



# Structuring Multinational Insurance Programs: Solvency II and its Potential Impact on Captive Insurance Companies — Considering the Alternatives

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## Structuring Multinational Insurance Programs: Solvency II and its Potential Impact on Captive Insurance Companies – Considering the Alternatives

By Suresh Krishnan, Richard Sica, Dan Brown, Barry Leigh Weissman

June 2011



### I. Overview

The role of captive insurance companies in global risk management strategies is at an inflection point as Solvency II<sup>1</sup> moves toward implementation.

As currently proposed, Solvency II may challenge many of the benefits offered by captives to multinational enterprises. A prudent approach to risk management requires an evaluation of the impact of Solvency II and the consideration of alternative approaches.

Multinational enterprises have increasingly included single-parent captives or group-owned captives as part of their insurance programs for managing, financing and bearing risks, typically as reinsurers of their own global risks, and, in certain circumstances, as direct insurers of those risks.

Multinational enterprises that purchase global insurance coverage from multinational insurance companies and then arrange for the reinsurance of such coverage to their captives have particularly complex requirements, including the need for consistency with respect to limits, types of coverage, and risk transfer terms for their worldwide exposures. They also desire to control the type and scope of coverage purchased at the local level. Such multinationals seek to obtain the most favorable risk transfer terms and pricing available from a consolidated purchase of coverage and then reinsure some or all of their exposures to their captives. They expect service from their insurer, including consolidated loss information with respect to each subsidiary, affiliate, and joint venture partner (i.e., their “affiliated entities”).<sup>2</sup> Moreover, as many multinationals consolidate risk management functions within the parent, the parent often takes the lead in negotiating and arranging insurance policies and reinsurance contracts for its captive(s) to provide consistent worldwide coverage, terms, and limits.

When considering where to establish a captive, sophisticated multinational enterprises have taken advantage of various jurisdictions’ relatively low capital requirements, minimal governance obligations, advantageous tax treatment, and other beneficial aspects of the regulation of captive insurers. However, depending upon how Solvency II requirements are finally promulgated and implemented over the next 18 months, the current benefits conveyed by certain jurisdictions and the current assumptions behind using captives may be challenged. As such, multinational enterprises have begun considering alternative arrangements that may effectively emulate the benefits of captives in order to fill the gaps caused by shifting regulatory parameters and current uncertainties.

Based on the current versions of the Solvency II Directive, the cost-benefit analysis of maintaining a captive may need to be revisited based on new capital requirements and the management supervision rules that are recommended for implementation. Under the current Solvency II Directive, many of the underlying assumptions behind captives as an effective or efficient method for managing multinational exposures may need to be reevaluated to reflect a standard similar to the standard required of a commercial insurer. The insurance market has foreseen this challenge and has been rapidly developing alternative structures that allow multinational enterprises to participate in the risk management process and ultimately retain much of the insured risk just as they have been under the current captive insurer regulatory milieu.

One such alternative is the Deductible Recovery Structure,<sup>TM</sup> which facilitates a multinational enterprise’s management of its global exposures through the use of large deductibles in insurance policies issued to the parent company. Regardless of what final form Solvency II regulations ultimately take, any multinational enterprise that includes a

captive insurer in its current or contemplated global risk management program should closely follow (a) the development of Solvency II, and (b) the development of products designed to address changes necessitated by Solvency II.

This paper summarizes some key assumptions behind the role that a captive plays in a multinational insurance program and assesses how those assumptions may be challenged by the Level 1 Directive and the Level 2 Guidance discussions currently underway to implement Solvency II. It analyzes some of the uncertainties that may adversely impact many of the assumptions behind using captives, from capital and solvency requirements to management issues, and recommends that risk managers and captive managers thoroughly consider alternative risk management techniques in light of the current uncertainties about the implementation of Solvency II. It also addresses the scope and influence of Solvency II, whether it will impact jurisdictions outside the European Union, and how certain “captive friendly” jurisdictions are responding to the development of Solvency II. It also identifies some of the reinsurance issues impacting captives, which remain unaddressed in the reinsurance regulatory platforms proposed in the United States. Finally, this paper provides an alternative risk management structure to captives for consideration, which achieves a substantially similar risk management result.

