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ALBERTA: CONSIDERATIONS IN ESTABLISHING A NEW CAPTIVE JURISDICTION

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EXECUTIVE SUMMARY

The Captive Insurance Companies Act, formerly Bill 76, was introduced by the government of Alberta in October 2021 and passed in December 2021. The act enables entities to establish their own insurance company, called a captive insurer. A captive insurance company is created and owned by a non-insurance parent for providing insurance coverage for the parent company's exposures and/or those of associated parties.

This paper discusses the regulatory policy elements that serve as the key foundations for the captive insurance market in major captive insurance jurisdictions, best practices for captive insurance regulation, and key elements of a best-of-breed regulatory regime that is needed in Alberta to be a competitive captive jurisdiction. We examine regulation and policy elements in leading captive insurance jurisdictions and identify policies that have been implemented to stimulate growth of captive insurance markets.

To foster an environment for a robust captive insurance market, regulation must ensure fast and predictable licensing and setup (or redomiciliation), be cost neutral, and have simple, reasonable requirements for capital, solvency, and reporting. It is equally important that Alberta's captive regulator have the mindset of a captive regulator, meaning that it appreciates the distinction between regulating traditional insurers versus captives, has a willingness to work with the captive industry, and is responsive to regulatory changes taking place in the competitive captive marketplace.

ALBERTA: CONSIDERATIONS IN ESTABLISHING A NEW CAPTIVE JURISDICTION

In October 2021, the Government of Alberta introduced Bill 76, the Captive Insurance Companies Act, which would enable entities to establish their own insurance company, called a captive insurer. A captive insurance company is created and owned by a non-insurance parent for providing insurance coverage for the parent company's exposures and/or those of associated parties (e.g., suppliers, employees, customers, association members). Its primary purpose is to insure the risks of its owners, and its insureds can often benefit from the captive insurer's underwriting profits through dividends, lower premiums, and/or broader insurance coverage.¹ Sectors that use captives include professional and personal services, construction, energy, retail, non-aviation transportation services and manufacturing, and insurance, investment and finance. Any business sector with risks, including non-profits and, governments may be able to benefit from the use of a captive depending on their specific risk-financing and insurance needs.

Captives can operate on a direct insurance and/or reinsurance basis. The most common forms of captive insurance companies are:

- **Pure captives:** A captive insurance company with one legal owner, insuring only the risks of the parent organization or its subsidiaries. Also called a single-parent captive (IRMI 2018a).
- **Group/association captives:** Captives that are formed by a group of entities or individuals to collectively own a captive. They are often formed by industry associations, professional bodies, or unions to insure their members (IRMI 2018b).
- **Segregated-account or protected-cell captives:** A type of captive where the captive keeps separate accounts (i.e., segregated accounts or cells) for each account or cell owner (IRMI 2019a). These types of captives have multiple cells often owned by different entities. The assets and liabilities of each cell are segregated from those of other cells. These types of captives are often used by smaller entities because a cell requires less startup capital than a traditional captive does.

A captive insurer differs from other insurance companies in terms of the scope of what it insures. "A captive is a legitimate licensed insurance or reinsurance company, but it does often have a limited scope in that typically it will only cover the risks of the parent company and its subsidiaries... this means that the regulations a captive has to comply with — which are established by the location in which the captive is domiciled — are usually less stringent than for insurance companies covering risks for third parties. It is possible in certain situations and domiciles for a captive to take on third-party risks but doing so usually increases the regulations it needs to comply with" (Zurich Insurance 2021).

¹ For a more complete description of the purpose and advantages of having a captive insurer, see: <https://www.irmi.com/articles/expert-commentary/captives-101-what-are-they-and-why-do-i-want-one>.

In this paper we discuss the regulatory policy elements that serve as the key foundations for the captive insurance market in major captive insurance jurisdictions, best practices for captive insurance regulation, and key elements of a best-of-breed regulatory regime that Alberta should implement. We examine regulation and policy elements in leading captive insurance jurisdictions, what policies have been implemented to stimulate growth of captive insurance markets and discuss the desired regulatory policy elements that would enable Alberta to foster an environment for a robust local captive insurance market.

1. OVERVIEW: THE CAPTIVE INSURANCE MARKET

The global captive insurance market has experienced increased competition as states and countries “seek the economic benefits that come with building a solid infrastructure of supporting financial services” (IRMI 2020b). The growing competition to attract new captive insurers or entice existing captive owners to relocate highlights the need for a thorough analysis of the factors at play when owners select the jurisdiction for their captive. Evidence of this competition is the increasing number of U.S. jurisdictions that have recently created new captive legislation or have overhauled current legislation to stay up to date with market trends (Miholic 2021). Captive domiciles vary widely in terms of regulatory environment, the local captive community, captive infrastructure, capitalization, taxation, and fees. This variation in approach and qualities of different captive domiciles has resulted in some domiciles being very successful in attracting captives, while others have not developed a captive industry of meaningful scale.

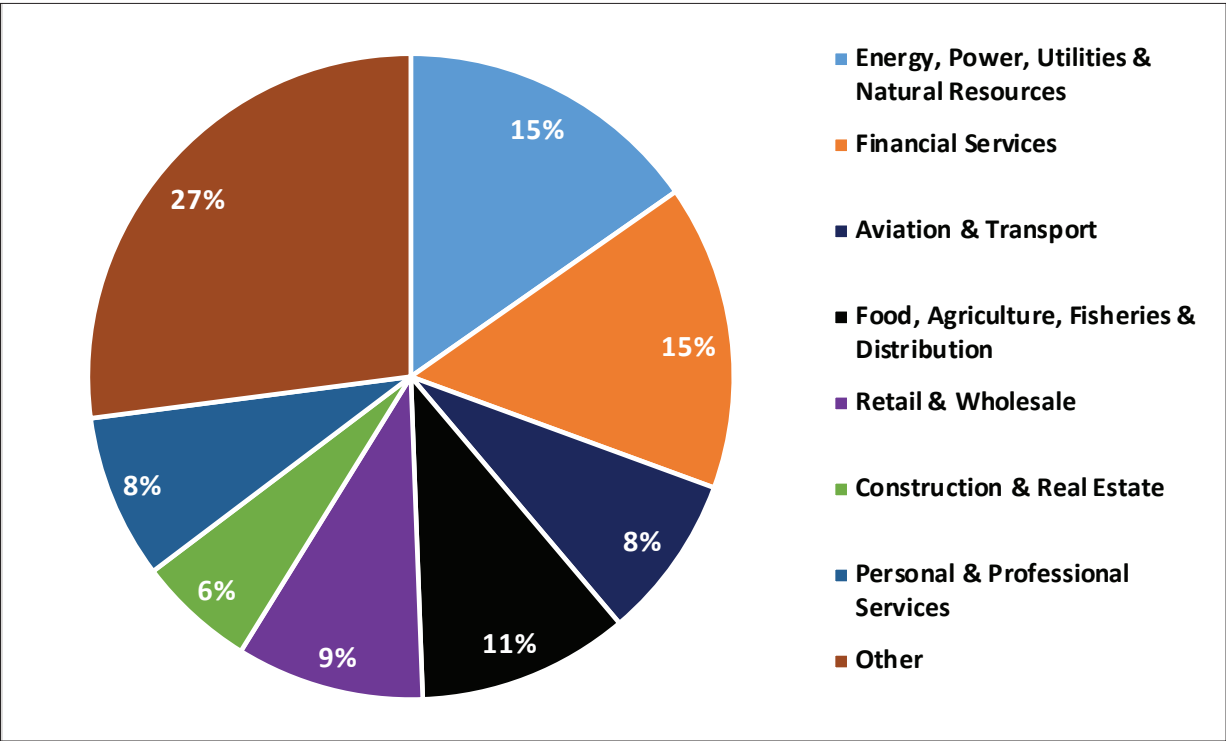
1.1. CURRENT SITUATION

At the end of 2021, there were 5985 captives operating in approximately 70 domiciles. Bermuda remains the top domicile, with 670 captives in 2021, followed by the Cayman Islands (661) and Vermont (589), while British Columbia, the only Canadian province with captive legislation, has 21 captives (Captive.com, 2022). There are 29 U.S. states plus the District of Columbia that have captive legislation, and domiciles continue to update regulation to retain and attract captive business. Between 2019–20, Vermont, North Carolina, Hawaii and Texas all saw substantial growth in captive numbers (BI Survey 2020). While the International Association of Insurance Supervisors and its associated Group of International Insurance Centre Supervisors (Group of International Insurance Centre Supervisors, n.d.) have studied captive regulation and issued reports and consultations on captive regulation (IAIS 2015), there remains a strong degree of variance in captive regulation globally. Given the slow pace of international regulatory convergence around captives and evidence of strong competition between domiciles to attract captives, there is scope for Alberta to develop a regulatory framework for captives that is competitive and facilitates the development of a meaningful captive industry in Alberta.

Most of the Canadian company- or association-owned captives are domiciled in Barbados and Bermuda, due in large part to their favourable regulatory environments, attractive tax treaties, and continued regulatory innovation. From 2015–17, 15 to 20 per cent of new captives formed in Bermuda were Canadian owned (Kelly 2017). The ratings agency A.M. Best estimates that over 200 Canadian companies or associations own captives (as of 2020). All of these are located offshore, except for 22 that are domiciled in B.C. The industries that use a captive are varied. Figure 1 shows the proportion of Canadian-owned captives in

different industries in 2020 for the 85 captives managed by two of the world’s largest captive-management companies. Publicly available data about captives owned by Canadian firms relating to domicile, captive manager, and ultimate owner are limited due to the large number of Canadian captives domiciled in jurisdictions without freely accessible corporate registries.

Figure 1. Proportion of Canadian-owned captives by industry, 2020



Source: Private. Classification by sector determined by the authors.

The determination of which domicile to choose when setting up a captive depends largely on the risk profile of the owner, the flexibility of the captive regulator, the capital and solvency requirements of the domicile, taxation, and the location of the risks to be insured in the captive. Currently, the only domestic option for Canadian-based captives is B.C., which offers reasonable capitalization requirements, and no “mind and management” issue for Canadian organizations (Marsh McLennan n.d.a). However, for many Canadian companies and associations, B.C. does not offer sufficient benefits. The introduction of Bill 76 in Alberta provides another Canadian domicile option for captive owners.

