

Foreword

Many lawyers who do not include captive insurance planning as a part of their practice could very well encounter a captive insurance issue at some point in their career. This is due to the fact that most of the Fortune 500s as well as many mid-sized (and even small) businesses and tax-exempt organizations participate in captive insurance structures.

As this book will demonstrate, captive insurance as field of practice can be portrayed pictorially as a Venn diagram, with various overlapping and subsuming circles representing legal and nonlegal practice areas such as taxation (domestic, foreign, state and local), insurance (regulatory, coverage, reinsurance, etc.), securities, commercial transactions, employee benefits, tax controversy, actuarial science, underwriting, etc.

A business lawyer might be required to give special attention to an M&A transaction where a target company participates in a “captive program,” a term that might be foreign to the lawyer. Alternatively, a lawyer might be asked whether a client must hold a meeting related to its captive, and whether the meeting can be held in the place most convenient to the owners. The lawyer must most likely dig deeper upon further review to examine program documents, governing law of the captive program, and other insurance and tax issues. Or, a lawyer might be consulted regarding the deductibility of premiums paid to a captive because the lawyer specializes in taxation, requiring opening Subchapter L, perhaps for the first time. A client may contact a lawyer regarding a sales pitch involving a captive that will help the client save income taxes and pass wealth to family members. Perhaps the lawyer will be asked to sign off on documents related to the entry or exit of a captive structure, or respond to an IRS request for information related to the client’s participation in a captive program.

This book will help the lawyer understand the issues involved with situations like this and much more. Although a single lawyer most likely cannot handle every issue that arises in the context of captive insurance, this book should help the lawyer identify the issue and if not address the issue, point the lawyer in the right direction to provide helpful assistance.

This book consists of contributions from accomplished and well-regarded professionals of various areas of expertise, with two chapters presented as first-person accounts of the Vermont captive regulator and former in-house counsel for a Fortune 500. This book begins with a discussion of types of captives, addresses how one would approach whether a captive makes sense for a business owner, and then focuses on various aspects of the captive’s operation and management, from taxation, special uses, and regulation to eventual exit and potential tax litigation issues.

Many of the contributing authors have presented on these topics for the American Bar Association's Captive Insurance Companies Committee in the Business Law Section. The committee has accumulated these presentations for free access to its members. This book represents a compilation of many of these efforts; however, much more, including breaking news items, can be obtained through committee membership (open to all, including non-lawyers). It has been an absolute pleasure serving as a chair of the committee, and a truly captivating experience working with these co-authors.

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