

The practice of structuring

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For the advisers of an industrial group, the establishment of a captive is a project that combines insurance, regulatory, tax and corporate law. A feasibility study begins with the analysis of the risks and losses of the group and the cost of its current insurance programme. The choice of domicile follows, weighing regulation, capital requirements, taxation, substance and access to markets. The business plan, the application to the supervisor, the appointment of the board and the captive manager, the reinsurance contracts with the fronting insurers and the collateral arrangements must then be prepared and negotiated. In the author's practice, questions of regulatory structuring and of the substance required by the tax authorities have stood at the centre of such projects, since a low tax rate alone no longer justifies a captive.¹

The same skills apply to the review of existing captives. A captive set up decades ago may no longer fit the risks of the group, its tax position may have changed with the abolition of special regimes and the introduction of the minimum tax, and its governance may not meet the standards that supervisors and tax authorities expect today. Corporate transactions, such as the spin-offs that have reshaped the Basel industry, require the allocation of captive assets and liabilities between the parties. Insurance-linked securities, finally, raise questions of securities law, collective investment law and anti-money laundering compliance for the vehicles, managers and investors involved.²

1 Notes

1. On the steps in establishing a captive (feasibility study, choice of domicile, licensing, governance, fronting and reinsurance arrangements), see the guides published by the captive managers and owners' associations. To be verified. ↩

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2. On the review of existing captives in light of tax reform, Pillar Two and governance expectations, and on the regulatory requirements for ILS vehicles and fund managers in Switzerland, see the literature on captive insurance and on Swiss financial market law. To be verified. ↩

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Online version: helveticaregister.com/basel-the-practice-of-structuring