

## **MICHIGAN'S CAPTIVE LAW**

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In March 2008, Michigan joined the fast-growing group of onshore captive domiciles. With the passage of a captive law that combines provisions similar to those in traditional captive domiciles, such as the inclusion of several types of captive insurance companies, with less-common features, such as relatively low capital requirements, Michigan aimed to attract both insurance and noninsurance companies to the state and to provide financial incentives to existing businesses to domicile their captives in Michigan. The law was intended to help grow, as well as diversify, Michigan's economy: the legislative analysis suggested that "thousands" of new jobs might result from the creation of Michigan-domiciled captives.<sup>1</sup>

In many respects, Michigan's law duplicates provisions borrowed from Vermont's seminal legislation and popular in most onshore domiciles. For instance, Michigan allows for several different types of captives,<sup>2</sup> including special purpose financial captives, a catch-all category that is specifically intended to be used for captives wishing to undertake insurance securitization transactions. In fact, Michigan's first captive was formed as a special purpose financial captive, apparently in order to securitize certain classes of risks in order to have access to alternative sources of capital.

One way in which Michigan distinguished itself from other onshore domiciles was in its capital requirements. Michigan chose to require relatively low capital requirements, ranging from \$150,000 for a pure captive, to \$300,000 for an industrial insured captive, to a high of \$750,000 for an association captive organized as a mutual.<sup>3</sup> The minimum capital requirement for a special purpose captive is not set by law, but is instead determined by the Michigan Office of Financial and Insurance Regulation (OFIR).<sup>4</sup> In so doing, Michigan apparently hoped to attract both first-time captive entrants and existing captives wishing to redomicile in Michigan.

Notably, Michigan's law does not impose premium taxes but instead charges captive parent companies fees linked to premium volume, ranging from \$5,000 (for captives with volume of less than \$5 million) to \$100,000 (for those with more than \$75 million in premium volume).<sup>5</sup>

Michigan also allows companies to form branch captives.<sup>6</sup> Branch captives are generally used by companies with offshore captives that wish to fund employee benefit risks, and federal rules disallow the use of offshore captives to fund employee benefit plans covering United States employees. In addition, Michigan provides for the creation of protected cell companies,<sup>7</sup> but these are not limited to captives and so may potentially be used by other Michigan-domiciled insurers.

In one respect, at least, Michigan stands out from other onshore domiciles, and this is in its disallowance of reciprocal companies. The reciprocal model is favored by tax-exempt organizations wishing to form onshore captives because it allows them to organize the company in a way that eliminates or reduces federal income tax on their profits. Without this provision, Michigan-domiciled captives may face significant federal tax liability, even if the owners of the captive are tax-exempt organizations.

## **FEDERATION OF REGULATORY COUNSEL, INC.**

The success of Michigan's captive program will have many measures, including its ability to attract entities wishing to decrease their tax liability during the economic downturn, and the readiness and availability of regulatory staff to fulfill potential and registered captives' needs.

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### **Endnotes**

1. Senate Fiscal Agency Bill Analysis, S.B. 1061 & 1062, August 14, 2008.
2. MCL 500.4601(h).
3. MCL 500.4611(1).
4. MCL 500.4611(1)(f).
5. MCL 500.4625(5).
6. MCL 500.4611.
7. MCL 500.4663.