority, the minimum capital and surplus is provided by one or more sponsors, the risks of separate participants is provided through contract and each participant's liability is segregated through one or more protected cells.

B. SPVs AND SPECIAL PURPOSE FINANCIAL CAPTIVES

In addition to the more traditional types of captives formed by non-insurance companies, commercial insurers have begun creating captives for reinsurance, securitization or reserve financing purposes. These captives are often referred to as special purpose vehicles (SPVs.) An SPV, where defined under state law, is a captive licensed and designated as an SPV insurance company by the insurance commissioner. SPVs can take several forms. Special purpose financial captives are limited to issuing only special purpose financial captive insurer contracts to provide reinsurance protection to the cedant/parent. Special purpose reinsurance vehicles facilitate the securitization of one or more ceding insurers' risks as a means of accessing alternative sources of capital and achieving the benefits of securitization. Limited purpose subsidiaries can also be created for similar purposes.

General Statutory Definitions

According to the states that responded to the Subgroup's request for comment, 10 states indicated that their respective state's laws define SPVs and 25 states indicated that their respective 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 issuing only special purpose financial captive insurer contracts that provide reinsurance protection to the cedant/parent.

(3) – Special Purpose Reinsurance Vehicle: Limited to issuing only coverage for securitized reinsurance transactions, for which the maximum liability exposure must be fully funded by the bondholders together with the premium paid by the ceding insurer.

(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.

In 2001, the NAIC adopted the *Special Purpose Reinsurance Vehicle Model Act* (#789), which provides a framework for the establishment of SPRVs under limited certificates of authority. An SPRV's business must consist exclusively of reinsurance contracts that are tied to the risk of specific triggering events and that are financed by securitizations. The SPRV must be fully funded, meaning that the fair value of the assets held in trust must equal or exceed the aggregate limit of coverage, and the assets must be held in trust for the benefit of the ceding insurer, in the same manner as trusts that are used as collateral to secure a reinsurer's obligations under the *Credit for Reinsurance Model Law* (#785). Credit for reinsurance is expressly limited to the fair value of the assets held in trust. Model #789 is the only NAIC model that attempts to address SPVs or special purpose financial captives.

At the time Model #789 was adopted, catastrophe bonds were the most widely discussed type of securitization transaction, and the model as originally proposed would have been limited to property catastrophe coverage. However, the first securitization transactions involved life insurance, so Model #789 was adopted without any line-of-business restriction, with a drafting note identifying this as an issue that could be considered on a state-by-state basis. To date, four states have adopted Model #789.

Securitization solutions allowed for within Model #789 are not always being utilized, however, as other structures may be preferred today. As the Subgroup progressed through its study, identified issues and developed recommendations, a consensus emerged that the framework within Model #789 is an ideal place for the implementation of many of the Subgroup's recommendation. Thus, the Subgroup recommends that the NAIC consider re-evaluating the *Special Purpose Reinsurance Vehicle Model Act* (#789), and updating it as necessary to reflect alternative market solutions acceptable to state insurance regulators, to ensure there is a uniform framework for the implementation of such solutions.

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. 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 U.S. captive states. See Section IX – Holding Company Analysis Considerations for discussion of procedures that apply to all holding companies, including non-U.S.-based insurance groups.

III. TYPES OF BUSINESS AND RISKS

The Subgroup did not include in its study pure captives, RRGs or similar structures providing risk of loss to a parent or its subsidiaries. However, the Subgroup believed it may be helpful to consider the different types of business and risk that are either explicitly allowed (or explicitly not allowed) to be transferred from a commercial insurer to a captive.

According to the responses to the Subgroup's request for comment, 27 states indicated that they allow insurance risks to be transferred from a domestic insurer to a captive or SPV in their respective state. It should be noted that some of the responses provided by the states 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 and 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 products allowed to be transferred to captives or SPVs in their respective states.

IV. CAPITALIZATION

State laws on captive insurers generally address, among other things, the capital and surplus requirements. For this reason, and to consider in this white paper the extent to which such requirements differ from commercial insurers, certain information was gathered on this topic. 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/SPVs – \$250,000 Other Captives – \$400,000	LOC	No	No	
Hawaii	Based on Transaction	LOC			
Delaware	\$250,000	LOC	No		GAAP

*Letter 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.

**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 takeaways:

- 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 a 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 a typical SPV 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. Banks generally require collateral for the LOC. Collateral requirements can vary depending on whether the captive parent is an insurer or a private business.
- LOCs utilized in many captive transactions are longer-term (i.e., five years, seven years and 10+ years, where the peak reserves are covered by the term of the LOC) and are designed to mitigate the risk of non-renewal for non-payment of fees by entering into fee agreements that require prefunding of the LOC fees.
- Some banks have placed certain restrictions on LOCs, 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.
- 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 or additional collateral at the bank.
- There could be differences in the level and type of review the states complete 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 captives 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.

