

HSBC Insurance Management (USA)* Client Bulletin

-Summer 2007-

Update: Vermont Securitization Bill Passed!

As anticipated, the State of Vermont recently enacted captive legislation specific to reinsuring life insurers. Commonly referred to as “Special Purpose Financial Captives (SPFC), they assist life insurers with reserve liability issues (both XXX and AXXX as referenced in the NAIC regulations) and typically involve the SPFC accessing the capital market through a securitization process.

The new law applies to securitization captive programs formed after enactment and those already in existence (although a provision grants the Commissioner discretion to exempt an SPFC from any part of the statute determined inappropriate given the SPFC’s Business Plan).

The enacted legislation contains detailed requirements concerning each SPFC’s plan of operation. Among the provisions are a requirement that an SPFC’s President, Vice President, Treasurer or CFO submit an affidavit certifying compliance with all applicable provisions of state and federal law and regarding the adequacy of the investment policy and key associated documents. The new law contains specific provisions concerning the SPFC securities, reinsurance, disposition of assets, permitted investments and the form and operation of the trust agreement. As with Vermont captives in general, all business plan changes require prior written approval from the commissioner.

As always, HIM USA is happy to address any specific questions you may have regarding the provisions or operation of the new law.

NAIC Update – Risk Retention Group Corporate Governance Standards and Beyond

The National Association of Insurance Commissioners (NAIC) has developed model corporate governance standards for Risk Retention Groups. The proposed model standards impact the following areas:

* **HSBC Insurance Management (USA)** is the marketing name for HSBC’s onshore captive and risk retention group (RRG) management operations. Captive and RRG management services are provided by HSBC Insurance Agency (USA) Inc., a wholly owned subsidiary of HSBC Bank USA, National Association and an indirectly wholly owned subsidiary of HSBC Holdings plc.

- Independent Directors: Majority required. Independence to be determined by whether or not a “material” relationship exists with the RRG.
- Service Provider Contracts: establishes maximum time period for “material” service provider contracts; majority of independent directors must approve.
- Written Charter: RRG bylaws must set board requirements regarding governance standards (standards must be disclosed); RRG management oversight; review and approval of payments to material service providers; and review and approval of performance and compensation of officers and service providers. Bylaws must require that all owners receive evidence of ownership.
- Audit Committee: Audit committee with written charter and minimum independent board member composition required.
- Business Conduct and Ethics: RRG must adopt a code of conduct and ethics for directors, officers and employees.
- Non-Compliance – Reporting: RRG manager or CEO must report any material non-compliance with governance standards to the domestic regulator in writing.

The committee responsible for developing the standards has forwarded the proposed standards with a recommendation for inclusion in the Financial Examiners Handbook. HIM USA has evaluated the proposed corporate governance standards with reference to the risk retention groups it manages and will advise them in this regard as the standards move forward toward adoption. In the meantime, if you have any questions or would like a copy of the standards, please let us know.

In other matters, NAIC committee discussions continue concerning accreditation standards for reinsurance ceded and the development of a Medical Malpractice Closed Claim Reporting Model Law.

The proposed claims reporting model law would require reporting data on medical malpractice claims annually to the insurance commissioner. Reporting would be required from authorized insurers, captive insurers, joint underwriting associations, patient compensation funds, risk retention groups, and unauthorized insurers that provide surplus lines coverage. HIM USA will continue to update as developments dictate.

TRIA Update

TRIA changes slowly move forward. The current version of the “Terrorism Risk Insurance Revision and Extension Act of 2007” in the House includes the following provisions:

- A ten-year extension
- Lowering of the event trigger to \$50 million
- Addition of group life insurance
- Additional CNBR coverage and a requirement that companies make CNBR coverage available
- Creation of a blue ribbon commission

In late June, the House Subcommittee on Capital Markets, Insurance and Government-Sponsored Enterprises held a hearing on the Terrorism Risk Insurance Revision and Extension Act of 2007. The subcommittee heard testimony from industry, regulatory and academic experts.