Recent trends in the current environment indicate there is an opportunity for Alberta to establish itself as a new captive domicile. These include:

- **Increased cost of compliance:** Increased regulatory, compliance and corporate governance requirements are having a negative impact on operational costs for captives and their owners, making it more difficult to keep costs reasonable. “All (captive-related) service providers now have an increased administrative workload to maintain compliance with regulations around AML/KYC (i.e., anti-money laundering and know your client) and Economic Substance (ES) and we accept that this is not going to change and is a necessary part of maintaining Bermuda’s reputation and integrity” (Bermuda Domicile Profile 2020). As the cost of doing business in Bermuda and other jurisdictions increases due to compliance, some companies may investigate alternative captive domiciles.
- **Insurance market conditions:** Over the past two years, the hardening commercial insurance market, meaning rapidly increasing premium rates, has generated interest in captive insurance. While availability of insurance has decreased, rates have increased, and companies are looking for alternatives to the traditional insurance market. While some companies are looking to establish new captives, existing owners are also expanding the use of their captives to deal with higher rates and less availability of insurance (Souter 2021).
- **Economic substance (ES):** Some countries and regions (e.g., the EU) have enacted policies to address profits being shifted offshore to low-tax jurisdictions. In response, ES legislation was enacted in Bermuda in 2019 and other offshore captive domiciles to address EU concerns that offshore structures were generating profits disproportionate to the real economic activity taking place within the low-tax jurisdiction. In essence, for a captive to benefit from low offshore tax rates, the captive must demonstrate that it has sufficient economic substance in the low-tax domicile, such as a physical location, local directors, and employees, and/or sufficient local operating expenses (Captive International 2020). This legislation has caused captive owners to carefully review the costs and benefits of operating in low-tax jurisdictions.
- **Base erosion and profit shifting (BEPS):** A similar set of policies is increasingly in place via the EU and/or OECD to tackle BEPS. This is viewed by many developed nations as “any potentially harmful tax practice where there is believed to be a dislocation between where value is generated and where profits are being recorded” (Captive International 2020, Economic substance compliance). These policies look to where firms domicile captives in low-tax jurisdictions with an “artificial” permanent establishment. In essence, this means that wherever the captive is doing business, in whatever domicile it is located, it needs to be clear that the decision-making is happening in that domicile and not, for example, where the parent is located (Winter and Skinner 2018).
- **Global Minimum Tax (GMT):** In October 2021, 136 countries and jurisdictions, including Canada, of the 140 members of the OECD/G20 Inclusive Framework agreed that certain multinational enterprises would be subject to a minimum 15-per-cent tax rate and other international tax reforms, effective from 2023. Key Canadian-captive domiciles, such as Bermuda and Barbados, that have very advantageous captive-insurance corporate tax regimes will be impacted by this as they have signed up to the initiative (Royal Gazette

2021). Whether the GMT is implemented depends on whether the U.S. agrees to the change. If GMT goes into effect, there is scope for Alberta to be tax-competitive for captive owners.

- **Reputational risk:** Canadian (and other) companies have recently faced significant negative press related to the use of offshore tax havens. Boards may prefer an onshore, “made in Canada” solution, rather than risk the association with “brass plate” captives in known or former tax havens.
- **Increasing focus on environmental, social and governance (ESG) performance:** Insurers are increasingly considering ESG in their underwriting decisions. Recently there has been a focus on reducing available insurance capacity for oil sands, offshore drilling, and coal assets. Captives may enable companies operating in these sectors to retain, manage, and transfer risks more efficiently as traditional insurance capacity exits these sectors due to increasing investor and regulatory pressures. However, since captives typically rely on reinsurance and many (re)insurance groups are pulling away from insuring these types of risks, there are limits to the benefits that captives can provide. There may be means of creating made-in- Alberta reinsurance solutions to aid in the development of Alberta’s captive industry and simultaneously help mitigate the insurance challenges faced by the energy sector.
- **Carbon footprint:** The COVID-19 pandemic led to a further examination of GHG emissions and ways to meet carbon-neutrality goals. Companies saw cost savings and a reduction in emissions by reducing travel to in-person meetings. Justifying travel to sunny and expensive destinations, such as Bermuda and Barbados, becomes more difficult if Alberta provides a cost-effective alternative.

Increasing interest in captives globally is also fuelled by unconventional purposes. Captives may offer a solution to directors’ and officers’ (D&O) liability coverage, specifically for the expansion of special-purpose acquisition companies (SPACs) by offering D&O insurance as part of these corporate structures (Raskin and Burke 2021). Captives may also be able to offer a solution for municipalities looking for police liability insurance (Abraham 2021), given the increased focus on policing risk, particularly in the U.S. A recent innovation is the use of captives in providing deposit insurance for digital assets, such as crypto deposits, against hacking (Zuckerman 2020). Captives have generally been used to address a lack of commercially available insurance and/or where commercial insurance is cost-prohibitive. As the economy and society evolve, once can expect that the possible uses of captives will also evolve.

1.2. RECENT CAPTIVE INSURANCE LEGISLATION CHANGES

Captive domiciles are updating their legal environments to maintain their attractiveness amid global competition. For instance, in 2021, Vermont's Bill S.88 amended the state's captive legislation (State of Vermont 2021). The new amendments allow cells² within protected-cell captives to convert to standalone captives. The amendments also consolidated rules regarding mergers and redomestications of captives.

In 2020, Utah expanded the types of insurance captives can undertake. Previously, Utah captives could only insure risks related to their parent, affiliate, or controlled unaffiliated business. After the Utah House Bill (HB) 37 passed in 2020, captives are allowed to reinsure risks of any other unrelated insurer (State of Utah 2020). This permits Utah-based captives to, for instance, reinsure a fronting company that offers direct insurance to the customers of a captive parent (e.g., product warranty, travel). This legislative change comes one year after the previous update to Utah's captive laws. In 2019, Utah allowed captives to apply for dormant status (IRMI 2020a). Dormant captives can maintain a fraction of the capital and surplus requirements for active captives and avoid annual reporting requirements. Other examples of the legislative race are evident throughout the U.S. onshore domiciles. For instance, Georgia allowed cell captive formation in 2019 (IRMI 2019c). In 2019, North Carolina started offering a two-year premium tax break for established captives moving to the state (IRMI 2019b).

2. KEY CONSIDERATIONS IN DOMICILE SELECTION

Increasing interest by many jurisdictions in creating captive-friendly environments has resulted in an expansion of the number of captive domiciles around the globe. Well-established domiciles, such as Bermuda, the Cayman Islands, Vermont, and Barbados, continue to evolve and innovate to remain competitive. At the same time, newer entrants into the captive field have introduced legislation to appeal to "domestic" companies that may benefit from a locally licensed captive insurer. For example, several U.S. states have introduced captive legislation that has influenced company decisions regarding where they choose to domicile their captive. The legislation typically addresses key factors including flexibility, options for various captive licences and structures, aggressive premium-tax reductions or holidays, and various corporate tax benefits (Miholic 2021).

The process of domicile selection by a company considering a captive involves a comprehensive examination of the key considerations that will determine the benefits and costs of the captive. Below we discuss what large and growing domiciles (onshore and offshore) offer, in terms of both regulation and business environment, focusing on those elements that are most important to captive owners. Table 1 provides details about leading captive domiciles and how they differ in terms of capital and surplus requirements, regulatory and reporting requirements, fees, and other important considerations that influence domicile selection.

² Protected-cell (sometimes called segregated-cell) captives involve a captive setting up a separate account or "cell" for each insured entity. The cells isolate losses incurred by the insured party from all other entities involved in the captive. See: <https://www.captive.com/articles/how-to-set-up-a-captive-insurance-company-a-5-step-primer>.

2.1. REGULATORY ENVIRONMENT

The regulatory climate is one of the most important considerations in domicile selection. This includes both the captive business climate (e.g., what is done to support the industry and relationships with the regulator) and the actual legislation and regulations that govern the captive industry, such as the licensing process, requirements for ongoing operations, capital and solvency requirements, and the time needed to form a captive and gain regulatory approval. Other elements include types of captive structures allowed, lines of business permitted, how non-admitted (e.g., unlicensed) coverage is treated, along with treatment of fronting arrangements³ and reinsurance considerations (IRMI 2020b, 2019a).

Successful domiciles, such as Delaware, Vermont, and Bermuda, all have world-renowned regulators that are noted to be flexible and adaptive. They maintain close ties with the industry, often engaging with the captive industry via local trade associations. For instance, in February 2022, the Bermuda Captive Network formed through the consolidation of several captive-related trade bodies. In a launch press release it was noted that the group will advocate for the sector, while “leading and evaluating changes in Bermuda’s legislative and policy landscape with one voice, to ensure the interests of Bermuda and its stakeholders are represented” (Bermuda Captive Network 2022). The organization also aims to “promote the domicile internationally to attract new opportunities for members and the industry” (Bermuda Captive Network 2022). The authors have seen other examples of where a strong and commercially focused relationship between captive trade bodies and captive regulators has supported growing and competitive captive domiciles.

Successful domiciles also feature user-friendly websites. Vermont, for example, has its traditional Department of Financial Regulation website that contains all the information relating to the regulator, including fillable forms for annual returns (Vermont Department of Financial Regulation n.d.). However, the state also has a business-oriented website directed at attracting new business (State of Vermont n.d.). This business-development website is a one-stop shop for any captive looking to compare domiciles. It offers easy access to frequently asked questions, fees, and capital and solvency requirements, and prompts visitors to contact “advisors” and to get in touch with the regulator for a conversation. Other domiciles, such as Texas and Barbados, have very complex and/or hard-to-navigate websites. To attract established captives to relocate, some domiciles offer simple forms to be completed to support redomiciliation applications. For instance, in Delaware, the application form to redomicile is an easy-to-complete five-page document that includes a checklist of relocation requirements.

³ “Through a fronting arrangement a licensed insurer will issue the policy in the relevant country (domicile) and then reinsure the risk, either in whole (gross) or part (net) back to the captive. Fronting partners (e.g., AIG, Chubb, Zurich and AXA XL) offer a wide range of services including policy administration; cash flow management, claims management and compliance support. The advantage of purchasing reinsurance direct is that there is generally greater flexibility within the policy terms and the wholesale pricing is comparably lower than the commercial insurance market” (KPMG Captive Insurance Guide, Sept 2020).

2.2. REGULATORY APPROVALS

The licensing review process can take different forms, such as a review by the local regulator, a panel of experts appointed by the regulator, or third-party actuarial consultants appointed by the regulator (IRMI 2020b, 2019a). In terms of best practices, the licensing process must be clear, specific, and not overly burdensome. It is essential that the guidelines for the captive's regulatory business plan are clear, and that applicants can follow clear and readily available guidance, get feedback from the regulator prior to seeking approval, and be able to obtain approval in a reasonable time for complete and suitable applications. The top domiciles ensure that the time to approve a captive is predictable and reasonable and, in some instances, there is a guaranteed turnaround time for applications. For example, decisions regarding captive applications in Bermuda and Barbados typically range from 1.25 to two months, whereas B.C. decisions take a minimum of four months (See Table 1). In a challenging insurance market, such as that of the last two years, companies need risk-financing solutions that are flexible and timely. Domiciles that can deliver regulatory feedback and application approval quickly are more competitive. As a result, we recommend that Alberta adopt a clear and timely process for rendering a decision on a captive application, with fully complete and suitable applications being approved within 20 business days.

2.3. REDOMICILING A CAPTIVE

Large Canadian firms often establish captive insurers, many of which are domiciled offshore in Bermuda or Barbados (Kelly 2017), to facilitate their risk-financing strategies. There are a number of Alberta-based companies with offshore captives, due to the number of medium-sized to large energy companies in Alberta. To develop Alberta's captive insurance sector, bringing business and assets to Alberta, it is necessary to ensure that the process to redomicile an existing offshore captive is straightforward and quick. The ability to redomesticate without complex application or regulatory hurdles is a strategy adopted by U.S. captive regulators to provide a competitive option for captive owners that are based in the U.S. (Miholic 2021).

Legally, this process is referred to as continuance into a new jurisdiction or discontinuance in a captive's former jurisdiction. Continuance is where a company retains its existing legal personality, while moving its legal jurisdiction (Lloyds 2019). Captives have done this in the past to move onshore to newly established captive jurisdictions (e.g., U.S. states), to benefit from beneficial tax or regulatory regimes, or to aid consolidation as part of mergers and acquisitions. For example, Vermont's Department of Financial Regulation completed six redomiciliations in 2020, with five being from offshore domiciles (Law 2021). Vermont's regulator noted, "we've heard generally the optics of having an on-shore vs off-shore captive is one of the reasons companies are choosing to re-domesticate back to the US" (Law 2021). Captives also move onshore because some captive owners believe that it is easier to do business, reduce costs, reduce travel, and save time by having their captive in the same domicile as their parent (Geisel 2016).