## 2. Current Use of Captives by Multinational Enterprises

Although there are exceptions, a pure captive insurance company is typically formed to insure or reinsure only the risks of its affiliates. More generally, captives are organized to provide a non-insurance company or group with greater flexibility in placing worldwide insurance programs for group members, and to permit the non-insurance entity to retain within the group some level of premium associated with assuming the risks of the group. Captives provide an important risk management tool for multinational companies by providing an alternative solution for risks which may not be available in the commercial insurance market and in many cases add a supplementary level of protection (e.g., (re)insuring deductible exposures via deductible buyback policies).

Forming a captive allows the parent company access to a broader range of insurance markets, especially the reinsurance markets; provides greater flexibility in arranging varied layers and lines of insurance for its affiliated business entities; and potentially allows for advantageous tax treatment. In addition, management of a captive may be placed with an

experienced, independent management company that oversees and implements the underwriting and management guidelines that are required by the parent company to achieve the cost savings goals of owning and operating a captive.

In recognition of their unique characteristics, the regulation of captives is generally less onerous than for commercial insurers including minimal management requirements and low capital investment. Because the policyholders “at risk” are usually the corporate members of the group (i.e., there are typically no third party consumers at risk of losing coverage benefits if the captive insurer is undercapitalized), the capital requirements for captives tend to be minimal even though the solvency margins may be identical to a commercial insurer. Since the captive’s policyholders consist of a very narrow set of affiliated entities, the form of the policies issued by a captive tend to be customized policies tailored for the risk appetite of the group. In particular, the terms of the policies tend to be drafted with the intent to provide insurance terms that will substantially match the terms of the excess coverage the parent will purchase above any layers to be assumed by the captive. Although this provides a great degree of flexibility, as a practical matter the policy form is somewhat constrained by the terms of commercially available (re)insurance agreements.

The minimum required capital to form a captive insurer can vary greatly, but is generally much less than the capital required to form a commercial insurer. Minimum capital and surplus requirements in the U.S. vary by state and can be as low as \$250,000 but are frequently set between that figure and \$3,000,000.<sup>3</sup> In Bermuda, on the other hand, minimum capital is set on a sliding scale between \$120,000 and \$1,000,000.<sup>4</sup> Thus, there is a great deal of flexibility in the minimum capital requirement based in large part on where the captive is formed. In practice, however, the more critical issue is whether the captive desires to insure large single risks, because many regulators restrict a captive’s ability to assume such risks. A common single risk limit is 10% of the captive’s capital, which means that the most coverage a captive can retain for a single exposure is 10% of its capital.<sup>5</sup> Thus, the captive would then need to obtain reinsurance for the amount of the risk in excess of the per risk limitation based on the amount of capital it actually holds.

Although this constrains the capitalization of captives to some degree, the overall flexibility of the minimum capital requirements is currently a significant feature of captive formation and operation. Based largely on these factors, captives

have been a cornerstone for global risk managers looking for a centralized, cost-effective, and regulatory-friendly way to manage their worldwide insurance exposures. However, many of the perceived advantages of captives have come under scrutiny in the current dialogue regarding the negotiations, drafting, and ultimate implementation of Solvency II.

### 3. Anticipated Impacts on Captives Resulting from Solvency II

It is important to note that the impact of Solvency II on the use of captive insurers is not yet known because the Level 2 guidance is not anticipated to be promulgated until mid-2011. Nonetheless, issues such as capital requirements, solvency requirements, financial reporting requirements, corporate governance and other areas have been explored and advice issued with respect to how captives fit into the Solvency II regime. These requirements raise significant concerns about the traditional assumptions behind the role of a captive in a risk management program.

#### a. Distinction between a commercial insurer and a captive is not yet clear

A “captive” is broadly defined in the Level 1 Directive as an insurance or reinsurance company established by a parent firm for the purpose of (re)insuring the exposures of the parent or its affiliates.<sup>6</sup> Even though Solvency II is intended to achieve a high degree of convergence in regulatory standards, there is nevertheless a degree of flexibility in the implementation of standards from one Member State to another.<sup>7</sup> In so doing, Solvency II recognizes the importance of the proportionality principle—that it may not be appropriate to enforce the Directive, without qualification, evenly across all captives and commercial insurers.<sup>8</sup> Rather it may be advisable to distinguish between commercial insurers and those captives that have unique features and risk profiles, which ultimately may contribute to lower systemic risks.

