

# OPEN FOR BUSINESS

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Connecticut's revised law expressly recognises different types of captives and provides a \$7,500 first-year tax credit

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**O**n 27 October 2011, Connecticut Governor Dannel Malloy signed into law An Act Promoting Economic Growth and Job Creation in the State<sup>1</sup> (the "Act"), which is intended to spur the creation of new jobs, encourage innovation and entrepreneurship, and strengthen the state's overall competitiveness. This article highlights the provisions of the Act, which revise Connecticut's existing captive insurance law and make Connecticut a more attractive domicile for captive insurance companies. They include a first-year tax credit for newly established captives in the amount of \$7,500, more fully developed provisions on what constitutes "common ownership and control" for

the purpose of aggregating tax liability among multiple insurers, and the express recognition of different types of captive entities. Moreover, the more comprehensive law should simplify for Connecticut-domiciled captives the task of satisfying IRS consideration of the rigor of captive insurance regulation as part of the test of whether the captive conforms with commonly accepted notions of an insurance company.

Captive insurance companies are most often established with the specific objective of financing the risks of their parent group or groups and sometimes also insuring the risks of the group's customers. To date, more than 5,000 captives have been formed worldwide; however, since the passage of Connecticut's original captive insurance statute<sup>2</sup>, enacted in 2008, no company has as yet chosen Connecticut for its captive domicile.

Connecticut's original statute<sup>3</sup> and its revision were modelled in large part after its counterpart in Vermont, which is the most popular US domicile with more than 900 captives formed under its laws. Connecticut insurance commissioner Thomas Leonardi said: "This updated captive law reinforces the State of Connecticut's position as the insurance capital of the United States. To be attractive to captive insurance companies, the state and its insurance department must have flexibility to set the reserve requirements of the captives based upon their performance. We look forward to welcoming those captives that are well-managed and well-capitalised."

The revisions to Connecticut's insurance statute should increase certainty with respect to what is covered under the statute. The Act also codifies the commissioner's discretion in certain instances. For example, the revised statute broadens the types of insurable losses eligible for recovery by the captive insurer to "any kind of loss, damage or liability properly a subject of insurance, if such insurance is not prohibited by law or is not disapproved by the commissioner as being contrary to public policy". Previously, it was unclear whether certain types of losses would be eligible for coverage by a Connecticut-domiciled captive insurance company.

The Act initially provided for the creation and operation of, and regulatory matters with respect to, "pure" captive arrangements. The revisions now re-

by the Commissioner. The minimum requirements remain the same for all captives as initially under the Act, except for association captive insurance companies, for which such requirement has been reduced from \$750,000 to \$500,000.

**Premium tax and financial incentive**

The tax levied on premiums collected by captive insurance companies, payable by March 1 annually, remains unchanged, but the Act now provides for tax rates on reinsurance premiums. The premium tax rates are as follows:

Connecticut provides the incentive of a first-year tax credit in the amount of \$7,500, which is the amount of the minimum tax set by the statute.

The new law provides that one or more captives under common ownership and control shall be taxed as though they were a single captive insurance company. By providing a definition for “common ownership and control”, the statute enables more certainty with respect to a captive’s tax planning. In the case of sponsored captive insurance companies, the statute clarifies that each protected cell is treated as a separate captive insurance company owned and controlled by such protected cell’s participants.

**Insurance department funding and resources**

Under Connecticut’s new legislation, which goes into effect on 1 July 2012, a “Captive Insurance Regulatory and Supervision Account” will fund staff positions and other expenses related to the regulation of captives. This account is funded by eleven percent (11%) of the premium taxes paid by captives, and by fees and assessments collected by the Commissioner. Two percent (2%) of the account may be transferred to the Department of Economic and Community Development for the purpose of promoting the captive insurance industry in Connecticut. With the new law, the Department of Insurance (DOI) is expected to add four to five positions to its staff.

