

## Captive Insurance Company Counseling



Captive insurance arrangements can raise a multitude of complex issues spanning a broad range of disciplines, including insurance, corporate and transactional, finance, regulatory, securities, and taxation. By teaming our leading insurance coverage lawyers with our highly experienced practitioners in other areas, K&L Gates provides multidisciplinary, integrated, policyholder-oriented counseling to clients who have formed, or are considering forming, captive insurance companies (and other alternative risk mechanisms).

We have advised clients on captive insurance issues in a wide variety of industries, including banking and financial services, chemicals, education, entertainment, health care, manufacturing, real estate, retail, technology, telecommunications, and software, among others. Our engagements have involved captive programs insuring directors and officers, employment practice, general liability, medical malpractice, professional liability, and property and warranty coverage, among others.

We advise clients on captive program feasibility, design, and structure aspects, including the evaluation of domiciles. We have counseled on single-parent, multi-parent, group-owned, and segregated cell structure issues, as well as direct-write versus fronting arrangements. We help our clients evaluate various collateral options, including letters of credit and trust arrangements. We also have helped clients in highly regulated industries evaluate the viability of captives.

Our captives work includes providing ongoing advice related to operational and governance issues, including regulatory review and compliance. Additionally, our lawyers advise clients on taxation issues, including premium deductibility issues arising from captives insuring the risks of parents, siblings, affiliates, and unrelated entities, as well as excise taxes and investment income taxation. We also help clients evaluate and implement various captive exit strategies and mechanisms, including controlled run off, commutation, novation, retrocession, and sales.

K&L Gates' lawyers, as internationally recognized leaders in policyholder-oriented coverage representation, review, draft, and negotiate direct insurance contracts, as well as reinsurance and retrocession agreements. Our lawyers also advise on the many issues associated with transitioning from commercial risk transfer markets to a captive, and vice versa. We represent our policyholder clients' captives in the litigation and resolution of coverage disputes with their reinsurers. In doing so, we draw upon experience accumulated through litigating hundreds of insurance coverage disputes in state and federal jurisdictions across the United States and in other jurisdictions, and on our extensive arbitration experience, including arbitrations conducted under the American Arbitration Association, the International Centre for Dispute Resolution, the English Arbitration Act, the Bermuda Arbitration Act, the International Chamber of Commerce, and various other administrative rules, as well as arbitrations conducted on ad-hoc bases. We have successfully resolved coverage disputes between captives and their reinsurers at all stages of litigation.