The precise impact of this flexibility is yet to be



determined, and continues to be discussed as part of the Level 2 guidance process. This is due at least in part to the overarching position stated in the Prologue to the Directive that captives should be treated the same as other insurance and reinsurance undertakings unless specifically provided otherwise.<sup>9</sup> In addition, in those cases where captives write third party as well as affiliated entities’ risks (i.e., they are not “pure” captives), there continues to be a degree of uncertainty about whether the risk profile of such entities is more closely aligned with commercial (re)insurance companies or captives. These and other issues fuel the debate about the appropriate definition and role of captives, and the degree of regulation applicable to them, under Solvency II.

#### b. Solvency requirements might not distinguish between a captive and a commercial insurer

One of the key issues for consideration when analyzing Solvency II’s financial impact on captives is that using the standard formula for the Solvency Capital Requirement (“SCR”) for a captive may result in a much higher level of required minimum capital for captive insurers than for commercial (re)insurers because the current formulae do not necessarily distinguish between the business model of captives and commercial (re)insurers.<sup>10</sup> For example, the book of business (re)insured by a captive may not be as diverse as a commercial insurer, and may not be underwritten to generate an underwriting profit. The standard Solvency II formula (even using a modeling system tailored to the captive’s book of business) may penalize the captive and require additional capital, depending on how the Directive is actually implemented under the Level 2 guidance.<sup>11</sup> This would in turn become a financial burden for the group and might make the use of captives financially impractical for reasons unrelated to the actual risks assumed. Consequently, the result could be an increase in costs ultimately passed down to a consumer. The actual impact on captives, therefore, turns in large part on the extent to which the potential flexibility granted in the Directive is actually recognized and implemented in the yet-to-be-released guidance.

Multinational enterprises that purchase global insurance coverage from multinational insurance companies and then arrange for the reinsurance of such coverage to their captives have particularly complex requirements, including the need for consistency with respect to limits, types of coverage, and risk transfer terms for their worldwide exposures.

The recently reported results of the Quantitative Impact Study 5 (“QIS5”) do not necessarily clarify the uncertainty in this regard. On the one hand, the advisory body providing guidance with respect to developing the Level 2 guidance<sup>12</sup> recently reported that captives performed well in QIS5.<sup>13</sup> The European Insurance & Occupational Pensions Authority (“EIOPA”) noted that participating regulators did not report captives having any significant problems completing QIS5, but it is difficult to draw conclusions from this statement or the QIS5 results in general. For example, regulators have generally affirmed that captives will be subject to the principle of proportionality espoused by Solvency II.<sup>14</sup> It is too soon to tell, however, whether the application of this principle to captives will result in a “hands off” approach by regulators taking the view that captives do not impact systemic and insurance group risk, thereby permitting captives to continue business as usual, or if it will result in a modified application of the capital requirements to captives. In any event, the implementation of the proportionality principle to captives in the Level 2 guidance could dramatically impact the financial viability of the continued use of captives as a risk management tool.

**c. New reporting requirements under Solvency II may be cumbersome on captives**

Another problem that Solvency II poses for captives is the possibility that they may face the same rigorous financial reporting requirements as commercial insurers and reinsurers. Historically, the affiliated nature of the risks insured, and the profile of the risks insured, provided regulators and auditors a level of comfort that it was typically unnecessary to subject a captive insurer to the same administrative and financial reporting burdens as commercial insurers and reinsurers. Additionally, captives, due to their lack of independence from a corporate parent, have enjoyed relative anonymity from public disclosure of financial statements and other material matters that may impact the parent’s business. However, the new rules contemplated by Solvency II appear to challenge these assumptions and may impose the same stringent requirements

on captives as imposed on commercial insurers.<sup>17</sup> In particular, Article 51 of the Directive makes no distinction between the reporting requirements of commercial (re)insurers and captives.

The current Solvency II proposals may change the current and historic posture of captive reporting and may require that captives or their parent disclose publicly the captive’s financial statements and certain material matters that impact its financial condition.<sup>18</sup> As currently constructed, this could include the same level of detail that is required of commercial insurers, including specification of material claims potentially impacting financial statements and explanation of the reserving methodologies of the captive.<sup>19</sup> This, in turn, may adversely affect litigation of matters related to claims that directly or indirectly impact the value of securities of group companies (particularly the ultimate parent’s common stock).