V. TRANSPARENCY AND CONFIDENTIALITY

As previously indicated, one of the primary purposes of the Subgroup's study was to determine if policyholders of commercial insurers that form captives or SPVs could be subject to risk because of the differences in the regulation of such entities compared with the regulation of commercial insurers. One of the questions raised related to this study was whether there are any risks created because of a difference in transparency and confidentiality requirements for captives compared to commercial insurers. The Subgroup discussed the differing requirements and agreed that a higher level of confidentiality should be afforded to captive insurers because they do not issue policies to the public; however, the Subgroup agreed that the level of confidentiality relating to captives that assume insurance risk from commercial insurers deserved more study.

The Subgroup began its study of transparency and confidentiality by reviewing requirements of specific jurisdictions that either responded to the survey or provided information to the Subgroup, with the following table noting some of the requirements.

State	Shares Information with Other States	Financial Information is Public	Any Planned Changes in Legislation	Requires an NAIC Company Code	Requires Filing to the 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

The Subgroup found varying legal requirements among the states. All of the captive states have some form of confidentiality requirements included in state law. Some of the states publish information to varying degrees, but publicly available information is usually limited to the captive or SPV's name and owner. Filings from captives and SPVs made with the insurance department are considered confidential. While captive states generally have authority to share information with other state insurance regulators, and many of the states also allow information-sharing with federal regulators, not all of the states have such authority. 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, because 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 that 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 expressed concern that if the same level of transparency was required of these captives, that 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 noted 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, because 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 that 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 questioned the need for confidentiality and were supportive of public disclosure of at least some level of information, similar to what is disclosed in the statutory annual statement blank. These Subgroup members noted that captives and SPVs owned by commercial insurers were different than pure captives, and asserted that their financial statements should be available to the public. These Subgroup members recognized the concerns noted by the other Subgroup members that some 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 in order to make informed decisions about the insurer's financial strength.

Despite these differences, there is, and always will be, a need for all of the 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.

STATES' CONFIDENTIALITY PROTECTIONS

The issues surrounding regulatory access to sensitive, proprietary, confidential and/or privileged information are important to insurance regulators, as well as to regulated entities. In order to carry out the duties of regulating the financial solvency and market conduct of insurers, most of the states have adopted examination laws granting broad access to company information.⁵ 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.⁶

Regulators are charged with protecting the public interest and promoting the solvency of insurance companies, which may conflict 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

⁵ See Appendix A.

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

records laws, which 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 ensure that regulators have 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 the states include confidentiality provisions within their captive laws. In these instances, all confidentiality provisions indicate that information submitted to the insurance department 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 *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 generally authorize regulators to share important confidential regulatory information with each other, federal financial regulators and law enforcement agencies.⁷ Maintaining the confidentiality of shared information is important, because regulators and insurance companies have an interest in ensuring confidentiality when appropriate. State laws often require that the receiving party verify that 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. Those 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 exist related to international captives, and regulators should strive to address their concerns in similar ways.

As noted above, the Subgroup could not reach a consensus as it pertains to the transparency needed for commercially owned captive insurers and SPVs. For this reason, the Subgroup recommends that the NAIC study this issue more closely.

⁷ *Id* at 53.

The Subgroup discussed recommending the development of a database that includes an NAIC company code, name and domiciliary information, the purpose of which would be to allow regulators to quickly respond to questions regarding the states' universe of captives and similar entities. Some captive states already require these types of captives to obtain an NAIC company code or supply information to the NAIC sufficient to assign a code. However, the Subgroup could not reach consensus on making a recommendation for databasing the above type of information with the NAIC, partially due to confidentiality issues; therefore, this white paper includes no suggestions on this issue. It should be noted that the NAIC does collect some captive information from the states that is published within its annual *Insurance Department Resources Report*, including information regarding the number of domestic captives, as well as the direct, assumed and total premium written by such entities. However, because this information has its limits, questions about the captive and SPV market will likely require coordinated action by the collective captive states to respond to such inquiries in the future.

The Subgroup did reach consensus that ceding insurers could provide more specific, but-non-trade secret, information regarding the insurer's use of captives within Note 10M of the Notes to Financial Statements of the statutory blank. This recommendation is made in order to improve transparency, but not at the expense of the privacy of the transaction. U.S. ceding insurers already disclose significant information related to affiliated transactions, as summarized in Appendix B.

