

Webb & Morton, PLLC
Captive Insurance Legal Expertise
Captive Insurance Company Feasibility Study

The first significant step to owning your own Captive Insurance Company begins with a Captive Feasibility Study. Each Captive Feasibility Study should be custom tailored to meet your individual needs. This means that your Captive Feasibility Study will be developed using your data not industry wide data, and all recommendations will be tailored to your unique business and personal goals. Your customized Captive Feasibility Study will answer most, if not all, of the questions you have regarding the costs and benefits of owning your own Captive Insurance Company. Although it is not as detailed as the Captive Business Plan which is required to form a Captive, it does provide an excellent executive overview and summary of the most important aspects of your Captive. Your customized Captive Feasibility Study should contain the following key components:

- **A Multi-Year Cost Benefit Analysis.** You will be provided a cost benefit analysis which will compare the economics associated with forming a Captive Insurance Company to the economics associated with not forming a Captive. The Cost Benefit Analysis will usually compare these two scenarios over a 1, 5, 10, 15, and 25 year time frame. You should think of having a Captive as a long-term commitment.
- **5 Years of Pro Forma Financial Statements.** You will be provided 5 years of Pro Forma Income Statements and 5 years of Pro Forma Balance Sheets for your Captive. Each annual statement will include estimates of your Captive's: premium income, investment income, loss costs and other operating expenses, profits, cash and other assets, liabilities, capital and surplus. Each statement should also include a calculation of the minimum required capital and solvency margin, and the minimum required reserves levels which your Captive must maintain in order to be a licensed insurer in the chosen domicile.
- **Captive Insurance Tax Analysis.** You will be provided an analysis of the impact that forming a Captive Insurance Company will have on the State and Federal Taxes which you and your business(es) currently pay. This will include a review of your current State Business and Personal Income Tax Rates and potential savings, as well as a review of your current Federal Business and Personal Income Tax Rates and potential savings. It will also include a summary of IRS Safe Harbor Rulings as well as the tax incentives which are currently available to small property and casualty insurance companies under Section 831 and Section 162 of the Internal Revenue Code. For clients who currently own voting stock in a privately held insurance company, we will also include a review of the effect which the "Controlled Group" statutes found in IRC Section 1563 will have (if any) on the Captive's taxation under IRC Section 831. Additionally, your customized Captive Feasibility Study will also contain a review of the costs and benefits associated with obtaining an IRS Private Letter Ruling on your Captive (if one is desired). Finally, you will be provided with an analysis of the decided tax cases that might affect your decision to own a Captive.

- **Identification of the Specific Insurance Coverage and Limits Your Captive Will Provide.** The Feasibility Study will identify specific commercial property and casualty risks, as well as liability risks, which you are not currently insuring through the commercial market. Many of these can and should be insured by your Captive. It will provide you with a list of suggested Coverages your Captive should provide including Limits of Insurance and rough Premium estimates.
- **Meeting Your Captive Reinsurance Needs.** You will be provided with sample Reinsurance Agreements which your Captive may utilize in all of its reinsurance transactions. You will also be provided with a list of qualified reinsurers who can meet all of your reinsurance needs at an affordable low price. Finally, we will make the necessary introductions when the time is right.
- **Document the Captive's Business Purpose.** Your Captive Feasibility Study will begin by documenting several business purposes for creating your Captive Insurance Company. It is important to clearly document your rationale for establishing a Captive Insurance Company in order to satisfy IRS requirements that require a valid "business purpose" for creating or operating a company, especially one which uses tax incentives (IRC Section 831 (b)). The domicile regulator (in NC, the Department of Insurance, Captive Division) will also require clear statements of business purpose.
- **Selecting the Best Domicile for Your Captive Insurance Company.** We will help you to select the best domicile in which to incorporate, license, operate and manage your Captive. This is often one of the more difficult choices. Since we were heavily involved with establishment of North Carolina as a captive domicile and have worked closely with the NC Department of Insurance to implement wise regulatory procedures, we will weigh that knowledge and experience heavily in the scales before recommending another USA domicile or a foreign domicile. However, special circumstances or requirements will sometimes indicate a non-NC choice of domicile.
- **Captive Structure Selection.** We will help you select the Captive structure which best meets your needs (i.e. Single Parent Captive, Association Captive, Group Captive, Industrial Insurance Captive, Rent a Captive, Sponsored Captive, Protected Cell Captive, or Segregated Account Captive).
- **Captive Ownership** - We will advise you on the most tax efficient and asset protected arrangement for ownership of your Captive. For example, we may recommend a limited liability company ("LLC") to hold the Captive, but with a portion of that LLC in turn owned by either a domestic or foreign asset protection trust. There are many important factors to consider in this analysis.
- **Captive Management** – You must take a significant and meaningful initial and on-going role in the formation and operation of your Captive. There must be a significant financial and time commitment by the senior management of the Parent and other operating entities that will be insured. A Captive is a keystone for a well thought out risk management program. However, it is a specialized business function with strict regulatory oversight. Consequently, the regulator will require you to have an approved Captive Manager. We know many of the managers (especially those in NC). We will assist you in selecting the right one.

SUMMARY

The Feasibility Study is the crucial first step in the Captive ownership and formation decision-making process. All other steps move forward from this crucial first step.

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