While the Directive acknowledges that in some cases public disclosure may be unnecessary, there is no mention that captives may be singled out and distinguished from other commercial insurers for reporting purposes.<sup>20</sup> Although there may be those in favor of a consistent approach to regulating captives and commercial insurers, others may argue for having local regulators apply the proportionality principle with respect to captives so that they may be treated differently under the Level 2 guidance.

**d. Minimum capital requirements for captives may be raised to be equal to that of commercial insurers**

Even though there are some areas in which captives are expressly permitted to be treated differently than commercial (re)insurers in the Directive,<sup>21</sup> such distinctions are infrequent. Under the more detailed Level 2 guidance these permissible distinctions may be subsumed by uniform application of the rules and may inadvertently burden captives by requiring the same standards as commercial insurers. For example even though the absolute minimum capital requirement for commercial property and casualty insurers is €2,200,000 (regardless of whether it is a captive) and the absolute minimum capital requirement for commercial property and casualty reinsurers is €3,200,000, the minimum capital requirement for a property and casualty reinsurance captive is



Solvency II proposals may change the current and historic posture of captive reporting and may require that captives or their parent disclose publicly the captive’s financial statements and certain material matters that impact its financial condition.

€1,000,000.<sup>22</sup> Whether this distinction will remain after Level 2 guidance is finalized is yet to be publicly determined.

This level of uncertainty, and the potential aggregate additional expenses that could be associated with operating a captive, from its day-to-day administration to financial disclosure to capital requirements, should provide captive managers and corporate risk managers with ample reason to explore alternatives to enhance or replace current solutions in order to meet their risk management goals.

#### 4. Interaction Between EU And Non-EU Companies and Groups, Equivalency Issues

One of the most frequently asked questions is whether Solvency II will affect captives or corporations owning captives that are not domiciled in the European Union (“EU”). Although the current assumption is that unless a captive reinsurer is domiciled in the EU the reach of the Solvency II Directive is limited or inapplicable; there is no clear and definitive response to the geographical impact of the regulatory oversight at this time, particularly with respect to captive direct insurers. Non-EU captives, or non-EU groups that have a captive formed in an EU Member State, may not be directly subject to the requirements of Solvency II but may still be impacted if the captive or group covers risks in the EU.

Solvency II empowers the European Commission to assess whether the solvency regime, prudential supervision and regulatory framework, of a non-EU country is equivalent to Solvency II under three criteria: reinsurance, group solvency, and/or group supervision.<sup>24</sup> The intent is to determine whether a non-EU country's system of insurance regulation provides a substantially similar level of policyholder and beneficiary protection as Solvency II.<sup>25</sup> If a non-EU country is deemed to be equivalent, then capital requirements of that country will be accepted and capital held in that country will be credited by the EU for EU exposures. These assessments for equivalence will affect reinsurance collateral requirements for non-EU reinsurers (including captive reinsurers) that reinsure EU insurers, as well as group capital requirements and other compliance requirements generally applicable to non-EU groups with EU subsidiaries and non-EU subsidiaries of EU groups.<sup>26</sup>

“Although the European Commission has stated its support for a ‘transitional’ equivalence regime that would allow a jurisdiction to be treated as equivalent until the Commission has carried out a full assessment, to date the only non-EU jurisdictions that will be assessed for equivalence are

Bermuda and Switzerland for all three criteria, and Japan for reinsurance equivalence only,” states Trish Henry, Executive Vice President and Head of Global Government Affairs with the ACE Group, who has closely followed the development and potential impact of Solvency II on commercial insurers and captives. “At this point, the actual ramifications of the absence of a finding of U.S. equivalence is unclear both for U.S. based insurers doing business in the EU and European based groups with business in the U.S.” The European insurance industry has called for “transitional” equivalence to apply to the U.S., if it is not determined to be equivalent before Solvency II implementation. Until any such equivalence assessment is conducted and finalized, there is a risk that groups that have entities in the U.S. and the EU may have to deposit higher levels of capital in their captives within the EU to be compliant with Solvency II.