The Subgroup also discussed the need for greater transparency and sharing of information on proposed transactions among the ceding state, the captive state and the lead state at a minimum. Consensus was reached that further clarification and guidance is needed; therefore, the Subgroup has recommended additional procedures be added to the *Financial Analysis Handbook* to address this concern, and that any re-evaluation of Model #789 include considerations of the confidentiality issues.

VI. ACCOUNTING AND REPORTING

Captive SPVs are generally subject to the same accounting and reporting requirements as commercial insurers, with the exception of certain permitted practices for LOCs. Permitted practices are expressly allowed under the *Accounting Practices and Procedures Manual*. On an annual basis, captive SPVs generally report on the financial annual statement for life, accident and health insurers, and are audited by independent auditors in accordance with NAIC standards. In the case of certain large, public life insurers, these reports are filed with the captive domicile regulator, the ceding life company state regulator and with rating agencies.

Accounting and reporting requirements for captives generally differ from commercial insurers and may vary from state to state, primarily because the risks posed by captives differ from commercial insurers. Consequently, U.S. insurance regulators have generally used flexibility in dealing with these different risks. Some of the states require quarterly reporting on a statutory accounting principles (SAP) basis and require the use of the NAIC financial annual statement. 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, of the states allow for some prescribed accounting for captives and SPVs, such as the 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 insurance risk from an affiliated commercial insurer. This question is posed because the concern is that such transactions may be consummated, in part, to provide relief from statutory accounting.

As noted previously, results of the Subgroup's regulator-only request for comment suggest that the vast majority of transactions from a commercial insurer to a captive insurer or SPV that were studied are a means of dealing with perceived XXX and AXXX reserve redundancies. Nearly 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 to provide alternative financing for the redundant/non-economic reserves within the captive or SPV. Most of the states also determine and require that the transaction meets the statutory 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 an LOC that is to the benefit of the ceding company. Therefore, the review entails ensuring that the calculation of the economic reserve is reasonable, follows actuarial principles and that the 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 was raised by the Subgroup is whether an alternative treatment of such transactions could 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 and AXXX reserve redundancies, the general opinion of the Subgroup was that it is inappropriate for captives and SPVs 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 activity/risk because of a perception that the regulatory framework does not accurately account for such activity/risk was a concern noted by the Subgroup. The Subgroup specifically discussed, as an example, concerns that such entities might be utilized in the future as a means to discount property/casualty insurance liabilities, where the regulatory structure clearly does not allow discounting. Again, the Subgroup held a consensus view that an alternative accounting treatment of XXX and AXXX reserves should be pursued, as opposed to the use of captive insurers and SPVs, thereby possibly eliminating the need for the separate transaction outside of the commercial insurer simply to address these perceived reserve redundancies.

VII. CREDIT FOR REINSURANCE

The Subgroup's study also included an evaluation of reinsurance issues, because reinsurance is the avenue under which commercial insurers transfer risk to a captive or SPV.

Summary of Requirements under NAIC Credit for Reinsurance Models

Under the *Credit for Reinsurance Model Law* (#785) and the *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 affiliated and non-affiliated assuming insurers. However, neither model provides a specific definition of the term "assuming insurer" and, as such, 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.

The following summarizes the different ways in which credit can be provided under Model #785 and Model #786.

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.

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, which has specific requirements including maintaining a surplus of at least \$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.

Assuming Insurer Maintains Trust Funds – Credit is allowed for reinsurance ceded to an assuming insurer that maintains 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.

Certified Reinsurers – In November 2011, the NAIC adopted revisions to 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: 1) are domiciled and licensed in qualified jurisdictions; 2) have been certified in the ceding insurer's domiciliary state; and 3) secure their obligations in accordance with the requirements of the NAIC credit for reinsurance 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 state-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 provided as security for reinsurance obligations and held in a U.S. institution, the ceding insurer is permitted to take a reduction of liability or record an asset for the reinsurance ceded. The reduction is not allowed 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/or any other security that has been approved by the insurance commissioner. The NAIC credit for reinsurance 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 a 30-day advance notice, and must provide notice on which laws the LOC is governed by (e.g., state law, Uniform Customs and Practice for Documentary Credits of the International Chamber of Commerce, or any other publication).

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). NRRA Section 532 reserves to a reinsurer’s domiciliary state the sole responsibility for regulating the reinsurer’s financial solvency. NRRA 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. The U.S. Congress was 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 and guidance do not define the term “reinsurer” for purposes of the NRRA. The Subgroup discussed that it was its understanding that there has been some discussion that the Reinsurance (E) Task Force may develop a standard definition of “reinsurer” for the purposes of the NRRA, in an effort to promote uniformity for the application of the NRRA throughout all regulatory jurisdictions. It was noted that, if such action takes place, the following terms may 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.”

