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O Captive! My Captive! Alberta's Captive Insurance Company Legislation is Effective July 1, 2022 - Do You Know the Opportunities?

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On June 1, 2022, Alberta Treasury Board and Finance released the much-anticipated regulations to the *Captive Insurance Companies Act*.¹ Both the Act and the regulations will **come into force on July 1, 2022**.

The Act represents a great opportunity for businesses and associations alike to help address several business issues they face in a hard insurance market where, increasingly, more insurers and reinsurers are scaling-back – or pulling-back completely – capacity for certain risks such as oil & gas, cyber, and directors & officers liability, just to name a few. It also represents an opportunity for Alberta to establish itself as a preferred, business-friendly domicile for captive insurance companies outside of the more traditional jurisdictions such as Barbados, Bermuda, and Cayman Islands.

Let's explore this a little further by answering some questions, starting with some basics and then highlighting some important aspects of the Act.

1. What is a captive insurance company and what can one do for me?

In short, a captive insurance company (a Captive) is a licensed insurance company whose main purpose is to insure its owners. Having a Captive able to insure its owners can be of great value in situations where, for example, the owners have issues securing insurance coverage in commercial markets for any number of reasons – including where their line of business has ceased to be a desirable risk for traditional insurance companies or the commercial insurance premiums are too high. On the other hand, if the risk management practices and procedures observed by the owners are so good that they have minimal if any claims but require insurance for their operations, they may establish a Captive to insure themselves (and indirectly pay themselves) the premiums they would otherwise pay to a traditional insurance company for the same insurance coverage.

2. What types of Captives will be permitted in Alberta?

Under the Act, the following types of Captives can be formed:

Pure Captive

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This is a Captive that insures the risks of its parent company and its parent company's affiliates, in addition to the officers, directors, employees, agents and independent contractors of itself, its parent and its parent's affiliated entities against losses while acting on behalf of itself, its parent or its parent's affiliated entities.²

Sophisticated Captive

This is a Captive that insures the risks of the sophisticated insureds that comprise its sophisticated insured group and their affiliated entities, in addition to the officers, directors, employees, agents and independent contractors of itself, a sophisticated insured in its sophisticated insured group or the sophisticated insured's affiliated entities against losses while acting on behalf of itself, the sophisticated insured or the sophisticated insured's affiliated entities.³

A “**sophisticated insured**” is an insured person who, in the Alberta Superintendent of Insurance's opinion, has expertise in insurance matters and whose aggregate annual premiums for insurance on all risks insured by an insurer total at least \$500,000.^{4, 5, 6}

Association Captive

This is a Captive that insures the risks of its association, the member organizations of its association and their affiliated entities, and the officers, directors, employees, agents and independent contractors of itself, its association, a member organization of its association or the member organization's affiliated entities against losses while acting on behalf of itself, the association, the member organization or the member organization's affiliated entities.⁷

An “**association**” is an association of persons, the member organizations of which, or which does itself, whether or not in conjunction with some or all of its member organizations, own all of the Captive's shares (if a body corporate) or own all of the partnership interests in the Captive (if formed as a limited partnership).⁸

3. What forms of ownership structures for Captives will be permitted in Alberta?

The Act will permit Captives to be formed as either (i) a body corporate incorporated under the *Business Corporations Act*⁹ or (ii) a limited partnership under the *Partnership Act*¹⁰ provided that the limited partnership has a sole general partner and the general partner is incorporated as a body corporate under the *Business Corporations Act*.¹¹

4. What kinds of business will Captives be permitted to undertake in Alberta?

Captives will be permitted to undertake the business of direct insurance¹² (as described at #2 above for each type of Captive), which includes any activity that is reasonably ancillary to the business of insurance.¹³

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Captives will also be permitted to assume (reinsure) risks from any other insurer or reinsurer and cede (reinsure) its own risks to any other insurer or reinsurer.¹⁴

Notwithstanding the above, Captives will *not* be permitted to insure or reinsure surety risks.¹⁵

5. What are the capital requirements to form and maintain a Captive in Alberta?

Before a Captive may obtain a license to carry on the business of insurance in Alberta, it must have an initial minimum base capital of the *greater* of the following:

- i. \$250,000 (if a Pure Captive) or \$500,000 (if a Sophisticated Captive or an Association Captive);¹⁶ or
- ii. an amount higher than (i) as determined by the Minister after taking into account the nature of the Captive's business, the expected volume of business, and any restrictions on its business.¹⁷

On an ongoing basis, the Captive must maintain a level of capital that is equal to or exceeds the minimum amount of capital required as calculated using the Minimum Capital Test that is made available by the Minister.¹⁸

6. What if I already have a Captive operating in another jurisdiction. Can I move it to Alberta?

Yes. The Act will allow Captives formed and operating outside of Alberta to transfer to Alberta (or "redomesticate"), if such Captive applies for a license under the Act, is otherwise eligible to be licensed as a Captive under the Act, and the Minister approves.¹⁹ A Captive that redomesticates to Alberta has, subject to all applicable laws, all of the rights, duties, and liabilities of a Captive that was formed under the Act.²⁰

7. British Columbia already has Captive legislation. What's the main difference between the Alberta Act and British Columbia's Captive legislation?

The main difference between Alberta's Act and British Columbia's *Insurance (Captive Company) Act*²¹ is that Alberta will permit Captives to be formed as a limited partnership. The availability of a limited partnership structure may permit owners (and associations in particular) to limit their exposure in a manner similar to a segregated cell structure available in offshore Captive jurisdictions.

Conclusions

Once in force, the Act will provide businesses and associations with the option to use Alberta as their preferred jurisdiction of choice to establish (or redomesticate) their Captive to pursue alternative risk transfer solutions that benefit their businesses and operations. Depending on the motivation and insurance business

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acumen of a Captive's owner(s) and those who will manage it, the prospect of offering reinsurance to other licensed insurers offers the potential for a promising revenue stream if done correctly.

In addition, the Act will allow Alberta an opportunity to establish itself as a desired jurisdiction to establish and run a Captive, which may have a knock-on effect of, among other things, spurring the development of an industry of complementary service providers to the Captives themselves.

While the expected timelines for establishing a Captive in Alberta remain uncertain, in our experience, establishing a Captive takes much less time than establishing a traditional insurer or reinsurer. In addition to this, Alberta has given every indication of its desire to be a preferred Captive jurisdiction, which we expect will only lead to its efficient processing of Captive applications.

¹ SA 2021, c C-2.4.

² *Ibid*, s 27(1).

³ *Ibid*, s 27(3).

⁴ *Ibid*, s 27(3)(a) and (b).

⁵ *Ibid*, s 1(1)(o)(ii).

⁶ *Captive Insurance Companies Regulation*, Reg. 196/2022, s 2.

⁷ *Supra* note 1 at s 27(2).

⁸ *Ibid*, s 1(1)(b).

⁹ RSA 2000, c B-9.

¹⁰ RSA 2000, c P-3.

¹¹ *Supra* note 9.

¹² *Supra* note 1 at s 3(1)(a).

¹³ *Ibid*, s 3(2).

¹⁴ *Ibid*, s 28.

¹⁵ *Supra* note 6 at s 11.

¹⁶ *Ibid*, s 3.

¹⁷ *Supra* note 1 at s 18(1)(b).

¹⁸ *Supra* note 6 at s 4.

¹⁹ *Ibid*, s 13.1(1).

²⁰ *Ibid*, s 13.2(2).

²¹ RSBC 1996, C 227.