



THE WHYS AND HOWS OF REDOMICILING YOUR CAPTIVE

— Written By Karrie Hyatt

A lot of consideration goes into choosing a domicile when a captive is established. A domicile is chosen because it can offer the structure and regulation a new captive will need.

Yet, too often captives will stay with their initial domicile, even when circumstances have changed—either for the captive or for the domicile. Established captives need to reconsider their domicile with some regularity to make sure that the goals of their charter are still aligned with the regulation of their domicile.

With more choices in domiciles than ever before, captives have a smorgasbord of domiciles to choose from. Some newer U.S. domiciles are even catering to captives considering redomiciling.

For example, North Carolina, one of the newest captive domiciles, actively pursues established captives to redomicile in their state. Their captive law offers taxation and financial benefits for captives redomiciling there. Last year, Connecticut amended its captive law to appeal to Connecticut-based business to bring their captives to the domicile.

WHY REDOMICILE?

There are as many reasons for captives to redomicile as there are captives. The reason could be something as simple as a change in ownership, or a merger or acquisition. With a new parent company or new owners, the captive's original domicile might not be the right choice.

As the field of domiciles has expanded, established captives might want to change domicile for geographic reasons. A parent company located in California with a captive domiciled in Bermuda might see benefit in domiciling their captive closer to home because of time zone issues as well as ease of access.

Another geographic advantage for captives considering changing domiciles would be to operate in their parent company's home

state. Home state captives are generally taxed at the admitted insurer rate rather than the often higher nonadmitted rate. With a captive operating in the same state as its owners, there are fewer travel costs and no need for separate in-domicile managers or legal teams.

As an example, soon after New Jersey passed captive legislation in 2011, BASF America Corporation redomiciled its captive, Lumerica Insurance Company, from Vermont to New Jersey in a show its commitment to its home state.

For some captives seeking to redomicile, the reason might be because the goals of the captive no longer align with the regulation by their original domicile.

This could be due to several reasons. The legislative landscape may have changed—such as increased taxes or more onerous reporting requirements—or their current domicile's focus may have changed and it is no longer as dedicated to captives as it once was.

If political instability strikes a domicile, a captive would likely wish to remove itself from that situation. It is the same for international perception.



If a domicile gets a black mark from a supervising association regarding their ability to regulate captives, many captives are likely to want to redomicile to keep up their reputation.

While not political instability, Brexit posed issues for many European-domiciled captives as the laws surrounding insurance changed dramatically with the UK no longer part of the European Union.

For European-based captives, as Brexit approached, there was a flurry of redomestication. Gibraltar lost and gained several captives, particularly with Malta. With Brexit, Gibraltar retained access to the UK insurance market, but lost access to the European Union market. While Malta remained connected with the EU.

If another domicile has legislation that is more favorable to the regulation of a captive, captive owners should consider redomiciling. The reason could be strictly for financial reasons, such as taxation rates or annual fees, or it could be because a different domicile allows for certain types of captives or coverages. While redomiciling has its costs, if a captive chooses to redomicile for financial reasons, the captive board likely foresees long-term financial benefits.

Such was the case for University of Vermont Health Network (UVHN). In 2019, VMC Indemnity Company, Ltd., the medical malpractice captive owned by the UVHN, redomiciled from Bermuda to Vermont. Established in 1993, the captive board found that Vermont had become less expensive to operate from and was geographically friendlier.

In the U.S., federal legislation can also cause captives to redomicile for financial reasons. The Nonadmitted and Reinsurance Reform Act (NRA) passed in 2010 and the “base erosion and anti-abuse tax” (BEAT) that was implemented as part of the Tax Cuts and Job Act passed in 2017 are both examples of federal law that could encourage captives to change domicile.

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Particularly in the case of BEAT, where pure captives domiciled offshore would have distinct financial benefits by redomiciling onshore. Continuous IRS scrutiny into captives has also led offshore captives to redomicile onshore.

In most cases of a captive redomiciling, there will be a number of reasons behind the decision, as was the case of International Paper redomiciling their captive to Tennessee.

In December 2020, Tennessee Department of Commerce & Insurance Captive Insurance Section announced that Memphis-based International Paper had redomiciled their original captive from Vermont to Tennessee.

In a statement released by the department, David Arick, International Paper Assistant Treasurer, said, “We have worked with the state for the past six years on our second captive and have a lot of confidence in the state as a fair and effective regulator. As a Memphis-based company, moving our captive to Tennessee will streamline administration and reduce operating costs.”



NUTS AND BOLTS OF REDOMICILING

Once the decision is made to seek a new domicile for a captive, the captive board and managers should undergo an evaluation similar to the initial process to choose a domicile. Although, this time around, the board should have a lot more experience with the management of captives and a better understanding of the insurance business.

Captive boards considering changing domiciles need to think about the financial aspects and operating costs in a new domicile, such as taxation and annual fees, as well as capitalization, surplus, and investment requirements. They also should look at how invested a domicile is in attracting quality captive insurance companies.

It should be easier to consider a domicile's captive regulation when redomiciling considering that captive directors will have had experience in this aspect of running a captive and can better estimate how a domicile's regulatory body will affect their management.

If a captive board is looking at a domicile that is not their home operating state, then considerations regarding travel and in-domicile meetings need to be considered.

These are just a few of a long list of things that captive boards looking to redomicile should consider.

The process of changing domicile can cost \$3,000 up to \$7,000 and usually takes around two months. ■

Evaluating the captive's current domicile should be an annual focus for a captive board. If a captive's domicile is not to be re-evaluated every year, it should be revisited every three to five years as part of its regular "health checkup."

Karrie Hyatt is a freelance writer who has been involved in the captive industry for more than ten years. More information about her work can be found at: www.karriehyatt.com.

When the decision to redomicile has been made and the choice of new domicile is decided the process is straightforward. Redomiciling a captive will require not only working with the newly chosen domicile, it also requires the approval of the captive's current domicile.

The approval from the current domicile is commonly known as a "letter of no objection." The captive may also require from their existing domicile a certificate of good standing and a certificate of discontinuance before gaining an insurance license in their new domicile.

To be approved as a captive insurer in the new domicile, the captive will have to go through the application process as designated by the domicile's legislation. For some domiciles, the process has been streamlined for existing captives redomiciling, but several domiciles will require the full application process.