Since most of Canada's existing captives are based in Barbados or Bermuda, the process of redomiciling from these jurisdictions to Alberta is relevant. The process in Bermuda and Barbados for redomiciling a captive is relatively straightforward and simple (Government of Bermuda 1981; Brady, Champ and Miles 2020; Government of Barbados 2002; Government

of Barbados).⁴ For example, the Companies Act in local domiciles will usually outline what steps are required. Local regulators/government may be required to approve redomiciling and to ensure that the proposed new jurisdiction is approved as a host domicile. For example, in the case of Bermuda, under the Companies Act 1981 of Bermuda, the minister of finance makes this determination, with Canada being an approved jurisdiction. Other steps that local corporate law may require include an attestation from a captive director that the captive is solvent and evidence that the captive can meet all its liabilities and that redomiciling will not negatively affect the interests or rights of creditors and shareholders (Brady, Champ and Miles 2020).

Streamlining the redomiciling of captives to Alberta will help to establish a captive industry more quickly in Alberta. Alberta needs a simple, transparent, and fast process, in terms of corporate continuance and captive regulatory approval, to enable offshore captives to redomicile. For example, New Jersey has a commitment to approve new captive applications in approximately 30 days and redomestications within 10 to 15 business days (Hyatt 2014). To reduce regulatory burdens on redomiciliation applicants, North Carolina accepts some of the required regulatory documents (e.g., legal agreements, director details) from the original host jurisdiction (Law 2021).

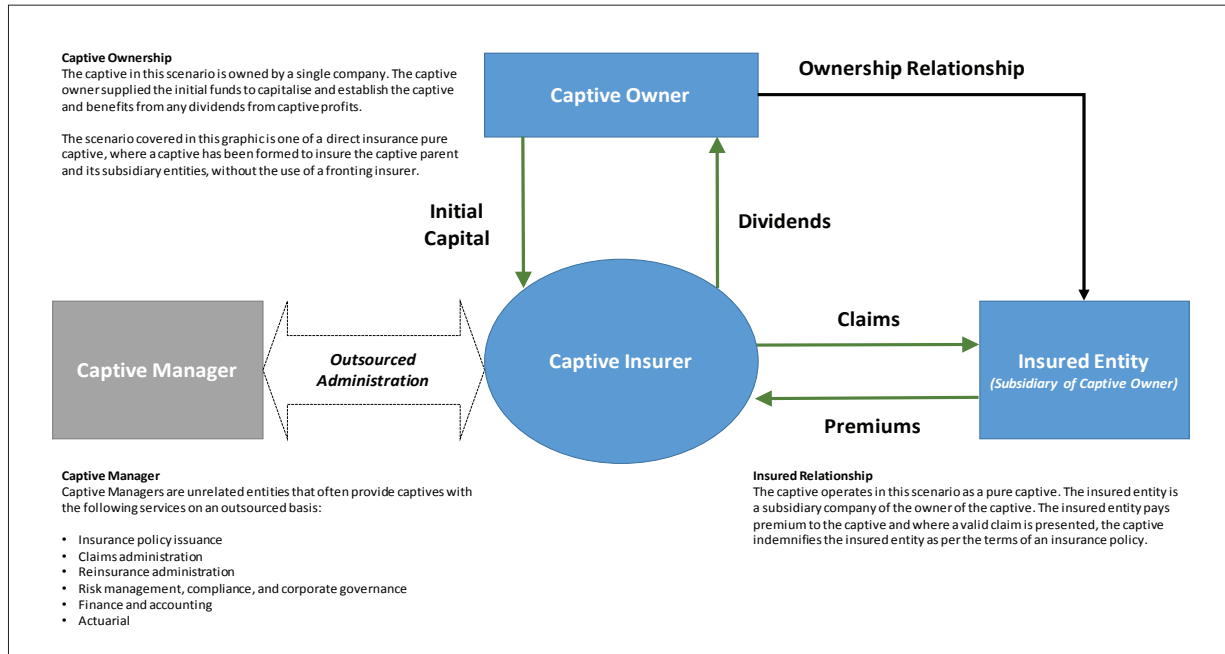
Alberta should have a regulated mandate to render a determination on captive redomiciliations in a short period, such as within 15 business days. This could be facilitated by having a streamlined corporate establishment and captive-approval process for redomiciliations from a list of pre-approved jurisdictions that meet the regulator's criteria regarding know-your-client, money laundering, company law, and corporate governance standards. This could include reliance on the corporate registration and captive approval in the jurisdiction where the captive is redomiciling from. Alberta should work to pre-approve Barbados and Bermuda in the first instance, given the number of Canadian captives domiciled there. Another strategy used by some U.S. jurisdictions to attract offshore captives is a premium-tax holiday. For instance, North Carolina offers a two-year insurance premium-tax holiday for captives redomiciling (Law 2021). To encourage captive redomiciliations from low- or no-tax domiciles, such as Barbados or Bermuda, Alberta should consider an insurance-premium-tax holiday for a set period for captives redomiciling to the province.

2.4. CAPTIVE STRUCTURES

The types of captives permitted vary by jurisdiction. The primary types of captives are pure captives, protected-cell (or segregated-cell) captives (PCCs) or incorporated-cell captives (ICCs), and group or association captives. Given the diverse insurance-coverage needs of companies of different size and in different industries, captive regulation needs to consider having options for various captive licences and structures. Pure captives are often an effective risk-management solution for large companies. A pure-captive insurer operates like a traditional insurer in terms of pricing risks, issuing insurance policies, and paying claims. Figure 2 illustrates the simplified operations of a pure captive and the parties and cash flows involved.

⁴ Bermuda has a cancellation-of-registration fee of US\$1,000 (Government of Bermuda 2022). In Barbados, there is fee for an application for cancellation, voluntary surrender of registration/licence or approval of dissolution equal to 250 Barbadian dollars, approximately US\$125 (Government of Barbados 2019).

Figure 2. Pure captive: illustrative schematic of operations

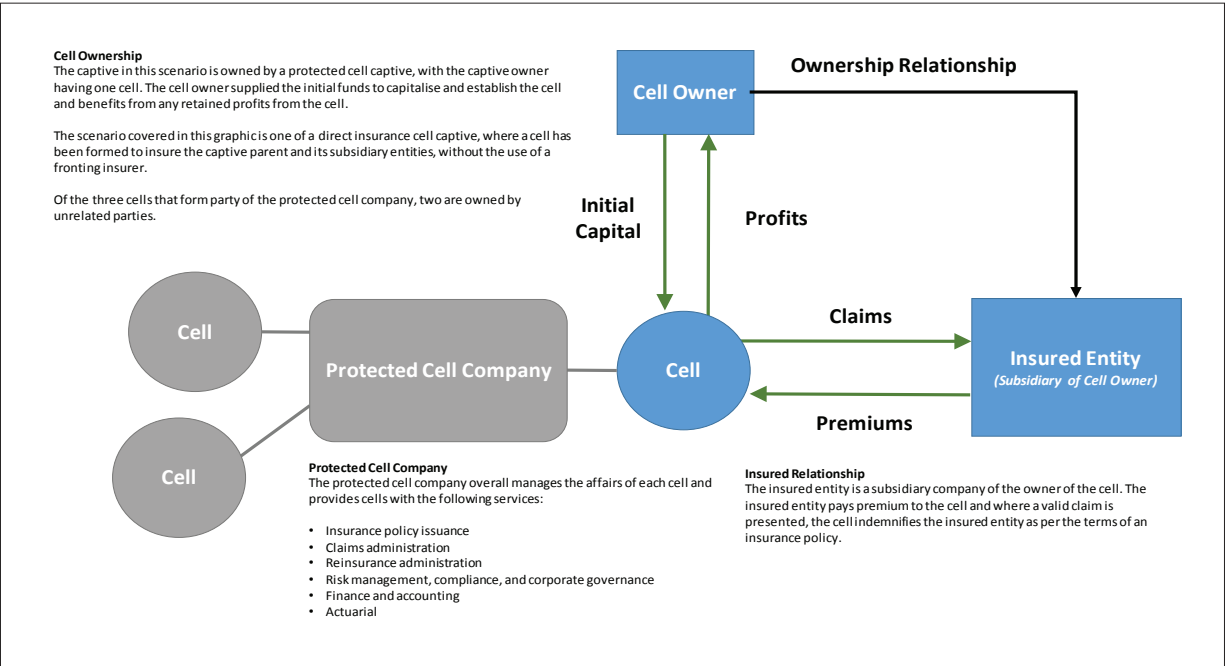


Source: Johnson 2022.

Single-parent captives, or pure captives, require significant scale in terms of premium volume to be cost-effective. For midsized companies and smaller companies that are local or have a small geographic footprint, a more reasonable option may be a cell captive (PCC or ICC).⁵ Cell captives access the captive market through a sponsored captive, which maintains underwriting accounts separately for each participant. The sponsor of the cell-captive structure is usually an existing captive manager with experience in managing captives. The sponsor usually provides initial regulatory capital to gain regulatory approval, with each cell then being subject to capital requirements that are lower than that for pure captives, making it more cost-effective for small and medium-sized enterprises (SMEs) to access the benefits of captive insurance. Figure 3 illustrates the simplified operations of a cell-captive structure.

⁵ See: <https://www.captive.com/articles/what-is-a-protected-or-segregated-cell-captive>.

Figure 3. Cell captive: illustrative schematic of operations

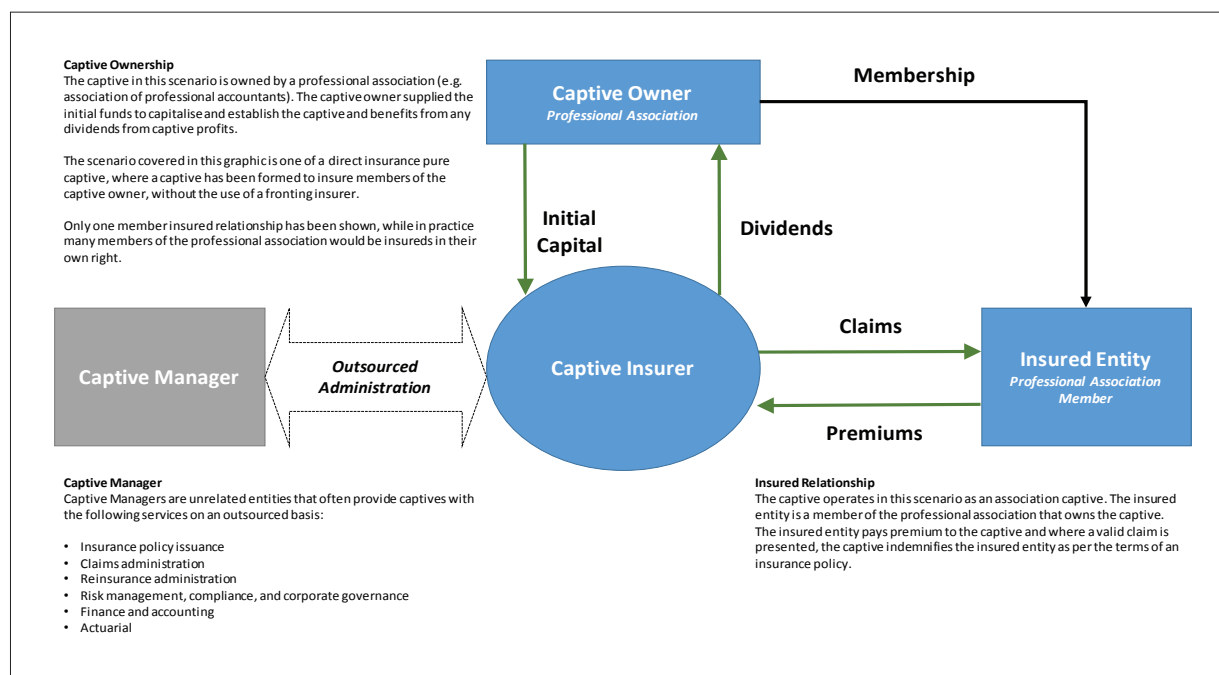


Source: Johnson 2022.