This uncertainty has also caused at least one of the prominent non-EU domiciles of captives, Guernsey, to announce that it will not seek to obtain a determination of equivalency with Solvency II. As such, captives domiciled in Guernsey will not be subject to the financial, management, or disclosure requirements of Solvency II, an option that is not available to EU jurisdictions that are also currently popular captive domiciles (e.g., Ireland, Luxembourg, and Malta). Although this could make Guernsey an increasingly attractive option as a domicile of captive insurers, it could also have the opposite effect. For example, the EU could determine that in light of the lack of equivalence, any insurer using a Guernsey domiciled captive could be denied statement credit for the reinsurance, or the EU might implement similar regulatory measures making the use of Guernsey less attractive for multinational enterprises with EU based affiliates.



Alternatively, Guernsey’s decision could encourage the EU to adopt the Level 2 guidance that treats captives differently than commercial insurers and reinsurers, thereby maintaining the current degree of competition between EU and non-EU based captives. In any event, Guernsey’s announcement has highlighted some of the uncertainty surrounding the interaction between EU and non-EU companies and groups.

### 5. Recent US Legislation Appears Uncertain about Captives

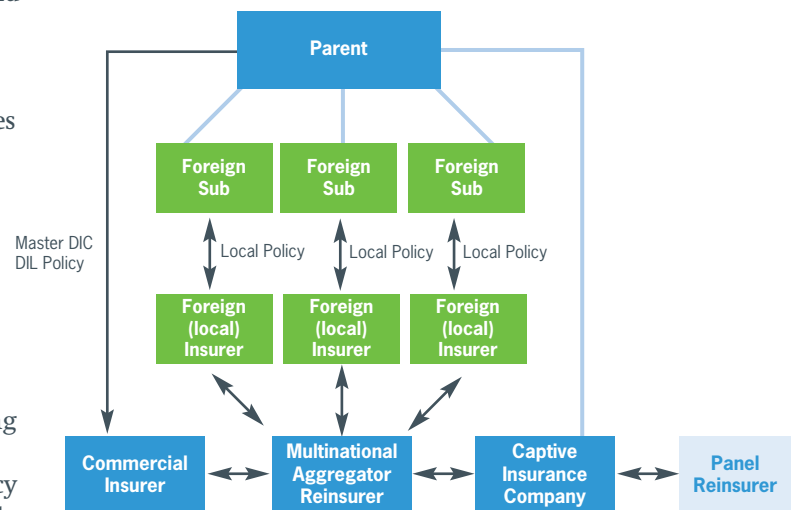
Similarly, recent US federal legislation with respect to reinsurance<sup>15</sup> and certain states’ revisions to laws governing credit for reinsurance<sup>16</sup> do not separately address captives. In particular, these laws do not specify whether captives will be required to follow the same standards as commercial reinsurers, or alternatively whether the criteria for reduced collateral may simply not be applicable insofar as pure captives do not have credit ratings that would place them in one of the applicable “bands” of insurers for which lower collateral requirements may apply. The fact that these laws are silent on issues specifically relevant to captives likely indicates that all reinsurers will in fact be treated equally, such that the lower collateral requirements may not be applicable to captives.

### 6. Potential Market Response

Based on the current degree of uncertainty with respect to how captives will be regulated under Solvency II, risk managers and captive managers have three options in the near term: (a) do nothing while waiting for a determination about how the captive regulatory regime develops under Solvency II; (b) acknowledge that captives may be regulated substantially similar to commercial insurers and adjust their cost of managing their captives accordingly; or (c) while waiting for clarification about the regulation of captives, consider alternative means to address their risk management objectives.

#### a. Current captive multinational structure

As mentioned previously, captives have been increasingly important to multinational enterprises as part of their risk management strategies. An example of a traditional multinational captive program involves local policies being issued by domestic insurers to the foreign subsidiaries of a parent corporation and a master differences in condition (“DIC”) differences in limit (“DIL”) policy issued to the parent corporation for any risks that are not covered under the local policies to ensure certainty of insurance coverage to the global enterprise. These policies (or a portion or layer of risk from these policies) are then reinsured to an aggregator reinsurer who in turn retrocedes the risks to the captive. Thus, the risks of the foreign subsidiaries are borne by the captive insurer and ultimately reflected in the consolidated results of the parent, as illustrated below.