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

If the captive or 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 Model #785 and Model #786 in order to be accredited. This is not an issue to be solved by the Subgroup, nor does the Subgroup have any specific recommendations, but it was noted by more than one Subgroup member. These Subgroup members noted that it raises issues as to the following: 1) whether captive licensure is equivalent to commercial insurance licensure for accredited status; 2) whether a captive can submit to the jurisdiction of a non-domestic state; and 3) whether, 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 Model #785 and Model #786, the captive would not be required to provide collateral for the benefit of the ceding insurer as security for amounts recoverable under the reinsurance contract.

As mentioned previously, most 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. state-based “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 the agreements mentioned within this 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, as well as all agreements with counterparties, such as the LOC facility agreement and reimbursement agreements. The Subgroup noted that regulators need this additional level of information to be able to logically conclude that transactions that utilize the alternative risk transfer market are sound, as well as permissible, under current statutory accounting guidelines. Insurers should be able to articulate these items to regulators, and these points should be emphasized within the *Financial Analysis Handbook*.

The Subgroup noted, in the course of studying specific transactions, that some transactions might not have met the requirements under Model #785 and Model #786. For example, there have been instances where 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), and such requirements are not generally not allowed under Model #785 and Model #786. It should be noted that Model #785 and Model #786 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 of the states have this discretionary provision in their statutes.

Other XXX and AXXX transactions have involved ceding business to a limited purpose subsidiary that is allowed to use a parental guarantee to meet a portion of its capital and surplus requirement. These limited purpose subsidiaries 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 Model #785 and Model #786 or other financial solvency requirements applicable to U.S.-domiciled commercial assuming insurers. The Subgroup held a consensus view that these types of transactions may not be consistent with the NAIC credit for reinsurance requirements. The Subgroup suggests consideration be given to study further the effects of, and potential limits on, the variability in qualified LOCs or any other security that might not provide the intended protections provided within the *Credit for Reinsurance Model Law* (#785).

VIII. INTERNATIONAL ASSOCIATION OF INSURANCE SUPERVISORS (IAIS) CONSIDERATIONS

In the course of its work, the Subgroup reviewed IAIS guidance applicable to captives. 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 recognizes 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.⁸

While there is not presently a specific ICP with respect to captives or captive supervision, there are various IAIS papers that include some discussion of captives, including an October 2003 paper on life insurance securitization that specifically references the use of securitizations for XXX reserve funding. ICP 13, Reinsurance and Other Forms of Risk Transfer, also discusses the use of SPVs. The October 2003 paper and ICP 13 discuss the use of captives by commercial insurers within the context of utilizing SPVs to transfer risk to the capital markets, which the Subgroup supports in its recommendation.

However, the Subgroup also identified other affiliated captive or SPV transactions, more limited in number, that were not designed to transfer risk to the capital markets. In some of these transactions, one indirect effect, intended or not, was to provide relief from what was perceived as the overly conservative requirements of statutory accounting. The IAIS guidance for dealing with these types of issues seems to fall back to the principle of proportionality.

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. This review and any resulting revisions are scheduled to be completed in 2013.

⁸ IAIS Insurance Core Principles, Standards, Guidance and Assessment Methodology, October 2011.

While the draft paper provides application guidance for consideration by captive supervisors in general, two specific aspects of the paper appear to be potentially relevant to the charge of the Subgroup:

- The IAIS draft paper 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 is explicitly interpreted by some to suggest 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 draft paper definition of a captive insurer (i.e., not owned by an 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.

The Subgroup interprets these bulleted highlights to suggest an expectation, subject to the principle of proportionality, that captives and SPVs owned by commercial insurance reinsurance groups, particularly those that may be operating in a manner that closely resembles a commercial insurer, should be held to the regulatory and supervisory requirements similar to those imposed on commercial insurers within the same jurisdiction. The Subgroup notes that such expectations may influence future FSAP reviews of the U.S. insurance sector. Thus, the Subgroup believes the NAIC should closely monitor developments with respect to the draft paper and other IAIS guidance regarding captives, and consider, where appropriate, enhancements to the U.S. captive and SPV regulatory framework in preparation for future FSAP reviews.

IX. HOLDING COMPANY ANALYSIS CONSIDERATIONS

The Subgroup believes that one of the most important items to consider when evaluating transactions between commercial insurers and commercial owned captives and SPVs, is the impact of the transaction on the entire holding company system and its financial condition.