Because of these benefits, there has been strong growth in cell captives and the number of associated cells (Wilkinson 2022). Several U.S. domiciles have enabled cell-captive formations to meet the needs of a broader set of companies (Miholic 2021). A cell captive can be more attractive than establishing a new standalone captive, due in large part to greater operating flexibility, cost savings, and lower capital requirements. As a result, some jurisdictions, such as Vermont, have recently updated legislation to make it easier to convert from a cell captive to a pure captive, and vice versa, as the needs of the captive owner evolve (Vermont Domicile Profile 2021). We recommend that Alberta should include the ability for cell captives to be established in the province, while noting that this may require changes to Alberta’s Business Corporations Act so that cell companies can be established as legal entities in the province.

A group or association captive is a captive that forms based on a group or association of companies, such as through professional associations, franchise associations, or industry groups. Such group captives can offer value to members by providing better coverage and lowering rates for individual members. This is especially relevant when the insurance market is generally challenging, or specific coverages become more expensive and less available for certain industries. Figure 4 illustrates the simplified operations of a group captive. The captive legislation introduced by Alberta permits association or group captives.

Figure 4. Association captive: illustrative schematic of operations



Source: Johnson 2022.

2.5. LINES OF BUSINESS PERMITTED

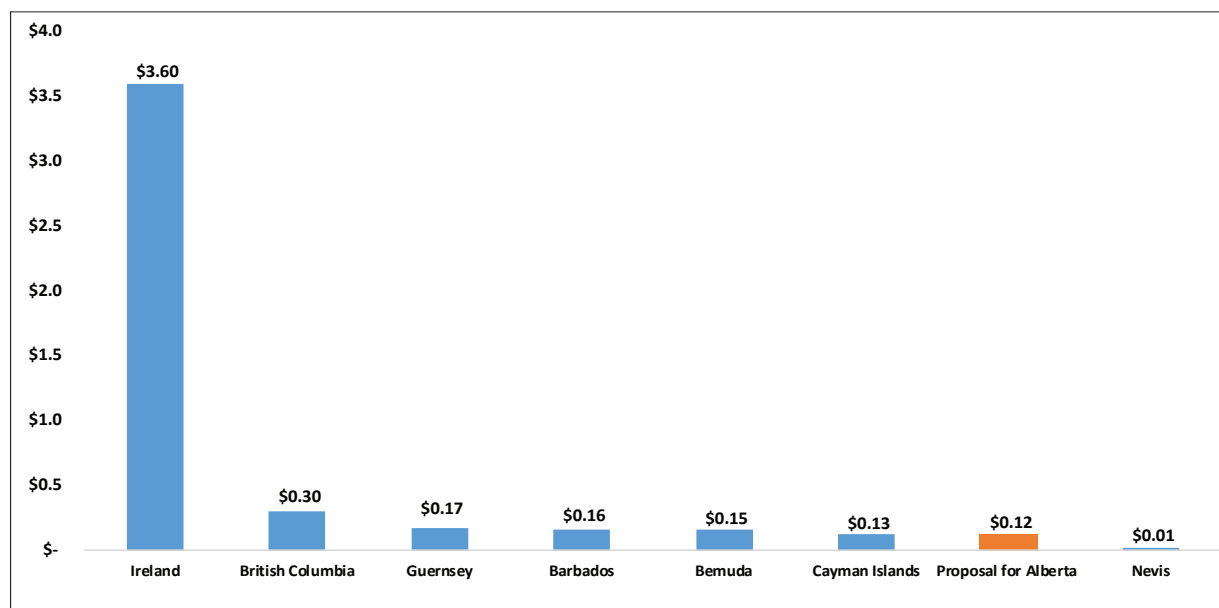
Captive regulation must also address what type of business the captive can write and whether it can insure third-party risks, such as franchise operations, employee benefits, and customer extended warranties. For example, companies in the automotive and telecommunications sectors have utilized their captives to provide their customers with additional products such as mobile-phone, extended-warranty, or car-rental insurance (Marsh McLennan n.d.a). Allowing companies to use their captive insurers for such risks offers significant benefit. Although some domiciles are quite restrictive, others aim to foster innovation and new solutions for emerging risks. For example, some U.S. jurisdictions intent on attracting captive business have been expanding allowable types of insurance written through captives, such as coverage related to employee benefits and third-party insurance business (Miholic 2021). Allowing captives in Alberta to write employee-benefits coverage for dental, health and long-term disability may provide an efficient risk-management opportunity for employers.

While allowing flexibility for captive owners to use their captive to meet their unique needs and needs not being met by the commercial market, an important distinction should be made regarding risks that are more suited to retention through captives (e.g., more predictable risks, such as high-frequency and low-severity) versus those that are less understood. As captives ultimately represent risk retained by the parent, certain catastrophic risks or risks that cannot be measured with reasonable certainty may be less suited to a captive or require different regulation in terms of independent actuarial oversight, reinsurance, and regulatory capital requirements. We make recommendations relating to Alberta’s captive regulatory regime on how to address different types of business underwritten by captives below.

2.6. MINIMUM CAPITALIZATION REQUIREMENTS

Regulated insurance companies are subject to minimum capital and surplus requirements. Captives globally are also subject to captive and surplus requirements, although these are generally set at lower levels than for insurers that insure third parties (e.g., consumers, unaffiliated businesses). Some captive domiciles view their capitalization and surplus requirements as a competitive advantage in terms of attracting captives (Sheridan and Adkisson 2014). Minimum capitalization requirements define the amount of regulatory capital that must be held by the captive to commence operations (IRMI 2020b).⁶ Surplus is defined as the amount by which an insurer's assets exceed its liabilities, also called shareholder's equity (IRMI n.d.) This is the level of capital required to underwrite a given level of premium, where a lower minimum capitalization of US\$100,000 for pure captives. Regarding the U.S. states reviewed, minimum capitalization is often US\$250,000 for pure captives, while in British Columbia it is \$300,000. The outlier in our review is Ireland, which is regulated under the European Union's Solvency II⁷ regime, which has a much higher minimum capital requirement of 2.5 million euros for pure direct-writing captives and more complex solvency requirements than other captive domiciles (Gonzales 2016).

Figure 5. Selection of minimum capital requirements for pure captives (in \$millions)



Note: Calculations by authors based on capital requirements as of Feb. 1, 2022. All figures in Canadian dollars and converted from local currencies on Feb. 14, 2022.

To compete with the two primary domiciles that are home to Canadian-owned captives, Alberta's minimum capital requirements should be comparable to Bermuda and Barbados. For example, Alberta should consider adopting a minimum capital requirement of \$120,000 for all types of captives domiciled in Alberta. This helps reduce the barrier to formation for

⁶ For an extensive list of minimum capitalization requirements by jurisdiction, see: <https://offshorecorporation.com/captive-insurance-minimum-required-capital-and-surplus/>.

⁷ Bermuda and Switzerland have full Solvency II equivalence. Canada and the U.S. have provisional Solvency II equivalence.

smaller captives and the upfront capital commitment to establish or redomicile a captive. Although lower minimum capital requirements increase the risk of an insurer being unable to pay valid claims, regulation around surplus can be used to manage this risk.

2.7. REGULATED SURPLUS/SOLVENCY REQUIREMENTS

A captive's surplus (i.e., assets in excess of liabilities) is its primary economic cushion to prevent insolvency. For instance, having sufficient surplus to cover losses that exceed the captive's reinsurance coverage, such as large property-catastrophe losses or large liability settlements, reduces the risk of a captive's insolvency. A captive's minimum capital forms part of its surplus.

"The primary goal of insurance regulators is to make sure there is sufficient capital for insurers to operate and meet their obligations to policyholders and other claimants" who are third parties (Hartwig, Lynch and Weisbart 2015).⁸ Captive insurers present a different set of considerations, determined by the type of captive and classes of business underwritten. For captives that insure only their parent and/or affiliated entities (e.g., subsidiaries, branches), it is reasonable to establish lower surplus requirements, as the risk of captive insolvency falls on its owner and affiliated entities (i.e., sophisticated insurance buyers). Captives that insure third parties that are often less sophisticated, such as customers, employees, contractors, or members of an association, arguably require higher surplus requirements to reduce the risk of unpaid claims and the effect on third parties. For long-tail lines of business (e.g., liability), where claims take longer to materialize and resolve and loss-reserving is more uncertain, higher surplus requirements may also be needed. An alternative to higher surplus requirements is to have more frequent, regulatory-driven, independent actuarial validation of loss reserves and a captive's financial position (Vermont Department of Financial Regulation 2017).

Where a captive is a reinsurance captive, reinsuring a fronting company, the risk of a captive's insolvency falls to the fronting insurer (IRMI 2018c). As a fronter is in essence underwriting the ability of the captive to reimburse it for claims paid, the fronting insurer has a strong incentive to ensure that the captive has adequate capital to reimburse it for claims (IRMI 2018c). Hence, where a fronter is involved in a captive insurance strategy, even if a local domicile has very low regulatory surplus requirements, the captive is likely to hold higher surplus to meet the credit requirements of the fronting insurer. Fronting insurers also often require captives to hold collateral for the fronting insurer's benefit to protect them from a captive's inability to reimburse them for claims (Antunes, n.d.). Due to these considerations, we recommend that Alberta not put in place more stringent capital and solvency requirements on reinsurance captives than those for non-reinsurance captives.

⁸ The regulation of traditional insurer surplus is focused on avoiding insolvency that could negatively affect policyholders who, in the case of traditional insurers, are not affiliated or associated with the insurer and generally require more regulatory protection.

Solvency requirements vary substantially by domicile (see Table 1), with Ireland having the highest.⁹ In the two primary offshore captive domiciles used by Canadian firms, Barbados and Bermuda, a relatively simple and formulaic surplus regime exists. Both use a percentage of premium and/or claims to determine regulatory surplus requirements. Guernsey, another major offshore captive domicile, recently adopted a more complicated and captive-specific approach to setting minimum solvency requirements.

- **Bermuda (Class 1 captive):** The surplus, including minimum capital, is the greater of: i) US\$120,000; ii) 20 per cent of the first US\$6 million of net premiums written (NPW) plus 10 per cent of the excess of US\$6 million of NPW; or iii) 10 per cent of loss reserves.
- **Barbados (Class 1 captive):** During the first year of underwriting, the surplus, including minimum capital, must exceed liabilities by US\$125,000 (the minimum capitalization). For subsequent years, 20 per cent of premium income for the preceding financial year for the first US\$5 million of premium income, plus 10 per cent of premium income for the preceding financial year for premium income in excess of US\$5 million.
- **Guernsey (pure captive):** The capital floor in paid-up share capital must be 100,000 pounds for a captive writing general insurance. The minimum capital requirement is the higher of 12 per cent of premiums (net of reinsurance/brokerage/commission) and 12 per cent of residual reserve exposure (all claims reserves net of reinsurance). The prescribed capital requirement is an assessment of market risk, counterparty default risk, premium risk and reserve risk, with a diversification adjustment applied both for line of business and category of risk at a 97.5-per-cent confidence level for captives. Some contingent assets may be held to meet this requirement. The own solvency capital assessment is an assessment, made by the captive's board, as to the appropriate capital to hold, and each insurance manager tends to have their own template and approach to this (Gale 2022).

Unique among the domiciles reviewed, the surplus requirement for the Cayman Islands for pure captives (Class Bii) is equal to the US\$100,000 minimum capital requirement. Where the surplus is set relatively low, accurate loss-reserving and appropriate reinsurance protection are essential to insurer captive solvency, particularly in periods of higher-than-expected claims.