The results of this arrangement are that the captive (a) manages the implementation of consistent limits, types of coverage, and risk transfer terms for their worldwide exposures; (b) controls the type and scope of coverage purchased at the local level with manuscript policies consistent with the reinsurance offered to protect it; (c) obtains the most favorable risk transfer terms and pricing available from a consolidated purchase of coverage; (d) addresses premium tax and, with the appropriate transfer pricing arrangements, income tax; and (e) ultimately reinsures the group’s global exposures or looks to a panel of reinsurers for those risks for which it does not have an underwriting appetite. As described in Sections 3 and 4 above, Solvency II may challenge the fundamental premises behind many of these assumptions and goals.



### b. Deductible Recovery Structure™

Similar risk management results may be obtained utilizing a different multinational insurance program structure that does not involve a captive. Under the Deductible Recovery Structure™, local policies and master DIC-DIL policies are issued just as they are in the captive structure described above. The parent's master DIC-DIL policy, however, permits the parent to set a deductible amount that will be applied to losses covered under the local policy as well as the master DIC-DIL policy. A deductible is distinct from a self insured retention ("SIR"). Although the terms deductible and SIR may be used interchangeably depending on the jurisdiction, generally in many jurisdictions an SIR is the amount of loss retained by the insured which is not covered by any insurance program. Excess insurance is generally purchased for losses above the SIR. A deductible, on the other hand, is

This effectively reduces the cost of the global insurance program similar to ceding risks and managing such risks within a captive.

The risk manager's checklist used in establishing a multinational captive program is substantially similar to the checklist used in implementing the Deductible Recovery Structure™. The risk manager (a) manages the implementation of consistent limits, types of coverage, and risk transfer terms for the group's worldwide exposures with local policies; (b) controls the type and scope of coverage purchased at the local level with policies that are customized and consistent with the laws of the jurisdiction where they are issued; (c) obtains the most favorable risk transfer terms and pricing available from a consolidated purchase of coverage; and (d) ultimately, through the Deductible Recovery Structure™, manages the group's global net exposures.

Under the Deductible Recovery Structure™ the local risks as well as the parent's risk are effectively assumed by the parent—much like any sophisticated corporation making use of a large or matching deductible in an insurance policy and purchasing a layer or risk transfer in excess of the deductible in case actual loss experience differs from the expected loss profile. The parent, understanding its loss experience and wishing to self-fund the frequency of claims, is able to work within a structure that allows it to rely on risk transfer to manage any catastrophes or uncertainties in the actuarial assumptions of its risk profile. Through inter-company allocations and appropriate transfer pricing documentation based on the group's actual experience, the premium and losses may be allocated to the appropriate entities in a transparent and materially compliant manner.<sup>28</sup> Ultimately, similar to the captive program, the risks of the subsidiaries will be reflected in the consolidated results of the parent.

Multinational enterprises have begun considering alternative arrangements that may effectively emulate the benefits of captives in order to fill the gaps caused by shifting regulatory parameters and current uncertainties.

an amount of loss which is covered by an insurance policy and first paid by the insurer for which the insured agrees to reimburse the insurer. Thus, unlike an SIR, under a deductible, the insurer must "pay and chase", i.e., it must pay the loss first and then chase the insured for reimbursement of such paid loss. The amount of the deductible assumed by the parent could be set at the same level as the amount of risk ceded to a captive, with risk transfer purchased in excess of the deductible. Many jurisdictions permit a deductible amount to be equal to the limit of the insurance policy—much like a one hundred percent quota-share reinsurance agreement reinsured by a captive. However, other jurisdictions may not recognize contracts with such features as contracts of insurance. So careful consideration must be given to the insurance regulatory nuances in a particular jurisdiction and local legal, tax and financial consultants should be retained to advise on the most optimal and compliant structure that suits an insured's specific needs.

Under the master DIC-DIL policy deductible, the parent agrees to reimburse the insurance company for all covered losses within the deductible for both the master policy and the local policies.<sup>27</sup>





## 6. Conclusion

Captives are and have been useful tools for various aspects of risk management. Their role and regulation, however, may be changing as Solvency II evolves to directly or indirectly impact the cost and convenience of operating such entities. Many multinational enterprises that don't have captives, or that anticipate an adverse impact on captive multinational programs from Solvency II (or simply as a supplement to their captive programs,) already use the Deductible Recovery Structure™ or similar products. Many other multinational enterprises are actively considering how the rapidly evolving landscape may impact their current use of captives, and how they can proactively address their risk management concerns in the absence of, or in addition to, the use of captives.

