

UPDATE ON THE NON-ADMITTED AND REINSURANCE REFORM ACT

Although the Non-Admitted and Reinsurance Reform Act (the “Act”) has now been in effect since July 22, 2011, its application to captive insurance companies continues to be unclear. This month has seen two of the leading trade associations and representative bodies, the Vermont Captive Insurance Association (VCIA) and the Captive Insurance Companies Association (CICA), issue white papers and guidance on the matter. In addition, the National Risk Retention Association (NRRA) has offered their support to the guidance issued by VCIA and CICA.

In summary, both VCIA and CICA believe that the Act was never intended to apply to captives as indicated by the statements below:

“Both the language of the legislation itself and the legislative intent are clear that the law was meant to apply only to the surplus lines market – not captive insurance” David Provost, Deputy Commissioner of Captive Insurance, State of Vermont

“There was no intent to have the Act encompass captive insurance” Rich Smith, President VCIA

The passing of the Act has led some states to adopt a more assertive position on taxing captive insurance transactions. While the Act does not specifically create any new taxes, some states have taken advantage of such tax opportunities during these difficult economic times.

The Willis Global Captive Practice is engaging with our clients on this topic and is advising captive insurance companies to seek independent legal and tax advice on the applicability of direct procurement taxes on their particular captive insurance transactions.

We continue to follow state tax department positions and evolving industry initiatives on this topic.

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