The U.S. domiciles reviewed have less explicit surplus and solvency requirements, permitting a degree of regulatory discretion. This provides regulators with flexibility when setting surplus requirements specific to the unique circumstances of each captive. This is similar to the approach taken by B.C.'s captive regulator. Although this approach offers captive owners flexibility to work with regulators to agree on solvency requirements, the lack of specificity makes comparing some U.S. domiciles challenging. This approach could also be perceived by some as enabling political favouritism to creep into the setting of captive solvency requirements for specific companies. In contrast to the bespoke approach, simple, consistent, and pre-determined surplus and solvency regimes are often preferred, as they make it easier to assess domiciles and assist with captive financial planning.

⁹ Under Solvency II, captive-solvency requirements in Ireland are determined either by what is referred to as the "standard formula" or a complex internal capital model (Institute and Faculty of Actuaries 2016). The complexity of Solvency II and the higher levels of it capital requires are likely to deter Canadian captive owners from domiciling in Ireland. A key reason that captives form in Ireland is to be treated as a regulated insurer throughout the European Economic Area as a fully licensed insurer and to eliminate the need to use a fronting insurer (Marsh Management Services Luxembourg S.à r.l. n.d.).

Based on the competitive context of captive domiciles, the domiciles that are home to most of Canada's captives, and the authors' review of differences between captive jurisdictions, a combined approach is recommended for Alberta. It should rely on both a standard formula for most captives while allowing for a bespoke approach for those captives who prefer it, supported by independent actuarial validation. The addition of independent actuarial validation of bespoke solvency requirements for captives helps insulate the regulator from any real or perceived favouritism. Alberta could require that captives using an approved bespoke approach to regulated solvency also calculate solvency using the standard formulaic approach, with a narrative provided to the regulator justifying the deviation from the standard formula. This reporting would enable Alberta's captive regulator to publish minimum, maximum, and mean deviations of bespoke solvency outcomes against the standard formula. Alberta's captive regulator could also disclose anonymized case studies of bespoke approaches to inform captives considering this approach. This regulatory reporting could help insulate the regulator from real or perceived accusations of favouritism, while enabling captives to use case studies to assess if the cost and complexity of applying for a bespoke and independently actuarially validated solvency approach may benefit them.

By having a clear and simple, yet flexible approach to surplus regulation, with a distinction between captive types and classes of business insured, Alberta will be positioned as a competitive domicile, while ensuring captives that could expose third parties to losses have a proportionate level of oversight.

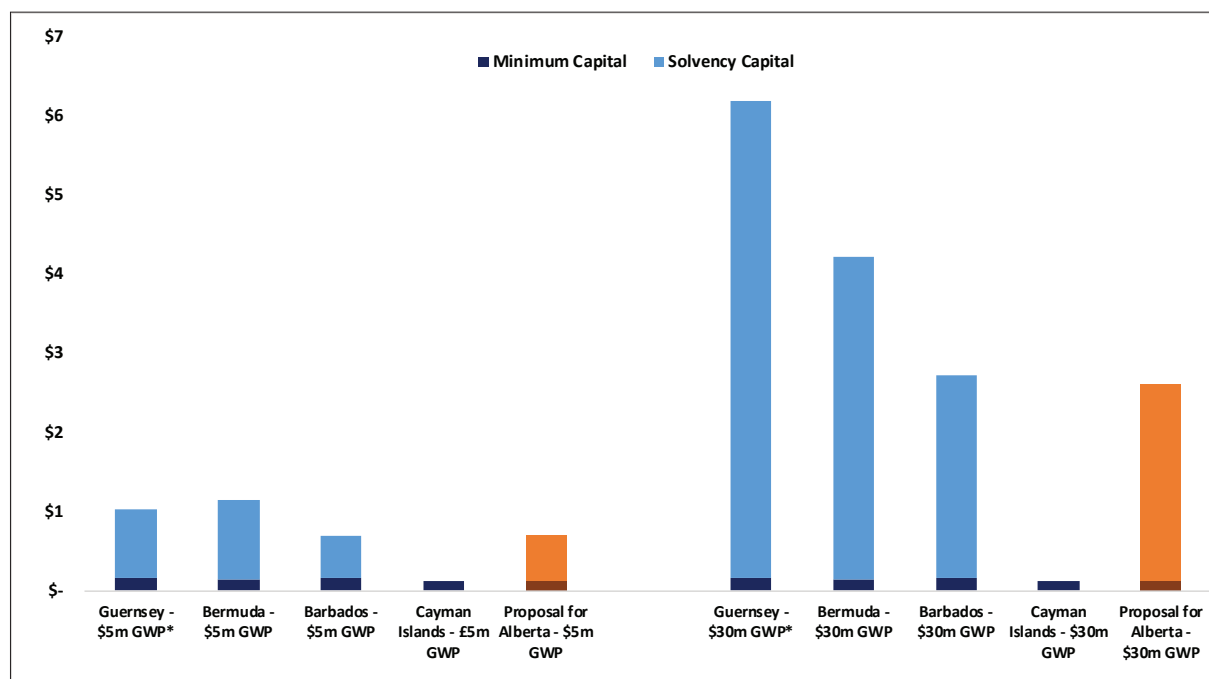
2.7.1. Standard Formulaic Approach to Regulated Surplus or Solvency Requirements

The standard formulaic approach offers a simple, consistent, and transparent formula for determining a captive's solvency. This should be no more onerous than the approaches in Bermuda and Barbados. Alberta should consider the following surplus requirement for all types of captives:

- **First year of underwriting:** The surplus, including minimum capital, must exceed liabilities by Alberta's minimum capitalization. This calculation should be based on the captive's first-year business plan, which should be subject to an independent actuarial review to minimize the risk to its financial viability.
- **Subsequent years of underwriting:** The surplus, including minimum capital, must be at least 20 per cent of premium income for the preceding financial year for NPW (gross written premium minus acquisition costs over commissions minus outwards reinsurance spend) up to \$5 million, plus 10 per cent of NPW for the preceding financial year for premium income in excess of \$5 million.

On an ongoing basis, captives should have a legal duty to notify the regulator if at any time the captive is, or reasonably expects to, fall below the minimum regulatory surplus requirement during a financial year.

Figure 6. Selection of post-year-one minimum capital and solvency requirements for pure captives (in \$millions)



Notes:

GWP refers to gross written premium.

Calculations by authors based on capital requirements as of Feb. 1, 2022. All figures in Canadian dollars and converted from local currencies on Feb. 4, 2022. Two examples of pure-captive solvency and minimum capital requirements are shown with a captive writing \$5 million and \$30 million of gross written premium. In these examples, commissions and reinsurance spend are assumed to be 30 per cent of gross written premium.

* Guernsey, while operating a formulaic approach to solvency capital in addition has a more complicated internal model and judgment-based approach to captive solvency setting, so the examples here for Guernsey are likely floors with additional solvency capital required.

2.7.2. Bespoke Approach to Regulated Surplus or Solvency Requirements

A bespoke approach to surplus requirements meets the needs of captives, which, due to their size, classes of business, asset types, reinsurance, industry, or customer type, warrant a customized approach to setting surplus requirements. A bespoke surplus approach is similar to captive regulation in the EU, where a captive can either use the standard formula (still comparatively complex) or make an application to the regulator to use an approved internal model to drive surplus requirements (Institute and Faculty of Actuaries 2016). For any such application, Alberta should commit to reviewing and rendering a determination on the application for bespoke surplus setting within 45 days. The regulation should commit the regulator to collaboratively engage with the applicant through the process to avoid any unnecessary delays caused by data gaps and/or misunderstandings. Any such applications should include an actuarial opinion from a suitably qualified and independent actuary. Vermont is a captive domicile that requires that captives submit an annual statement of actuarial opinion on the captive’s loss reserves and financial position instead of relying on regulated formulaic surplus requirements (Vermont Department of Financial Regulation 2017).

2.7.3. Independent Actuarial Oversight of Regulated Surplus or Solvency Requirements

Non-reinsurance captives writing more than 30 per cent of annual premiums in long-tail classes of business (e.g., liability, employee benefits), and/or 20 per cent of premiums from insuring entities outside the legal grouping of the captive's parent (e.g., employees, contractors, customers, members), should be required annually to provide an independent actuarial opinion on the reserves and financial position of the captive, conducted by a suitably qualified actuary, consistent with Bermuda (Oliver Wyman Inc. n.d.). All other captives should undergo this process every three years to ensure that Alberta captives are appropriately reserved and have sufficient capital to pay valid claims. These provisions should protect the reputation of Alberta's captive sector from unreasonable risk of captive insolvency negatively affecting the public, businesses, and/or the government.

2.8. ADMISSIBLE ASSETS FOR CAPITAL AND SURPLUS

Captive regulators treat assets differently in determining minimum capital and surplus because assets vary in terms of how quickly they can be converted to cash and/or how precisely they can be valued. For example, accounts receivable differ from cash deposits and therefore captive regulators often have proscribed types of assets that count for regulatory purposes when determining minimum capitalization and surplus (e.g., regulatory capital). Key types of admissible assets of interest to captive owners include intercompany loans (ILs) and letters of credit (LOCs). The primary benefit of LOCs for captive owners in terms of their admissibility for regulatory capital requirements is that they can be a less costly form of financing than cash or other approved regulatory capital. The collateral used to support an LOC may be invested in higher-yielding assets or activities, offsetting the costs of the LOC (Murray 2018). Captive owners can also benefit from loaning a captive's surplus back to the parent company, where it may be used to generate higher returns via an IL.

In comparing some of the top domiciles, there is variability in terms of how LOCs and ILs are treated in terms of admissibility for regulatory capital. Generally, LOCs are accepted by captive regulators for regulatory capital when they are issued by reputable banks and in a form approved by the regulator. The admissibility of ILs for regulatory capital purposes is more mixed. ILs, if acceptable, generally require the approval of the captive regulator. This is because a key interest of the regulator will be the financial ability of the parent to repay the loan, possibly with the captive calling in the loan on short notice, to ensure the captive remains solvent (Newton Media Ltd. 2014).

2.8.1. Letters of Credit

Bermuda, Barbados, Vermont, and Guernsey all permit LOCs for regulatory capital purposes. In these domiciles, the regulators require that the LOC be irrevocable, in a form approved by the regulator, and issued by a bank approved by the regulator (Government of Bermuda 1980). For example, in Guernsey, regulated capital may be in the form of an irrevocable LOC, issued to the benefit of the insurer, provided by recognized banks in recognized territories, for such amount and on such conditions as have been approved by the regulator (Guernsey Financial Services Commission 2008).

To be competitive, Alberta should permit the use of LOCs from recognized banks in recognized territories using a standard form approved by the regulator. The form of the approved LOC should be readily accessible on the regulator’s website. Alberta should determine a list of recognized jurisdictions whose banks will be approved issuers of LOCs for regulatory capital purposes, and the list should be developed to not unreasonably restrict existing captives with existing LOCs from redomiciling to Alberta.

2.8.2. Intercompany Loans

In Bermuda, Barbados, and Guernsey, ILs are permissible, “but do not qualify as an admitted asset for solvency purposes, unless approved by the regulator, which requires a review of the related entity financial position” (Oliver Wyman Inc. n.d.; Government of Barbados n.d.; Guernsey Financial Services Commission 2021). Vermont does not approve the use of ILs for regulatory capital (Department of Financial Regulation 2015).