**Excess workers’ compensation insurance**

The Act enables any captive to provide excess workers’ compensation insurance to its parent and affiliated companies, unless prohibited by the laws of the state having jurisdiction over the trans-

CAPTIVE TYPE	CAPITAL AND SURPLUS REQUIREMENT
Pure captive	Not less than \$250,000
Association captive	Not less than \$500,000
Industrial insured captive	Not less than \$500,000
Risk retention group	Not less than \$1,000,000
Sponsored captive	Not less than \$500,000
Special purpose financial captive	Not less than \$250,000
Sponsored captive licensed as a special purpose financial captive	Not less than \$500,000

PREMIUM AMOUNT	TAX RATE ON DIRECT PREMIUMS	TAX RATE ON REINSURANCE PREMIUMS
First \$20m	0.38%	0.214%
Next \$20m	0.285%	0.143%
Next \$20m	0.19%	0.48%
Over \$60m	0.72%	0.24%

action, or by federal law. Furthermore, any captive may reinsure a workers’ compensation qualified self-insured plan of its parent and affiliated companies, unless prohibited by federal law.

**Conclusion**

With the amendments to Connecticut’s captive insurance laws in place, it is now the objective of Connecticut’s Department of Economic and Community Development to promote the benefits of a Connecticut domicile, which include being a member of the business community in the nation’s insurance capital with its 150-year history of insurance expertise, well-developed regulation and a Governor who stresses the im-

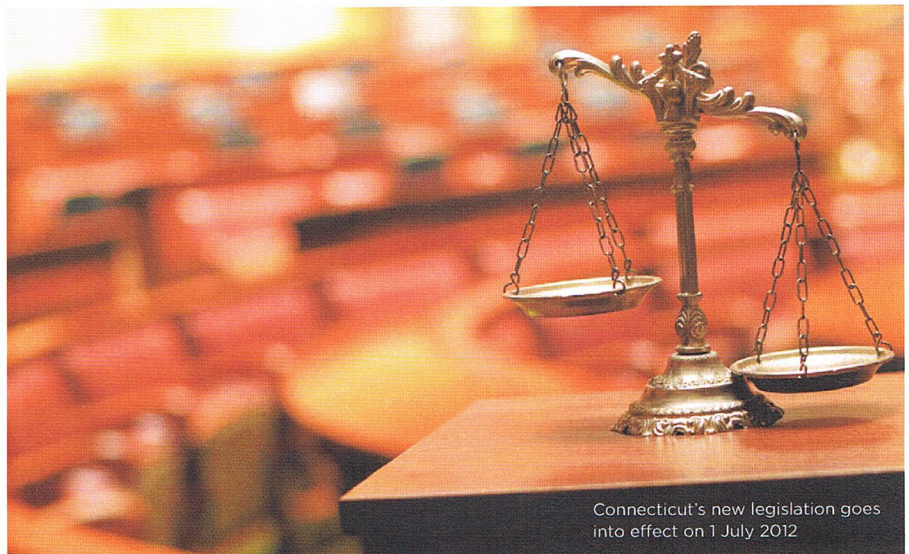
portance of insurance to his state. Connecticut will no doubt in the future be at the forefront of captive jurisdictions, which serve captives of all sizes and types and offer any category of insurance product.

<sup>1</sup>Public Act No. 11-1

<sup>2</sup>Public Act No. 08-127, An Act Concerning Captive Insurance Companies

<sup>3</sup>The revisions are based, in part, upon recommendations of the authors and their colleagues within the Captive Insurance Group at Anderson, Kill & Olick, P.C., which opened an office in Stamford, Conn. in January 2011.

<sup>4</sup>An “alien captive insurance company” is defined by the new statute as any insurance company formed to write insurance business for its parent and affiliated companies and licensed pursuant to the laws of another jurisdiction that imposes statutory or regulatory standards on companies transacting the business of insurance in such jurisdiction that the commissioner deems to be acceptable. Public Act No. 11-1, Sec. 55(2).



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