

THE OFFSHORE GROUP OF INSURANCE SUPERVISORS



**GUIDELINE
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**REGULATORY RESPONSES TO CAPTIVES CHANGING
DOMICILES**

The Offshore Group of Insurance Supervisors

REGULATORY RESPONSES TO CAPTIVES CHANGING DOMICILES (A Guidleline)

INTRODUCTION

The purpose of this paper is to provide guidance to the Members and Observers of the Offshore Group of Insurance Supervisors on regulatory responses to the issue of Captive Insurance Companies (“Captives”) wishing to transfer from one domicile to another. It is not intended to be prescriptive and insurance supervisors, if faced with such a situation, should examine the issue from the perspective of their own particular regulatory environment.

The Captive Insurance Industry is well established and thriving. There are over 35 domiciles worldwide with Laws that permit the formation of Captives, with over 4,000 Captives operating from within them. These Captives reported over US\$138billion in assets and over US\$30billion in premiums at year-end 2001.

Historically the image of the Captive has changed from that of a ‘tax avoidance vehicle’ to being viewed as an effective risk management tool. Recent global events, resulting in a reduction of capacity in the insurance market, have spurred a new interest in Captives. Additionally, even as the world of financial services is increasingly scrutinized, and the various domiciles are requiring adherence to strict global regulatory standards, Captives continue to grow in scope and size.

Changes to legislation have not only made it easier for captives to move from one domicile to another but have, in many cases, encouraged risk managers to examine the pros and cons of changing domiciles.

RE-DOMICILIATION

There are several reasons why the shareholders of a Captive might decide to re-domicile to another jurisdiction, including:

- to reduce costs by selecting a domicile closer to the parent organization
- mergers or take-overs at the parent level
- proximity to other insurance / reinsurance markets
- the need to take advantage of legislation not available in the current domicile
- concern over the political stability or regulatory standards of the current domicile

Regulators should also be aware that, although very rare, unacceptable activity seeking less vigilant regulation might also be a reason to move a Captive from one jurisdiction to another.

There are two main ways a captive may be re-domiciled:

- 1) by forming a new company in the preferred domicile and either a) leaving the existing captive to run-off in the old location with a view to eventually dissolving it, or b) effecting a portfolio transfer ,thereafter dissolving the old company, or
- 2) by moving the company under re-domiciliation legislation, where this exists.

Re-domiciliation legislation enables the Captive to move from one domicile to another with similar legislation in place, without having to dissolve the company or incorporate a new one and facilitates the continuance of the insurance business. All existing insurance agreements remain in place with the only change being that the Captive becomes registered under the applicable legislation of the new domicile.

REGULATORY RESPONSES:

When an Insurance Regulator becomes aware that a Captive is contemplating re-domiciliation to their particular domicile, this Regulator (“the new Regulator”) should first and foremost attempt to meet with the shareholders / directors of the company to discuss the proposal. It is imperative that the new Regulator understands the reasoning behind the move, and the nature of the business of the company, which he will be expected to regulate.

The new Regulator should ensure that the shareholders / directors have taken appropriate legal and tax advice, are willing to provide a Declaration of Solvency for the Captive and that a recent independent audit of the Captive has been performed.

Once the new Regulator is satisfied that he has a full understanding of the Captive and that there is a legitimate reason for the change, he should contact the Insurance Regulator of the domicile in which the company is currently registered (“the current Regulator”).

On a Regulator to Regulator basis, the following information should be provided:

- whether or not the Captive is in good standing with the current Regulator
- whether or not the current Regulator is aware that the Captive is contemplating re-domiciliation and has approved such a move
- whether or not there is a history of poor communication with the current Regulator
- whether or not the Captive has been able to file the required statutory reports on a timely and accurate basis in the past
- whether or not the current Regulator has performed due diligence checks on all persons involved in the Captive and is satisfied that there is no illegal activity being carried on

Once the reasons for redomiciliation are clearly understood and accepted by the regulators concerned, moving a captive should be no more complicated than setting up a new captive, and regulators should be especially careful not to place unnecessary obstacles in the way of a legitimate move by being uncooperative with regard to the provision of the information necessary to facilitate the move.

OGIS MEMBER / OBSERVERS WITH RE-DOMICILIATION LEGISLATION

British Virgin Islands
Cayman
Gibraltar

Guernsey
Isle of Man
Jersey

Mauritius