By enabling ILs as regulatory capital, captive funds can be loaned to the parent company, providing the parent with additional liquidity. However, ILs may need to be called in at short notice should the captive have a large claim payment that needs to be made. As a result, regulators that permit ILs for captive solvency purposes assess the creditworthiness of the parent as part of permitting ILs. We have not been able to identify any public statements by regulators on how the creditworthiness of a parent is assessed when a regulator determines if an IL will be treated as regulatory capital.

Alberta should permit the use of ILs upon the approval of Alberta’s regulator. Factors to consider when approving the admissibility of an IL for regulatory capital should include the ability of the captive to call the loan on short notice, any collateral that the loan is secured against, and the financial standing of the recipient of the loan within the captive’s corporate group.

2.9. INVESTMENT RESTRICTIONS

Captive domicile investment rules are typically not overly restrictive. Some jurisdictions prohibit various types of investments; others mandate maximum percentages of funds that can be held in specific investment vehicles; and some have more or less restrictive definitions of what constitutes “admitted assets.” Many U.S. domiciles indicate that a captive may invest its assets in any investment approved by the captive regulator. Offshore domiciles such as the Cayman Islands state that cash and all traditional investments are permitted. However, some domiciles have restrictions on stocks or other assets, or a requirement for only “investment grade bonds and stocks” (Bahamas), and no derivatives without prior approval (Cayman Islands) (Atlas Insurance Management n.d.b). B.C. has no statutory restrictions on investments held by a captive. In Alberta, for provincially regulated insurers, the Alberta Superintendent of Insurance has adopted and issued the guidelines of the Office of the Superintendent of Financial Institutions, including future revisions (Alberta Superintendent of Insurance 2019). The OSFI guidelines for investment rely on the “prudent person approach,”¹⁰ which is an appropriate basis to use for captives. We do not recommend changes to the regulatory framework covering allowable investments for Alberta-based captives other than for the inclusion of regulator-approved ILs and LOCs to be permitted assets, as noted above.

¹⁰ <https://www.osfi-bsif.gc.ca/Eng/fi-if/rg-ro/gdn-ort/gl-ld/Pages/b1.aspx>.

2.10. TAXATION

An important factor influencing the cost of captives is taxation.¹¹ There is considerable variation between domiciles with respect to the taxability of total written premium, underwriting income, and investment income, as well as whether companies must pay federal excise taxes. Some domiciles offer certain tax credits to attract new captives or captives willing to relocate. Many Canadian-owned captives have been domiciled in Barbados due to the existence of a Canada-Barbados income tax agreement. A Barbados affiliate is classified as a “foreign affiliate” of a Canadian parent, which means that dividends remitted to Canada from Barbados are considered “exempt” surplus in Canada and non-taxable according to Canadian laws. The captive pays a normal rate of tax¹² in Barbados and is allowed to remit the remainder to Canada tax-free (Kelly 2017). The Tax Information Exchange Agreement with Bermuda (2010) resulted in a similar situation for Canadian companies concerning exempt surplus. As a result, some large Canadian companies, especially in the oil and gas sector, moved their captives to Bermuda. Bermuda, due to it being a major global reinsurance centre, offers an advantage for companies that need good access to the reinsurance market (Kelly 2017).

The leading offshore captive jurisdictions have long been noted for offering a low- or no-tax environment. Bermuda has no corporate income tax and no profit tax or capital gains tax (Oliver Wyman Inc. n.d.). Barbados has a corporate income tax, but not for Class 1 insurance companies such as captives. The Cayman Islands has no income taxes, capital gains taxes or corporate taxes. If the GMT goes into effect, it will significantly reduce the advantage of these offshore domiciles. According to Fitch Ratings, “the 15 per cent minimum tax rate will reduce the gap between the effective tax rate of non-Bermuda (re) insurers and Bermuda (re)insurers, although it will not be entirely eliminated as most jurisdictions will have tax rates above the minimum” (Fitch Ratings 2021).

Captive domiciles also vary in terms of premium and unlicensed insurance taxes. The premium tax charged for premiums written by a captive differs by domicile, and some domiciles charge lower rates for greater amounts of premium written. For example, North Carolina assesses 0.4 per cent on direct written premiums (DWP) ranging up to \$20 million, and 0.3 per cent on DWPs greater than \$20 million. In Texas, licensed captive insurers pay a premium-tax rate of 0.5 per cent, with a minimum premium tax due of \$7,500 and a maximum premium tax due of \$200,000, whereas in Delaware, captives pay one per cent on DWPs subject to a \$200,000 maximum. Offshore domiciles, such as the Cayman Islands and Bermuda, do not impose any local premium tax. In Arizona, there is no premium tax but instead it has a \$5,000 annual licence fee, making it an attractive domicile for captives with high premiums. The B.C. insurance-premium tax, generally four per cent, is payable on DWPs on B.C. risks, whereas premiums for risks outside of B.C. are not subject to the premium tax.¹³

¹¹ For a complete discussion of captive-insurance taxation issues, please see Dolson 2022.

¹² Top rate is one per cent, whether for International Business Companies or regular corporation (over \$30 million in assets) and zero for Class 1 insurance companies.

¹³ Premiums for risk in other Canadian provinces are subject to premium taxes by province, generally three per cent to 4.5 per cent on licensed (fronted) policies. Premiums from Ontario, Quebec, and Manitoba are also subject to provincial sales tax of eight to nine per cent. Reinsurance premiums from outside Canada are subject to appropriate local taxes; e.g., in the U.S., this may include premium taxes, self-procurement taxes, and federal excise tax.

Many jurisdictions have restrictions regarding the purchase of licensed insurance and a penalty for the purchase of unlicensed insurance. For example, in Alberta, “a person may not enter or renew a contract of insurance to insure a risk in the province if the insurer does not hold a valid license unless the person meets certain requirements under the Alberta Insurance Act.” A person can obtain insurance coverage from an unlicensed insurer,¹⁴ but must pay a tax equal to 50 per cent of the premium, and a penalty is applied if the special tax is not paid within 30 days, which is 50 per cent of the unpaid tax, bringing the total cost to 75 per cent of the premiums.¹⁵ (KPMG LLP 2017).

Hence, for unlicensed insurance that covers a risk in Alberta, the 50-per-cent charge of the premium paid is substantial, and captive owners interviewed by the authors view it as punitive. However, the charge will be less than 50 per cent in some circumstances, specifically “at the request of the insured, the Superintendent may consider a reduction in the charge to an amount not less than 10 percent of the premium paid if the insured can provide evidence that at least five insurers licensed in Alberta have declined to provide coverage, commonly referred to as ‘declinations’, at the time of purchase” (Alberta Treasury Board and Finance 2017).

To avoid unlicensed-premium taxes, large industrial companies (such as Suncor or Nexen) can typically provide the declination letters required by the superintendent. A second option is to use a fronting insurer. When a captive is not licensed and registered in the policy-issuing jurisdiction, the captive may enter into fronting agreement with a locally licensed insurer, where the captive reinsures the fronting insurer, avoiding unlicensed-premium taxes. Typically, captives are not licensed to issue policies internationally (or in the case of an Alberta captive, not licensed outside of Alberta), and some insurance products can only be provided by locally regulated insurers (Kelly 2017).

The use of fronting agreements helps manage the cost of unlicensed-premium taxes; however, there is a cost to fronting. Fronting fees range from five to 15 per cent, depending on the services being provided by the fronter and whether any risk is being retained by it (IRMI 2018c; Mead 2004). For a company that has a lot of Alberta risk to insure, establishing a local captive could be more cost-efficient. The key point is that companies are looking for cost-effective strategies: captives operating in Alberta, as regulated insurance entities, will avoid the province’s high unlicensed-premium tax on Alberta-based risks.

¹⁴ In general, a person can obtain such insurance coverage from an unlicensed insurer if, among other conditions, the person notifies the superintendent in writing no later than 30 days after signing the contract of insurance or receiving any policy, interim receipt or insuring document issued by or on behalf of the insurer, whichever occurs first. <https://assets.kpmg/content/dam/kpmg/ca/pdf/tnf/2017/ca-Special-Insurance-Premium-Taxes-Meet-Your-Obligations-tnfc1703.pdf>.

¹⁵ In addition to the high cost, there is additional effort and time required, because Alberta requires a physical cheque to pay provincial unlicensed premium taxes.

2.11. REGULATORY AND INCORPORATION COSTS

Formation costs include items such as a stamp tax on capital (for offshore domiciles), registration fees, and incorporation expenses. These amounts can vary considerably across jurisdictions, which affects the cost of forming a captive and making it operational. Some of the typical formation fees include:

- **Application fees:** Captive application fees tend to be low, such as US\$500 in Vermont or \$500 in B.C. In the leading homes to Canadian captives, application fees are \$500 in Barbados and \$800 in Bermuda for pure captives.
- **Annual licensing fees:** These can vary depending on type of captive and domicile. In the leading homes to Canadian captives, application fees are \$12,500 in Barbados and \$2,250 in Bermuda for pure captives.
- **Company incorporation fees:** These can vary depending on type of captive and domicile. In the leading homes to Canadian captives, application fees are \$125 in Barbados and \$2,095 in Bermuda for pure captives.

We recommend that Alberta establish modest application, annual licensing, and incorporation fees comparable to B.C.

2.12. OPERATING COSTS AND SERVICE PROVIDERS

Ongoing operating costs are also an important consideration. However, research from Marsh found that operating costs for most captives, including annual licensing fees, represent less than five per cent of total premiums (European Captive Insurance and Reinsurance Owners' Association 2008). This suggests that operating expenses may not be as key a driver in domicile selection, given that regulatory solvency requirements usually represent a greater share of premiums.

Captive owners will need to identify which third-party services they will require, each with their own fee structure. The need for different services will vary based on the domicile, fronting strategy, size, and lines of business underwritten, as well as the necessary filings required in that jurisdiction. Some domiciles require that only local service providers be engaged and, in those circumstances, the choice available will differ depending upon the relative sophistication of that jurisdiction. Well-established jurisdictions, such as Bermuda and the Cayman Islands, are known for their first-class infrastructure of service providers. As noted previously, "...the increased regulatory and compliance environment (in Bermuda) will negatively impact operational costs. This will be a challenge... to keep the cost of doing business at a manageable level.... All service providers now have an increased administrative workload to maintain compliance with regulations around AML/KYC and Economic Substance" (Captive Insurance Times, Bermuda Domicile Profile).

2.12.1. Captive Managers

The availability of professional talent in Alberta (i.e., legal, audit, accounting) will help to promote Alberta's competitiveness and will be essential for companies that require professional services. Alberta is home to several large global insurance-broker offices that, within their groups, have captive managers (e.g., Aon, Marsh). In the short term, if there is insufficient expertise and qualified captive managers to service Alberta's captive industry, Alberta should consider a freedom-of-services regime. This would permit a captive domiciling in Alberta to use the services of a captive manager based in the captive's current host jurisdiction, if the host jurisdiction permits this, for a period of one or two years; or for new Alberta captives, where the captive manager is in B.C. This will help facilitate the redomiciling and establishment of captives in Alberta while the establishment of Alberta-based captive managers can take place. Several U.S. states permit captive managers based in other states (Newton Media Ltd. 2013). While this grace period enabling non-Alberta-based captive managers will reduce the employment and economic benefits to Alberta in the short term, it will facilitate captive redomiciliations and formations, while providing time for Alberta-based captive managers to develop.

It is worthwhile to consider if captive managers would be able to practically hire and domicile in Alberta. The considerations in attracting talent in many industries are similar and include cost of living, access to high-quality services, proximity to world-class attractions, cost of real estate, taxes, culture and arts, and overall quality of life. In these areas, Alberta is competitive, which should enable it to attract top talent to be the foundation for a captive industry.