The Subgroup discussed that the difficulty in trying to apply a uniform framework for captive and SPV regulation is that, no matter what rules or requirements are placed upon U.S. captives, a significant portion of captive transactions occur outside the United States. The more onerous and costly the regulations make these transactions, the more likely it is that companies will choose jurisdictions that are not as transparent and that are outside the purview of U.S. insurance regulation. Through proper use of the insurance holding company system laws and regulations, these transactions can effectively be monitored so 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 the use of captive insurers and SPVs by commercial insurers 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 Subgroup's recommendation to develop alternative accounting for such transactions within the ceding company, thereby potentially eliminating the need for the separate transactions outside of the commercial insurer, the most effective method to monitor all captive transactions is through insurance holding company system analysis. The Subgroup discussed that the transactions reviewed within the context of this white paper can be appropriately assessed through holding company analysis. 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. In this regard, it may be worth considering the development of ceding company procedures for alternative risk-transfer arrangements similar to other holding company procedures to help document the review and approval of the transaction. Under such an approach, the *Financial Analysis Handbook* procedures would consider 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.

The Subgroup discussed how procedures used to analyze holding companies could consider, among other things, the amount of risk involved, as well as determine the ability of the parent to meet obligations pertaining to reimbursing LOCs, parental guarantees and/or other similar arrangements. Any proposed procedures may need to consider transactions that have occurred in the past and to address 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 might be significant or adverse differences from original projections; and 3) ensure that, under stress, the entities are able to meet the guarantees. Also worth considering is the need for ongoing analysis and stress testing for changing economic environments and assumptions that could affect the business. The states should conduct 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 determine whether they are keeping up with their obligations, in addition to requiring results of stress tests.

X. TAKEAWAYS FROM CASE STUDIES (NOT COMPANY-SPECIFIC)

- 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.

XI. CONCLUSIONS AND RECOMMENDATIONS TO THE FINANCIAL CONDITION (E) COMMITTEE

Commercial insurers cede business to captives for a variety of business purposes. In general, the Subgroup determined that cessions to unaffiliated captives operating similar to pure or agency captives was not an area of concern, given that state insurance regulators have a 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 that captives are directly competing with professional reinsurers in the United States.

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 require communication between the ceding company state, the captive state and the lead state, which may not be possible to apply to captive domiciles outside of the United States. Further, the Subgroup is keenly aware that onerous requirements placed on U.S. domestic captives could lead to the increased use of non-U.S. captives, where transparency may be more limited. Even if such a situation develops, U.S. insurance regulators' exercise of their authority to thoroughly analyze and comprehend the risks associated with domestic company sessions to captives outside the U.S. should compensate for such limits.

The Subgroup determined that the majority use of captives and SPVs by commercial insurers is related to the financing⁹ of perceived XXX and AXXX reserve redundancies. Various structures have been utilized to finance these reserves, including:

- Captives as a conduit to securitizations that provide capital market financing of reserves.
- Captives capitalized by LOCs accounted for as assets in support of redundant reserves.
- Captives or SPVs capitalized by parental guarantees accounted for as assets in support of redundant reserves.
- Captives capitalized by a surplus note owned by an affiliate.

The creation and maintenance of these structures comes at a cost, from the burden of operating and reporting on another legal entity. Even parental guarantees could impact assessments of leverage and reduce financial flexibility of the parent.

The Subgroup also identified other affiliated captive or 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 or SPV to account for LOCs or parental guarantees as assets, something not permitted in the current statutory accounting framework. The Subgroup acknowledges that 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 that captives and SPVs were designed to address.

⁹ The term "financing" as used herein includes transferring risk to other non-insurance members of the holding company system.

The implementation of principle-based reserving (PBR) could reduce the need for commercial insurers to create new captives and SPVs to address perceived reserve redundancies, but existing captives and SPVs are likely to remain in existence for several years or decades, until the existing blocks of business run-off. Regulators need to be aware of and monitor the risks that captives and SPVs could pose to the holding company system, as well as to the legal entity insurer. With the proper tools and communication, regulators can adequately analyze transactions to ensure that the proper protections for policyholders are included.