The subcommittee chair expressed skepticism regarding a reset provision for areas previously impacted by terrorist attacks (which would affect NY only) and the section dealing with underwriting of life insurance for purposes related to past and future lawful foreign travel. Overall, the experts expressed support for extending TRIA in general and engaged in meaningful debate centering on the duration of the extension, retention levels, and whether or not the program should be expanded from its current coverage. The bill is expected to undergo revision over the summer.

HIM USA Charleston Office Moves!

As many of you are already aware, the HIM USA Charleston, SC office has moved to larger, more convenient quarters. Headed up by Ann West, the Charleston office expansion will allow HIM USA to better serve its growing client base in South Carolina.

The new contact information for Ann and her team is:

1180 Sam Rittenberg Blvd, Suite 235
Charleston, SC 29407
Main #: (843) 573-4676
Direct #: (843) 573-4814
Fax #: (843) 573-4998

HIM USA Approved to Manage Captives in Montana and Delaware

As part of its growth plan and in response to client demand, HIM USA has recently expanded its management capabilities and is now authorized to manage captives in the Montana and Delaware domiciles. HIM USA looks forward to positive and cooperative relationships with the regulators in each of these captive domiciles. If you have any questions or would like to discuss the specific captive programs for either one of these domiciles, please give us a call! Links for each of the state captive websites are provided below.

[Montana Captive Insurance](http://sao.mt.gov/captives/index.asp) (<http://sao.mt.gov/captives/index.asp>)

[Delaware Captive Insurance](http://www.delawareinsurance.gov/captive/default.shtml) (<http://www.delawareinsurance.gov/captive/default.shtml>)

Vermont Captive Insurance Association's Annual Conference in August

HIM USA will be one of the exhibitors at the largest captive conference in the world. The VCIA conference is being held August 7-9 at the Sheraton Burlington Hotel and attendance is expected to reach record levels again this year. The theme of the conference is Grow Your Captive Knowledge with VCIA and the Keynote speaker is Dr. Ned Hallowell. Dr. Hallowell will be discussing ways to understand and take charge of demands on our time to become more productive and achieve greater balance in life. We encourage you to take time to come visit us at our booth on the main floor!

South Carolina Captive Insurance Association Executive Forum

HIM USA was represented at the 4th annual SCCIA Mid-Year Executive Forum on June 19th and 20th in Greenville, SC. Highlights included honoring Leslie Jones from the South Carolina Department of Insurance as the Captive Person of the Year and a well-received presentation on the future development of the industry by guest speaker Les Boughner, Chairman of the Captive Insurance Companies Association (CICA). In addition, Insurance Department Director, the Honorable Scott Richardson, shared his vision for the future of captives in South Carolina including a strong emphasis on captive growth both through new formations and a focus on redomestications.

Captive Law Updates: Arizona, Montana, and Hawaii

Arizona

This spring, Arizona Governor, Janet Napolitano, signed legislation enacting significant updates to Arizona's captive insurance law.

In addition to simplification and clarification, a few of the more noteworthy features follow:

- Branch captives permitted to provide employee benefits
- Group captives (except risk retention groups) permitted to cover “controlled unaffiliated business”
- Arizona residency requirement for captive managers eliminated
- Minimum capital requirement for a protected cell captive reduced from \$1,000,000 to \$500,000
- Pure captives allowed to be formed as limited liability companies and may have as few as one director
- Group captives permitted to have as few as three directors and may have as many directors as group members
- Confidentiality of all information related to captive insurers clarified – limited information available (name, type, date licensed, license status, and business of owners; does not apply to risk retention groups)

Montana

Highlights of important updates:

- Captives permitted to organize as any type of recognized business entity, including LLC, LLP, For Profit Corporations, Not For Profit Corporations
- Reduced capitalization for fronted and deductible programs and capital requirements for protected cell captives
- Special licensing category created for risk retention groups
- Expands pure captive and branch captive ability to insure health plans
- Pure captives permitted to write controlled unaffiliated business entities

Hawaii

Highlights of important updates:

- Captives permitted to organize as Limited Liability Companies
- Premium tax liability capped at \$200,000
- Minimum capital and surplus requirements clarified

- Captive Insurance Administrator position elevated in insurance department structure

If you have any specific questions about these jurisdictions or potential benefits for your risk management program, please do not hesitate to contact any one of us at HIM USA.