2.12.2. Self-Managed Captives

Larger captive owners that have their own in-house insurance and/or risk-management departments may have the skills and capabilities to self-manage their captive. Captive managers generally handle functions such as policy issuance, claims management, accounting, record keeping, and actuarial, and some captive owners have these skills in-house (Newton Media Ltd. 2013). Alberta should allow Canadian-based captive owners with the appropriate level of skill and capabilities to manage their captives without a captive manager. This differentiation could make Alberta a more cost-effective domicile through savings generated by performing some or all the services of a captive manager in-house.

2.13. REPORTING AND AUDIT REQUIREMENTS

In most jurisdictions, the annual requirements consist of two components. One is the audited financial statements, which are typically due anywhere from four to six months after year end. The other is the annual regulatory report, which is typically due earlier and is not audited. Domiciles specify the types and frequency with which reports must be filed with local regulatory authorities. A common requirement for U.S. jurisdictions is for annual audited financial statements to be filed by June 30 and an annual report submitted to the local regulator by March 15. Depending on the types of business written and/or the insureds of the captive, there may also be a requirement to file a statement of actuarial opinion within a set time (e.g., six months). Bermuda, in addition to the annual audited financial statements within six months of year end, requires annual actuarial certification of insurance liabilities for captives that write third-party business (Class 3 and Class 2 captives).

Barbados also requires a certificate of solvency submitted by the auditor, an actuarial review of outstanding claims if claims exceed capital and surplus accounts by 200 per cent and quarterly reporting forms 30 days after quarter ends. Some U.S. domiciles have less onerous requirements. For example, Arizona does not require a regulatory financial examination for pure captives unless there is a reason, which eliminates examiner and service-provider time and costs. The state also provides a small-company exemption of annual actuarial opinion and audit for qualifying captives (Captive Insurance Times Domicile Profile, Arizona).

Section 9 of the Insurance (Captive Company) Act of B.C. requires that captives provide the superintendent with audited financial statements and an actuarial statement annually. The superintendent retains the ability to require from the captive and its parent, at any time, information about solvency and the conduct of the captive's business. The act and the regulation do not specify a deadline for these filing requirements.

Some domiciles demand a higher burden of reporting. For example, captives domiciled in Guernsey¹⁶ must provide, within four months of year end, an up-to-date business plan, solvency information, declaration of reliance on reinsurers, auditors' management letter, and summaries of corporate governance, management accounts, claims, deposits, and investments. Ireland and Luxembourg, as EU members governed by Solvency II rules, require captives to submit an annual compliance statement with the captive's annual return, and if the captive deviates materially from the requirements, the compliance statement must include a report on any material deviations that explains the background to the breach and the actual or proposed remedial action.

We recommend that reporting requirements for captives in Alberta should be comparable to top jurisdictions, such as Bermuda and Vermont, where captives must file annual audited financial statements within six months of year end and an annual report submitted to the superintendent within three months of year end.

2.14. DIRECTORS AND BOARD-MEETING REQUIREMENTS

Certain captive domiciles require directors to travel to the domicile for board meetings. There may also be requirements for the captive to have resident (i.e., local) board members. This can mean significant travel and time costs to attend captive board meetings if the captive is domiciled in a different jurisdiction than the parent. Captives operating in domiciles with local-director requirements also incur costs to appoint locally resident directors and possibly dilute their control of the captive through the appointment of directors who are unaffiliated with the parent company.

In 2020, Alberta removed the requirement for Alberta-incorporated companies to have directors that are either Alberta or Canadian residents. This change was made to reduce the inconvenience of foreign-owned Alberta subsidiaries having to appoint Alberta residents as directors (Armstrong 2020). This change also eliminates the need for Alberta-based subsidiaries of parent companies domiciled in another Canadian province to have resident Alberta directors. This recent change in Alberta enables, for instance, an Ontario-

¹⁶ Guernsey requires captives to undertake an "Own Risk and Solvency Assessment" to determine their own solvency requirements. This assessment must be completed annually by the captive.

based company to establish a captive in Alberta without the need for and cost of appointing resident Alberta directors. This legislative change helps ensure Alberta is competitive with other captive domiciles that do not require locally resident directors.

Regarding the location of board meetings, Alberta recently passed legislation similar to that of other captive jurisdictions, such as Vermont, to enable virtual company board meetings, including electronic voting and electronic provision of meeting notices. The Alberta government noted that this change was driven by the COVID-19 pandemic, however the change is permanent (Government of Alberta 2021). This move will allow captives with parents and board members outside of Alberta to conduct board meetings virtually and will eliminate the costs and time required to travel to physical board meetings. We do not have any specific board or director requirements specific to Alberta-based captives.

3. OTHER CONSIDERATIONS (NON-REGULATORY)

3.1. QUALITY OF ANCILLARY SUPPORT SERVICES

The leading captive insurance domiciles offer strong management expertise and high-quality support services for captive management, including audit and legal services. The quality of support services depends on the availability of qualified personnel. Given that the large captive-management companies (e.g., Marsh and Aon) and the major accounting firms have offices in major captive jurisdictions, there is not a lot of difference in availability of expertise across the larger domiciles. However, the cost and availability of local talent varies. For example, Bermuda does not have enough locally available skilled resources for some jobs, such as accounting and auditing, resulting in companies hiring skilled workers from outside of Bermuda. In fact, many of the individuals providing services in Bermuda are Canadian. Some captive managers in Bermuda also outsource some of their back-office functions to Canada. Alberta does not face the same challenge. There are ample qualified professionals needed to service captive insurers, including accounting, legal and actuarial, as well as the institutional infrastructure, including banks and insurance brokers, providing access to the reinsurance market. As the cost and time required increases with respect to compliance with AML/KYC, domiciles that have strong local talent to meet the ancillary needs of captives may compare more favourably to offshore domiciles.

3.2. LOCATION: COST AND EASE OF TRAVEL

The location of the captive — onshore (domestic) or offshore — also has implications for operational costs. Local-meeting requirements imply that companies must consider the cost and ease of travelling to the captive domicile. Whether there is already a corporate presence in the domicile is an important consideration. While travelling to Bermuda from the east coast of North America is straightforward, travelling from Alberta to Barbados is less convenient, requires more time, and is more costly. For companies located in Alberta, the ease of having a local captive and the savings in travel costs may be a secondary consideration in the current climate: as companies are forced to be more transparent about environmental performance and their GHG emissions, reducing international travel is one simple tactic.

4. ALBERTA CONTEXT

When Bill 76 was introduced in Alberta, the finance minister indicated that a main objective was to provide alternative insurance coverage for industries where insurance coverage is too costly or coverage is difficult to obtain, such as energy, agriculture, and manufacturing. While enabling companies to establish captive insurance companies in Alberta could help address certain insurance capacity and pricing challenges, this objective is distinct from the intent to diversify the Alberta economy and grow the financial services sector. Further, for companies that are currently facing challenges in obtaining sufficient and reasonably priced insurance due to increasing emphasis on ESG issues, and particularly carbon emissions, allowing companies to establish a captive will not solve the problem. This is because captives typically require reinsurance, which is often provided by reinsurers who are moving away from offering coverage to insure carbon intensive companies. However, we believe that Alberta has a realistic opportunity to develop a robust captive market because of the global interest in captives, the ability of Alberta to be a competitive domicile in terms of cost, the capacity of Alberta to offer professional services that support captives, and Alberta's reputation as a jurisdiction with a robust regulatory environment and dynamic business environment.

Strong interest in captive insurance solutions has meant global growth in captives, and Canadian- and Alberta-based companies are increasingly looking at how to use captive insurance to meet their risk-financing needs. The hard insurance market over the last two years, together with the pandemic, has exacerbated risk-financing challenges. The option to have an onshore Alberta captive provides a more cost-effective and easier-to-administer alternative to Barbados or Bermuda. If the GMT is implemented,¹⁷ this will create an opportunity for Alberta to establish a competitive tax environment (neutral with Barbados and Bermuda) for captives in terms of corporate income tax, insurance-premium tax, and unlicensed-premium taxes. In addition, Alberta has the regulatory infrastructure and institutions to be attractive as a captive domicile. Existing insurance company oversight and the adoption of OSFI guidelines by Alberta provide Alberta's regulators with a foundation for the province to create a responsive captive regulator with competitive regulatory capital requirements. We believe that it is possible for Alberta to make it quick, cost-effective, and straightforward to license a new captive or redomicile an existing captive.

Here we summarize the key recommendations related to the primary considerations of parent companies when comparing captive domiciles: the regulation and regulator, formation and redomiciliation, capital and surplus requirements, taxation, and the captive environment.

¹⁷ Absent the adoption of the GMT, it is unlikely that Alberta can create a material captive market, even if Alberta agrees to make captives tax-exempt entities.

4.1. CAPTIVE REGULATION AND REGULATOR

Captive regulation in Alberta should be simple, clear, and flexible to account for different types of captives, lines of business underwritten, and captive owners. The captive regulator must be responsive, predictable, available for consultation, and provide timely responses. This necessitates an adequately resourced regulatory office. The most progressive and active domiciles routinely update captive regulations to ensure that they meet the needs of current and prospective captive owners. For instance, Vermont is a popular domicile, as the regulator has a reputation for its “knowledge, flexibility and willingness of the state’s regulatory staff to be open to new, creative solutions” (Captive Insurance Times Domicile Profile Vermont 2021). Vermont’s regulator recently simplified the processes around redemestications, conversion to and from cell-captive structures, captive mergers, and the filing of organizational documents prior to licensure.

To ensure that Alberta’s captive regulator is qualified, credible, and has the mindset of a captive regulator, which differs from a traditional insurer regulator, Alberta could attract one or two experienced captive regulators from successful captive jurisdictions. The authors are aware of newer captive domiciles adopting this approach. Alberta’s captive regulator should also ensure that it has relevant actuarial expertise around captives, particularly if Alberta decides to provide captives with an option to either use a standard formulaic approach to regulatory solvency or instead use a more bespoke actuarially driven approach.

Alberta’s captive regulator should have within its mandate the promotion of Alberta as an attractive captive-insurance domicile, similar to the mandates of captive regulators in Vermont, Labuan, Bermuda, and North Carolina. This commitment should be clearly stated; for instance, North Carolina’s captive regulator’s website notes:

“The knowledgeable and credentialed captive team is committed to customer service and have a pro-business regulatory approach. The (North Carolina Department of Insurance) NCDI is focused on consistent, reasonable and appropriate regulation. The captive team is dedicated to being responsive to the needs of the captive industry in North Carolina and easily accessible via phone, email or in person. The Commissioner and captive team are dedicated to making North Carolina the best captive insurer domicile with a leading regulatory environment.” (North Carolina Department of Insurance 2022)

Based on our review of captive domiciles and captive insurance trade publications, the most successful domiciles are ones that do not regulate captives like traditional insurers. Instead, they recognize that captives pose less risk to the financial sector, actively collaborate with the captive sector, and are resourced to meet fast application-decision timelines and respond to captive needs.

4.2. CAPTIVE FORMATION AND REDOMICILIATION

Alberta needs to have clear and practical requirements in terms of forming a captive and gaining regulatory approvals in a timely manner. The due-diligence processes, incorporation, and setup should be quick, with the regulator working to an agreed fast turnaround time for applications. Alberta should have a regulated mandate to render a determination on a captive application in a short period, such as within 20 business days for a new captive application. For example, Vermont recently made changes to no longer require certified copies of organizational documents or the contribution of capital to the captive prior to getting a licence.

A competitive regulatory framework for captive redomiciliations to Alberta is important in terms of attracting existing captive owners to the province. Alberta needs a simple, transparent, and fast process to enable offshore captives to redomicile; a regulated mandate to render a determination on redomiciliations within 15 business days; and a streamlined corporate-establishment and captive-approval process for redomiciliations from a list of pre-approved jurisdictions. Permitting non-Alberta captive managers to manage Alberta-based captives for a period of one to two years, and offering premium-tax holidays for a given period will also help make Alberta competitive.