In transactions reviewed by the Subgroup, regulators of the ceding company and captive worked together to ensure that alternative assets, such as LOCs or parental guarantees, were used to support only those reserves considered redundant. Regulators required the companies engaging in these transactions to support economic reserves, plus some margin, with investment-grade, liquid assets. The net result of the transactions was that, collectively, the ceding insurer and the captive had 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 and SPVs have often been a means of dealing with perceived XXX and AXXX reserve redundancies. The practice of using a different entity or different structure outside of the commercial insurer to engage in a particular activity because of a perception that the regulatory framework does not accurately account for such activity should be discouraged. The Subgroup held a consensus view that captives and SPVs should not be used by commercial insurers to avoid statutory accounting prescribed by the states. The Subgroup believes that an alternative treatment of such transactions should be to deal with the accounting and reserving issues within the ceding company, thereby eliminating the need for separate transactions outside of the commercial insurer. Specifically, the Subgroup held a consensus view that the Financial Condition (E) Committee should form a separate subgroup to develop possible solutions for addressing any remaining XXX and AXXX perceived redundancies prior to the effective date of PBR. Such issues should be addressed directly, as opposed to through the use of captives and SPVs. 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.

2. Confidentiality

The Subgroup recommends that the NAIC study the issue of confidentiality related to commercially owned captives and SPVs more closely. This 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 discussed in recommendation #3 below).

Further work should be done to ensure that 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 and SPV transactions, 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 SPVs, 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.

3. 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 *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 Model #789 are no longer being utilized, as other solutions are preferred today. The NAIC should consider re-evaluating Model #789, and updating it as necessary to reflect alternative market solutions acceptable to state insurance regulators, to ensure there is a uniform framework for the implementation of alternative market solutions. The NAIC should further encourage the states to adopt Model #789 and should consider making the model an accreditation standard in those states that have an active captive and SPV market. This should be referred to the appropriate NAIC group for consideration.

4. IAIS Principles, Standards and Guidance

The Subgroup recommends the NAIC closely monitor the ongoing developments with respect to IAIS principles, standards and guidance, and consider, where appropriate, enhancements to the U.S. captive and SPV regulatory framework in preparation for future FSAP reviews.

5. Credit for Reinsurance Model Enhancements

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 Model #785 and Model #786 or other financial solvency requirements applicable to U.S.-domiciled commercial assuming insurers. The Subgroup held a consensus view that these types of transactions are not consistent with the requirements outlined in Model #785 and Model #786. The Subgroup recommends consideration be given to study the further the effects of, and potential limits on, the variability in qualified LOCs or any other security that might not provide the intended protections provided within the *Credit for Reinsurance Model Law* (#785).

6. Disclosure and Transparency

The Subgroup recommends enhanced disclosure in ceding company statements regarding the impact of the transactions on the financial position of the ceding insurer. Enhancement of Note to Financial Statement 10M should be made to provide for disclosure of non-trade-secret captive information and disclosure of the overall utilization of captives.

7. *Financial Analysis Handbook* Guidance

To the extent affiliated captives and SPVs may be created in the future for purposes unseen today, additional guidance should be developed by the NAIC to assist the states in a uniform review of transactions, including recommendations for minimum analysis to be performed, as well as ongoing monitoring of the ceding insurer, the captive and the holding company. The guidance should be developed for perspectives of the ceding state, the captive state and the lead state. Once developed, the guidance should be considered to be added to the NAIC Financial Regulation Standards and Accreditation Program standards to ensure consistency and uniformity among the states.

It is recommended that the *Financial Analysis Handbook* be amended to include a section on alternative risk-transfer arrangements. In this regard, it may be worth considering the development of ceding company procedures for alternative risk-transfer arrangements similar to other holding company procedures to help document the review and approval of these types of transactions. Under such an approach, *Financial Analysis Handbook* procedures would consider 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. Such procedures could address: 1) communication and coordination between captive regulators and ceding company regulators; 2) monitoring of variances from actuarial projections; 3) routine stress testing of assumptions, particularly for changing economic environments; and, 4) enterprise risk management of the risks inherent to alternative risk-transfer arrangements.

XII. APPENDIX A – TYPES OF CAPTIVE INSURERS DEFINED

Information current as of June 12, 2012

Citation	Type of Captive	Summary
Alabama (07/12)		
§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.
Alaska (07/12)		
§§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.
Arizona (07/12)		
§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.

Citation	Type of Captive	Summary
	Risk retention group	Captive insurer that is organized pursuant to 15 U.S.C. §§3901-02.
§ 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.
Arkansas (07/12)		
§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.
California (07/12)		
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.
Colorado (07/12)		
§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.
Connecticut (07/12)		
§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.

Citation	Type of Captive	Summary
§ 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.
District of Columbia (07/12)		
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.
	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).
Florida (07/12)		
§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.

Citation	Type of Captive	Summary
§§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.
Georgia (07/12)		
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 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.
Hawaii (07/12)		
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.

