



**STATE OF NEW YORK
INSURANCE DEPARTMENT**
25 BEAVER STREET
NEW YORK, NEW YORK 10004

The Office of General Counsel issued the following informal opinion on October 30, 2002, representing the position of the New York State Insurance Department.

Re: Permissibility of Self-Procurement of Property Insurance from Parent's Captive Located and Regulated in Foreign Country

QUESTION PRESENTED:

1. May a New York company ("the company") that has access to its parent's captive insurer self-procure property insurance from the captive that is located in and regulated by the laws of a foreign country?
2. If this is allowed, what filings are required and what taxes are payable in New York?

CONCLUSION:

1. A New York company that has access to its parent's captive insurer may self-procure property insurance from the captive that is located in and regulated by the laws of a foreign country. However, except to the extent permitted under N.Y. Ins. Law § 1101 (McKinney 2000), the insurance transaction must take place outside of New York to prevent a violation of N. Y. Ins. Law 1102 (McKinney 2000).
2. If the transaction takes place outside of New York, no filings are required. However, with regard to the question about possible tax consequences, if the company self-procures the property insurance, taxes may be assessed under Article 15 of the Tax Law.

FACTS:

No specific facts were given.

ANALYSIS:

As a preliminary matter, the Insurance Law does not make a distinction between a captive unauthorized insurer and a regular unauthorized insurer. A captive insurer that is not authorized in New York is treated and subject to the same laws and regulations as any other unauthorized insurer.

The inquirer asks whether a New York company ("the company") that has access to its parent's captive insurer can self-procure property insurance from such captive insurer that is located in a foreign country and regulated by the laws of such foreign country. The important issue here is whether the proposed insurance transaction will take place within or without New York State. N.Y. Ins. Law 1102 (a) (McKinney 2000) prohibits an unauthorized insurer from doing an insurance business in New York. That section provides:

(a) No person, firm, association, corporation or joint-stock company shall do an insurance business in this state unless authorized by a license in force pursuant to the provisions of this chapter, or exempted by the provisions of this chapter from such requirement. Any person, firm, association, corporation or joint-stock company which transacts any insurance business in this state while not authorized to do so by a license issued and in force pursuant to this chapter, or exempted by this chapter from the requirement of having such license, shall, in addition to any other penalty provided by law, forfeit to the people of this state the sum of one thousand dollars for the first violation and two thousand five hundred dollars for each subsequent violation.

As mentioned above, Section 1102(a) prohibits the doing of an insurance business in New York by an unauthorized insurer. The unauthorized alien insurer would be doing an insurance business in New York without a license if the insurance transaction takes place in New York. Therefore, to prevent a violation of Section 1102, the company must self-procure the property insurance in question outside of New York.

Please note, however, that N. Y. Ins. Law § 1101(b)(2) (McKinney Supp. 2002) provides certain exceptions to the prohibition contained in Section 1102(a) above. For example, N.Y. Ins. Law § 1101(b)(2)(F) (McKinney Supp. 2002) provides an exception for insurance coverage placed through the excess line market. In addition, N.Y. Ins. Law § 1101(b)(2)(E) (McKinney Supp. 2002) provides an exception where the insurance coverage is principally negotiated, issued and delivered outside of New York. In such case, subsequent transactions between the insured and the insurer with respect to the policy may take place by mail from without the state.

The inquirer also asked about possible required filings in New York. No filings are required in New York if the insurance transaction takes place outside of New York. The inquirer also asked about possible tax consequences that might result from such transaction. The company may be subject to a self-procurement tax under Article 15 of the Tax Law if it self-procures the property insurance from the unauthorized insurer.

This opinion is limited to an interpretation of the Insurance Law.

For further information you may contact Senior Attorney D. Monica Marsh at the New York City Office.

¹ For a more detailed interpretation of the Tax Law, please contact the New York State Department of Taxation and Finance.