4.3. CAPITAL AND SURPLUS REQUIREMENTS

Minimum capital requirements should be comparable to the key domiciles used by Canadian-owned captives. We suggest Alberta consider minimum capitalization of \$120,000. Regarding surplus, we recommend having a standard formulaic approach comparable to Barbados and Bermuda, together with a bespoke approach, supported by expert actuarial review, to determine required surplus. This will provide captive owners with clarity as well as flexibility to determine their surplus requirements. Alberta should also require captives to undergo regular actuarial reviews depending on the type of business underwritten and the type of insureds covered. To give captives flexibility in meeting capital and surplus requirements, the use of both regulator-approved letters of credit and intercompany loans should be permitted as admitted assets.

4.4. PERMITTED CAPTIVE STRUCTURES

To maximize the potential value to be created in Alberta by attracting and retaining captives, the province should permit PCCs/ICCs. This will make Alberta's captive market more attractive for a broader set of companies (e.g., by size and industry), providing valuable risk-financing alternatives to the commercial insurance market. Incorporating flexibility that allows the cell of a PCC/ICC to change to a different PCC/ICC or become a standalone captive is also recommended, although we acknowledge that this will require Alberta to alter its corporate law to enable PCCs and/or ICCs as a legal form in the province.

4.5. DIRECTORS, BOARD MEETINGS AND REPORTING

Alberta's current laws provide captives and their owners with the flexibility required to compete, making it unnecessary to alter existing company laws or add captive-specific regulations on local-director requirements and/or local Alberta-based board meetings. Alberta should leave it to captives and their owners to determine how best to administer and govern themselves.¹⁸

Reporting requirements should be comparable to top jurisdictions, such as Bermuda and Vermont, where captives must file annual audited financial statements within six months of year end and an annual report submitted to the superintendent within three months of year end.¹⁹

Non-reinsurance captives writing more than 30 per cent of annual premiums in long-tail classes of business (e.g., liability, employee benefits) and/or 20 per cent of premiums from insuring entities outside the legal grouping of the captive's parent (e.g., employees, contractors, customers, members) should be required annually to provide an independent actuarial opinion on the reserves and financial position of the captive, conducted by a suitably qualified actuary, consistent with Bermuda (Oliver Wyman Inc. n.d.). All other captives should undergo this process every three years to ensure that Alberta captives are appropriately reserved and have sufficient capital to pay valid claims.

4.6. TAXATION

The introduction of ES, BEPS and the GMT creates an opportunity for Alberta to develop captive tax policy that is competitive from a corporate income tax perspective. To create a competitive captive environment, Alberta should consider the avoidance of provincially levied capital taxes on captives, no (or reduced) provincial corporate income tax on captive profits, and no taxation of dividends paid from the captive to the parent company. While corporate income tax has been reported to be less important to captive owners when selecting a captive domicile, it remains one factor given the large number of low- to no-tax captive domiciles competing for business.

Alberta's punitive unlicensed-premium tax is a major obstacle to non-Alberta-based captives insuring Alberta-based risks. Other Canadian provinces also levy unlicensed-insurer premium taxes, though not as high as Alberta's. Allowing Alberta-licensed captives could allow captive owners to avoid Alberta's high unlicensed-premium tax and fronting insurer fees, if the captive decided to operate as a direct-writing captive. To further increase Alberta's competitiveness as a captive domicile, mechanisms to reduce this burden could include Alberta seeking interprovincial recognition of Alberta-registered captive insurers or by creating a government-owned licensed and rated carrier²⁰ with pan-Canadian

¹⁸ From the authors' experience, due to tax considerations it is expected that many captives will retain the services of a locally resident Alberta director and have at least one board meeting a year in Alberta.

¹⁹ Vermont Captive Annual Report (VCAR) is a Microsoft Excel spreadsheet that includes a balance sheet, cash and investment schedule, income statement and capital and surplus account details, a questionnaire, a breakdown of direct and reinsurance premiums by source (long-term care, medical professional, workers compensation, etc.), details of reinsurance ceded and assumed, unpaid loss and a list of cells and details about their ownership: <https://dfr.vermont.gov/document/vermont-captive-annual-report-vcar>.

²⁰ The potential benefits and costs of a government-owned carrier would have to be carefully evaluated. Alberta could work with interested Alberta-based captive owners to investigate pan-Canadian fronting operations to reduce fronting costs and enable more cost-effective pan-Canadian insurance, including an Alberta-captive-

licensing that can act as a low-cost frontier for Alberta captives. This government-owned frontier could move towards being captive-industry funded and owned over time.

4.7. SUPPORTIVE CAPTIVE ENVIRONMENT

Alberta should have a “one stop shop” user-friendly website (e.g., <https://www.vermontcaptive.com/>) to handle all matters of interaction between captives, entities investigating setting up Alberta captives, and the regulator. This needs to include clear guidance on how to apply, types of captives, summary of regulations, how to redomile, and capital and surplus requirements. Everything needed in the process of establishing a captive and getting it licensed should be available through this website, including appropriate contacts to answer questions. Ideally, it should offer the option to manage the entire process digitally.

In the most successful domiciles, there is a good relationship between captive regulators, owners, and service providers. Open communication and a positive relationship help create an environment where captives can flourish. Alberta should foster the creation of a captive trade association for Alberta-based captive owners. This trade association could include membership from non-Alberta-domiciled captive owners in order to gain insights into what might be done to attract their captives to Alberta. Many captive domiciles have such associations that work together with government, industry, and regulators to promote the captive domiciles and advise the regulator on how to improve the local captive-regulatory environment.

5. CONCLUSION

Recent trends present an opportunity for Alberta to design captive-insurance legislation that offers an attractive alternative to companies seeking risk-financing solutions. It is essential that the regulation ensures fast and predictable licensing and set up (or redomiciliation), is cost neutral, and has simple, reasonable requirements for capital, solvency, and reporting. It is equally important that Alberta’s captive regulator have the mindset of a captive regulator, meaning that it should appreciate the distinction between regulating traditional insurers versus captives, has a willingness to work with the captive industry, and is responsive to regulatory changes taking place in the competitive captive marketplace.

industry and/or government-sponsored rated carrier.

APPENDIX

*Table 1: Comparison of Captive Domiciles – Offshore

Domicile	Bermuda	Barbados	Cayman Islands
Number of captives (end of 2020)	680	279	652
Allows cell captives	Yes	Yes	Yes
Class description	Class 1 - Single-parent. Underwriting related risks only	Class 1 - At least 80% related risks	Class Bi - At least 95% of NPW from related risks
Minimum capital in local currency	Greater of (a) \$120,000, (b) 20% of the first \$6M of net premiums written (NPW) + 10% of the excess of \$6M of NPW, OR (c) 10% of loss reserves	\$250,000 BBD = \$125,000 USD	\$100,000 USD
Solvency / surplus in local currency	Relevant assets >= 75% of relevant liabilities	During 1st year - Assets > liabilities by \$125,000. Subsequent years - (a) If last year's premium income is \$750,000 to \$5M => 20% of last year's premium income, (b) If last year's premium income above \$5M => \$1M + 10% of last year's premium income above \$5M	Based on "Prescribed Capital Requirement" which is calculated solely based on unrelated business
Letters of credit acceptable	Yes	Yes	Yes
Combined local / federal corporate income tax rate	0%	0%	0%
Insurance premium tax rate	0%	0%	0%
Maximum timeline for regulator decision on an application (AON)	1.5 to 2.5 months	1.25 to 2 months	2 to 3 months
Incorporation fees	\$2,095	\$125	\$500 KYD = \$410 USD
Annual licencing fee	\$2,250	\$25,000 BBD = \$12,500 USD	\$10,365.85 USD
Initial application fee	\$800 + 2,250	\$500 + \$12,500 USD	\$10,365.85 USD
Local office and director residency	Principal office and representative in Bermuda. Min. 1 resident director and 1 resident secretary, Or 2 resident directors.	Resident registered agent.	Resident registered agent. Min. 2 directors. No requirement for director residency.

Domicile	Bermuda	Barbados	Cayman Islands
Reporting requirements	Annual audited financial statements within 6 months of year end. Annual actuarial certification of insurance liabilities for Class 3 and tri-annually for Class 2.	Annual audited financial statements within 6 months of year end. Certificate of solvency submitted by auditor, actuarial review of outstanding claims if claims exceed capital and surplus accounts by 200%. Quarterly reporting forms due 30 days after calendar quarter ends.	Annual audited financial statements within 6 months of year end.
Relocation exit requirements	Letter of no objection from BMA. Corporate approval and 14 day notice for discontinuance under the Companies Act.	Letter of no objection. Must not adversely affect creditors and shareholders. Corporate approval. Rules on corporate mobility are in section 256.4 of the Companies Act.	Letter of no objection from CIMA. Must pay 3x annual registry fee. Corporate approval.

Table 2 Comparison of Captive Domiciles – Onshore

Domicile	British Columbia	Vermont	North Carolina	Guernsey
Number of captives (end of 2020)	21	590	250	191
Allows cell captives	No	Yes	Yes	Yes
Class description	Pure captive – only insures parent’s risks	Pure captive – only insures parent’s risks	Pure captive – only insures parent’s risks	Pure captive – only insures parent’s risks
Minimum capital in local currency	\$200,000 shareholder equity + \$100,000 reserves after initial registration	\$250,000	\$250,000	£100,000
Solvency / surplus in local currency	\$200,000 shareholder equity + \$100,000 reserves after initial registration. Regulations can specify a particular amount	Determined by the regulator	Determined by the regulator	Greater of (a) 18% of the first £5M of net premium income + 16% of net premium income above £5M, OR (b) 5% of value of the loss reserves. Insurers are required to undertake an Own Risk and Solvency Assessment at least annually.
Letters of credit acceptable	Yes, with the Superintendent’s approval	Yes	Yes	Yes for Class 2
Combined local / federal corporate income tax rate	12% Provincial 28% Federal	8.5% State 21% Federal	0% State	0%

Domicile	British Columbia	Vermont	North Carolina	Guernsey
Insurance premium tax rate		Max \$200,000. 0.38% (\$0-20M), 0.285% (\$20-40M), 0.19% (\$40-60M), 0.072% (\$60M+)	Max \$100,000, or \$200,000 for protected cell captives with more than 10 cells 0.4% (\$0-\$20M), 0.3% (\$20M+)	0%
Incorporation fees	\$380	\$125	\$125	£100
Annual licencing fee	\$2,500	\$500	No fees (except Special Purpose Financial Captive application fee)	£5,714
Initial application fee	\$500	\$500	\$0	£5,714
Local office and director residency	Must maintain a registered office and a records office in British Columbia. At least 1 director.	Min. 2 directors, of which 1 must be resident.	Min. 1 director or manager must be resident.	Equitable balance between local and non-local directors. General representative in Guernsey.
Reporting requirements	Annual audited financials and actuarial statements.	Annual audited financial statements by June 30. Annual report to Commissioner by March 15.	Annual audited financial statements by June 30. Annual report to Commissioner by March 15.	Within 4 months of year end. Business plan, Solvency info, Reinsurance info, Audit letter, Corporate governance summary, Summary of management accounts, claims, deposits and investments.
Relocation exit requirements	Min. 30 day written notice to Superintendent before ceasing to do business. MUST obtain reinsurance, surrender or discharge of insurance contract from the insured & written consent of insured.	Fillable form available. May apply for dormant status.	A captive is inactive if it has no liabilities.	

*A more comprehensive table is available by contacting the authors.

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