Citation	Type of Captive	Summary
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.
Idaho (07/12)		
§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.
Illinois (07/12)		
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 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.
Indiana (07/12)		
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.
Iowa (07/12)		
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.
Kansas (07/12)		
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.

Citation	Type of Captive	Summary
Kentucky (07/12)		
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 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.
Louisiana (07/12)		
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.
Maine (07/12)		
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.
Maryland (07/12)		
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.

Citation	Type of Captive	Summary
Massachusetts (07/12)		
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.
Michigan (07/12)		
§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 captive	A captive insurance company that is authorized under this chapter that does not 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.
Minnesota (07/12)		
§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.
Mississippi (07/12)		
§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.
Missouri (07/12)		
§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.

Citation	Type of Captive	Summary
	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.
Montana (07/12)		
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 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.

Citation	Type of Captive	Summary
Nebraska (07/12)		
§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.
Nevada (07/12)		
§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 insurer	An alien captive insurer licensed pursuant to this chapter to transact the business 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.

Citation	Type of Captive	Summary
New Hampshire (07/12)		
§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.
New Jersey (07/12)		
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	<p>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 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>
New Mexico (07/12)		
§§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.

Citation	Type of Captive	Summary
New York (07/12)		
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.
North Carolina (07/12)		
§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.
North Dakota (07/12)		
§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 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.
Ohio (07/12)		
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.

Citation	Type of Captive	Summary
Oklahoma (07/12)		
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 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.
Oregon (07/12)		
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.

Citation	Type of Captive	Summary
Pennsylvania (07/12)		
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.
Puerto Rico (02/13)		
Title 26 § 4302	International insurer	An insurer (a) organized under Ch. 43, or the laws of another jurisdiction and operates a branch in PR, (b) holds Class 1, 2, 3, 4 or 5 Authority, and (c) does not provide direct insurance on risks located or to be executed in PR unless authorized to transact surplus lines insurance, provided that these provisions do limit the authority to assume reinsurance on risks located or to be executed in PR.
	Class 1 Authority	Authority of the international insurer to transact insurance or reinsurance of all types, except disability insurance, life insurance, high limit accident insurance and property catastrophe insurance, with respect to the sole owner of the international insurer, any affiliated owner or other affiliate of the international insurer.
	Class 2 Authority	Authority of the international insurer to transact all types of insurance or reinsurance, except disability insurance, life insurance, high limit accident insurance and property catastrophe reinsurance, with respect to the risks of the owners (affiliated or not) of the international insurer or any of their respective affiliates, risks arising from the businesses or commercial operations of such owners or affiliates, or any other risk not exceeding 20% of the net written premiums of the international insurer.
Title 26 § 4325	Confidentiality	The information submitted to the commissioner according to this chapter and related regulations shall be maintained as confidential, except when disclosure is required by law or court order, or by formal request from a domestic or foreign government agency when the commissioner has grounds to believe it is in the public interest. The information shall be provided under a binding confidentiality agreement, but client information shall not be provided. The commissioner may, at his/her discretion, disclose information in all cases where it is made for the purposes of assisting the commissioner in the exercise of regulatory duties.
Rhode Island (07/12)		
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.

Citation	Type of Captive	Summary
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.
South Carolina (07/12)		
38-90-10	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.
	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.

Citation	Type of Captive	Summary
South Dakota (07/12)		
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 Captives	The provisions of chapter 58-3 apply to examinations, investigations, and processing conducted on a captive insurer.
Tennessee (07/12)		
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.

Citation	Type of Captive	Summary
Texas (07/12)		
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 requirements become operative in Texas through a statutory change.
Utah (07/12)		
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.

Citation	Type of Captive	Summary
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.
Vermont (07/12)		
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 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.
U.S. Virgin Islands (07/12)		
§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-U.S. 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.

Citation	Type of Captive	Summary
Virginia (07/12)		
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.
Washington (07/12)		
§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.
West Virginia (07/12)		
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.

Citation	Type of Captive	Summary
Wisconsin (07/12)		
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.
Wyoming (07/12)		
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

XIII. APPENDIX B – LISTING OF CERTAIN EXISTING DISCLOSURE REQUIREMENTS ON INSURERS

Current Disclosures and Requirements

Current U.S. laws and regulations provide for ongoing monitoring of the ceding insurer, the captive, and the holding company. The ceding insurer makes a holding company act filing with its domestic state disclosing relevant information about material transactions with affiliates. Other current, robust disclosures that allow regulatory monitoring include:

Notes to Financial Statement – Note 10 requires disclosures of “all material related party transactions,” including transactions with captive insurance companies. Note 10, paragraph E, requires disclosures of any guarantees or undertakings, including the nature of the relationship to the beneficiary of the guarantee or undertaking. Note 23, Part A, requires relevant disclosures about the Ceded Reinsurance Report.