When designing and implementing a multinational program, clients, brokers and insurers should be aware of the issues and ambiguities introduced and analyzed in this paper and the importance of an independent third party's documented assessment of their multinational program. Risk managers and buyers of multinational programs and producers should work with a global insurer and an independent financial and tax advisor to address many of the issues addressed in this paper. Working with experienced accounting, tax, legal, and financial specialists to design a comprehensive global insurance program, with appropriate documentation and supporting contractual arrangements fitting the specific needs and goals of multinational enterprises, should result in a materially compliant international insurance program and should assure that the program ultimately satisfies the collective objectives of the multinational enterprise, insurance broker and insurance carrier.

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### Endnotes:

- <sup>1</sup> Council Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II) (the "Directive").
- <sup>2</sup> For purposes of this paper we assume that the majority shareholder in a joint venture assumes the contractual or legal obligation for purchasing insurance for the joint venture, although parties to a joint venture may contract for any partner in the joint venture to assume this obligation.
- <sup>3</sup> See, e.g., Nevada (\$250,000 minimum capital and surplus for pure captive) Nev. Rev. Stat. § 694.25; Illinois (\$2,000,000 minimum capital and surplus for pure captive stock insurer, \$3,000,000 for a mutual) 215 Ill. Comp. Stat. 5/123C-3, 5/123C-4, 5/13.
- <sup>4</sup> Bermuda Insurance Act of 1978, § 7.
- <sup>5</sup> See, e.g., Colo. Rev. Stat. § 10-6-7(6).
- <sup>6</sup> Directive, Article 13(2), 13(5).
- <sup>7</sup> See, e.g., Directive, Prologue §§ 18, 24, 25, 53, 75, 85, 86, 93.
- <sup>8</sup> Directive, Prologue § 21; Article 86(h), 111.
- <sup>9</sup> Directive, Prologue § 10.
- <sup>10</sup> Directive, Articles 100, 101, 109, 111(l).
- <sup>11</sup> Id.
- <sup>12</sup> The European Insurance & Occupational Pensions Authority, an independent advisory body to the European Parliament and the Council of the European Union.
- <sup>13</sup> See Business Insurance, 22 March 2011, Sarah Veysey, Captives performed well in Solvency II test:EIOPA, Business Insurance, March 22, 2011.
- <sup>14</sup> Directive, Prologue § 21; Article 86(h), 111.
- <sup>15</sup> See 2010 Nonadmitted Reinsurance and Reform Act.
- <sup>16</sup> See Fla. Admin. Code Ann. r. 690-144.007; New Jersey Reinsurance and Surplus Lines Stimulus and Enhancement Act (Act 2670)(PL. 2011, c.39); and New York Reg 20, Tenth Amendment (11 NYCRR 125).
- <sup>17</sup> Directive, Article 51.
- <sup>18</sup> Id.
- <sup>19</sup> Id.
- <sup>20</sup> Directive, Article 53.
- <sup>21</sup> See, e.g., Directive, Prologue § 21, Article 86(h), 129(d)(iii).
- <sup>22</sup> Directive, Article 129(d).
- <sup>23</sup> Directive, Articles 2(1), 3-12, 13(3), 14.
- <sup>24</sup> Directive, Article 172, 227, 260, 261.
- <sup>25</sup> Id.; Prologue §§ 73, 89, 116, 132.
- <sup>26</sup> Directive, Article 172, 227, 260, 261.
- <sup>27</sup> Under US insurance laws and English law, a parent has an insurable interest in the assets of its foreign subsidiaries or in its financial interests in its foreign subsidiaries. See Structuring multinational insurance programmes: addressing the current challenges in Europe at <http://www.aceeuropeangroup.com/AceEuropeRoot/Media+Centre/Press+Releases/2010/ACE+Progress+ReportStructuring+Multinational+Insurance+Programmes+Addressing+the+Current+Challenges.htm>.
- <sup>28</sup> For additional information on transfer pricing considerations, see the paper co-authored by KPMG and ACE entitled Structuring Multinational Insurance Programs: Addressing the Taxation and Transfer Pricing Challenge at <http://www.acegroup.com/Media-Center/ACE-Perspectives/ACE-Perspectives.html>.