SSAP No. 25—Accounting for and Disclosures about Transactions with Affiliates and Other Related Parties – States that “related party transactions require specialized accounting rules and increased regulatory scrutiny. This statement establishes statutory accounting principles and disclosure requirements for related party transactions.” After the introductory language quoted above, the standard describes the required disclosures in detail including the nature of transactions, the relationship, and quantitative impacts of material transactions. The disclosures from this statement do not apply to reinsurance transactions.

Schedule Y – This schedule is designed to identify all entities affiliated with the reporting insurer including the upstream direct and indirect parent, downstream subsidiary, insurance affiliate, non-insurance affiliate and “other” with an explanation.

Schedule S – This schedule is designed to report the impact of reinsurance on the reporting insurer with the following parts (similar requirements exist for property/casualty insurers within Schedule F):

Part 1, Section 1 – Reinsurance Assumed Life Insurance Annuities, Deposit Funds and Other Liabilities Without Life or Disability Contingencies, and Related Benefits

Part 1, Section 2 – Reinsurance Assumed Accident and Health Insurance

Part 2 – Reinsurance Recoverable on Paid and Unpaid Losses

Part 3, Section 1 – Reinsurance Ceded Life Insurance, Annuities, Deposit Funds and Other Liabilities Without Life or Disability Contingencies, and Related Benefits

Part 3, Section 2 – Reinsurance Ceded Accident and Health Insurance

Part 4 – Reinsurance Ceded to Unauthorized Companies

Part 5 – Reinsurance Ceded to Certified Reinsurers

Part 6 – Five-Year Exhibit of Reinsurance Ceded Business

Part 7 – Restatement of Balance Sheet to Identify Net Credit for Ceded Reinsurance

Notable fields in the schedule include reinsurers categorized by affiliates and non-affiliates, amounts in-force and reserve credit taken.

Schedule BA – This schedule lists all other long term assets owned by the insurer. Depending on the organizational structure of the affiliate, the value of the ownership of such affiliate may appear here along with related transactions impacting the statement value.

Schedule D – This schedule lists all securities owned by the insurer and certain related transactions impacting the statement value. The value of the ownership of any affiliate owned all or in-part by the insurer is recorded here along with amounts effecting changes in value between periods. The changes in value would include capital contributions.

Statutory Management Discussion and Analysis (M D&A) – This section requires answers to pertinent questions about off balance sheet arrangements and capital resources.

Actuarial Memorandum – It is the appointed actuary’s professional responsibility to determine whether a company has adequate reserves. In performing his/her duties, the actuary needs to take into account any material reinsurance transaction(s), which would include captives. The Actuarial Memorandum should include documentation of how captive reinsurers were treated in the asset adequacy analysis.

Other Reporting by Publicly Held Insurers – Audited GAAP financial statements for holding company of ceding insurers and captive subsidiaries; footnotes contain additional disclosures.

Future Additional Disclosures and Requirements

The NAIC’s Solvency Modernization Initiative has produced additional disclosures. Significant disclosures will include:

Form F in the Model Holding Company Act – The revisions to the *Insurance Holding Company System Regulatory Act* (#440) require the ultimate controlling person to file an Enterprise Risk Report (Form F) identifying material risks within the holding company system. Form F will include the business plan of the insurance holding company system and summarized strategies for the next 12 months, as well as information on corporate or parental guarantees throughout the holding company and the expected source of liquidity should such guarantees be called upon.

Supervisory Colleges in the Model Holding Company Act – Revisions to Model #440 also authorize supervisory colleges, which will promote communication within a confidential setting among regulators and with an insurance group’s management.

Own Risk Solvency Assessment (ORSA) – The new ORSA requirement will also require material disclosures in the cedant’s ORSA Summary Report. In accordance with the March 2013 version of the *NAIC Own Risk and Solvency Assessment (ORSA) Guidance Manual*, Section 1 of the ORSA Summary Report will include a description of the insurer’s risk management framework, including specific key principles. Section 2 will report an insurer’s assessment of its risk exposure, including quantitative and/or qualitative assessments of risk exposure in both normal and stressed environments for each material risk category. In Section 3, the insurer will report on its group risk capital and prospective solvency assessments. Underlying this reporting is the expectation, as set forth in the manual, that insurers should have sound processes for assessing capital adequacy in relation to their risk profile and those processes should be integrated into the insurer’s management and decision-making culture. These processes may assess risk capital through multiple lenses, reflecting varying time horizons and valuation approaches.