

# Why Corporations Choose Delaware?

*'Alternative Risk Transfer'  
Business Opportunities*

June, 2011



# Why is Delaware the Corporate Gateway to the USA?



*As of December 31, 2010 there are approximately 909,000 business entities in the State.*

- ❖ Sixty-three per cent (63%) of the Fortune 500;
- ❖ Fifty per cent (50%) of the companies traded on the New York Stock Exchange and NASDAQ;
- ❖ Seventy-six per cent (76%) of new Initial Public Offerings on U.S. exchanges; &
- ❖ 118,000 new corporations, partnerships and limited liability companies formed in 2010.



# Delaware, the Global State Welcomes the World . . .

*The Second-Smallest State is the  
Corporate Home to the World's  
Leading Companies.*



# The Delaware "Advantage"



- ❖ Flexible and Modern Business Entity Statutes;
- ❖ Respected Courts;
- ❖ Exceptional Service;
- ❖ Stable Environment ;
- ❖ Significant Case Law Decisions; and
- ❖ Unsurpassed Corporate Law Expertise

*Result is predictability, efficiency and fairness.*



# Why Consider Delaware for 'Alternative Risk Transfer' Programs?



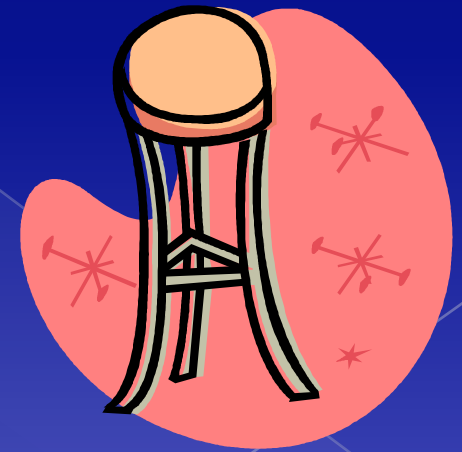
*The Delaware Department of Insurance offers a unique combination of business advantages:*

- ❖ In 2009 established a Bureau for Captive & Financial Insurance products (“BCFIP”);
- ❖ BCFIP is staffed with a team of professional experts;
- ❖ BCFIP offers an advisory approach to meet client needs;
- ❖ BCFIP receives support from other State agencies;
- ❖ BCFIP ensures that regulatory decisions are consistent; and
- ❖ BCFIP has a ‘true’ partnership with the Delaware Business community.



# “Three Legged Stool”

- ❖ Statute
- ❖ Regulator
- ❖ Industry Association



# Premise for Revised Statute

- ❖ **Leverage the “Delaware Advantage”**
  - ✓ Favored domicile for business organizations worldwide;
  - ✓ Positive pro-business climate and Court System comfortable handling business & corporate issues; and
  - ✓ Prime location.
- ❖ **In 2005, Delaware enacted the Delaware Revised Captive Insurance Company Act, Chapter 69 of Title 18.**
- ❖ **In 2007, Delaware enacted legislation that provides a comprehensive scheme for the formation of Special Purpose Financial Captive Insurance Company (“SPFC”).**
- ❖ **In 2010, House Bill 314 approved Agency & Branch Captive.**



# Common Captive Coverage

## Property & Casualty

- ❖ Director & Officer
- ❖ General Liability
- ❖ Employment Practices
- ❖ Litigation Defense
- ❖ Construction Defect
- ❖ Warranty
- ❖ Mold
- ❖ Subsidence
- ❖ Exclusions
- ❖ Deductible Reimbursement
- ❖ Difference in Conditions
- ❖ Difference in Limits
- ❖ Workers' Compensation

## Expanding Captive Coverage

### Life, Health & Pension Benefits



# Understanding Delaware Captive Regulation

## ❖ Flexibility of Entity Type

- ✓ Captive insurers may be organized as limited liability companies, partnerships, limited partnerships or statutory trusts.
- ✓ Allows a company to utilize a foreign entity, thereby offering expanded structural flexibility.
- ✓ Captive regulation is a “licensing” statute.

## ❖ Accounting Treatment

- ✓ Allow a captive to prepare its annual report under generally accepted accounting principles (“GAAP”), statutory accounting principles (“SAP”), or international accounting standards (“IAS”).



# Understanding Delaware Captive Regulation

## ❖ Captives Owning Captives

- ✓ Delaware captives of all types are expressly permitted to own the securities of, or interests in, another captive.
- ✓ This allows a parent company or industrial insured group greater flexibility to segregate risks in multiple captives, and to arrange those captives vertically in the corporate structure rather than horizontally.
- ✓ The ability of one captive to hold another captive means that a captive can set up a subsidiary captive as a 'special purpose reinsurance vehicle' for extraordinary purposes that might include issuing catastrophe bonds for use in covering the parent's exposure to otherwise uninsurable risks, such as natural disasters and terrorism.



# Understanding Delaware Captive Regulation

## ❖ Series Limited Liability Company vs. Protected Cell Captive

The differences include:

- ✓ A series captive insurance company (which could be an LLC or another form of legal entity, such as a statutory trust) may enjoy more flexibility to define its governance mechanisms.
- ✓ A series LLC captive can be designed for simpler administration than a protected cell captive.
- ✓ Series entity law protects the assets of one Series Business Unit (“SBU”) from the debts & obligations of other SBUs.



# Understanding Delaware Captive Regulation

- ❖ **Series Limited Liability Company vs. Protected Cell Captive (Continued)**
  - ✓ SBUs differ from cells in that SBUs exist pursuant to alternative entity laws and not pursuant to the captive insurance statutes that define protected cells.
  - ✓ Ideal transactions for a series entity captive are:
    - Each participant in a group captive arrangement to set up its own SBU as the participant.
    - Ceding a captive's premiums to multiple series reinsurers or retrocessionaires that could be owned by interested or related parties and offer tax advantages or wealth transfer advantages.



# Understanding Delaware Captive Regulation

## ❖ Writing Non-Captive Business

- ✓ Delaware law allows industrial insured and association captives to write risks other than those of the members of the association or industrial insured.
- ✓ Provision allows a captive to write up to 50% of its business outside of the captive groups.
- ✓ A pure captive is permitted to insure the risks of 'controlled unaffiliated businesses' i.e. risks that are not those of the captive's parent or affiliates, but are the risks of an unaffiliated entity that has a contractual relationship with the captive's parent or affiliates.



# Understanding Delaware Captive Regulation

## ❖ Simplified Premium Tax Scheme

- |                                  |     |                     |
|----------------------------------|-----|---------------------|
| ✓ Direct Premium                 | .2% | Capped at \$125,000 |
| ✓ Assumed (Reinsurance) Premiums | .1% | Capped at \$75,000  |

## ❖ Place of Business

- ✓ The captive must have its principal place of business in Delaware.
- ✓ There is no requirement to retain a Delaware based captive manager.

## ❖ Required Meetings of Governing Board

- ✓ A captive is required to have at least one meeting of its governing body in Delaware.
- ✓ The Delaware corporation law provides that directors may participate in a board meeting by conference telephone or other communications equipment.



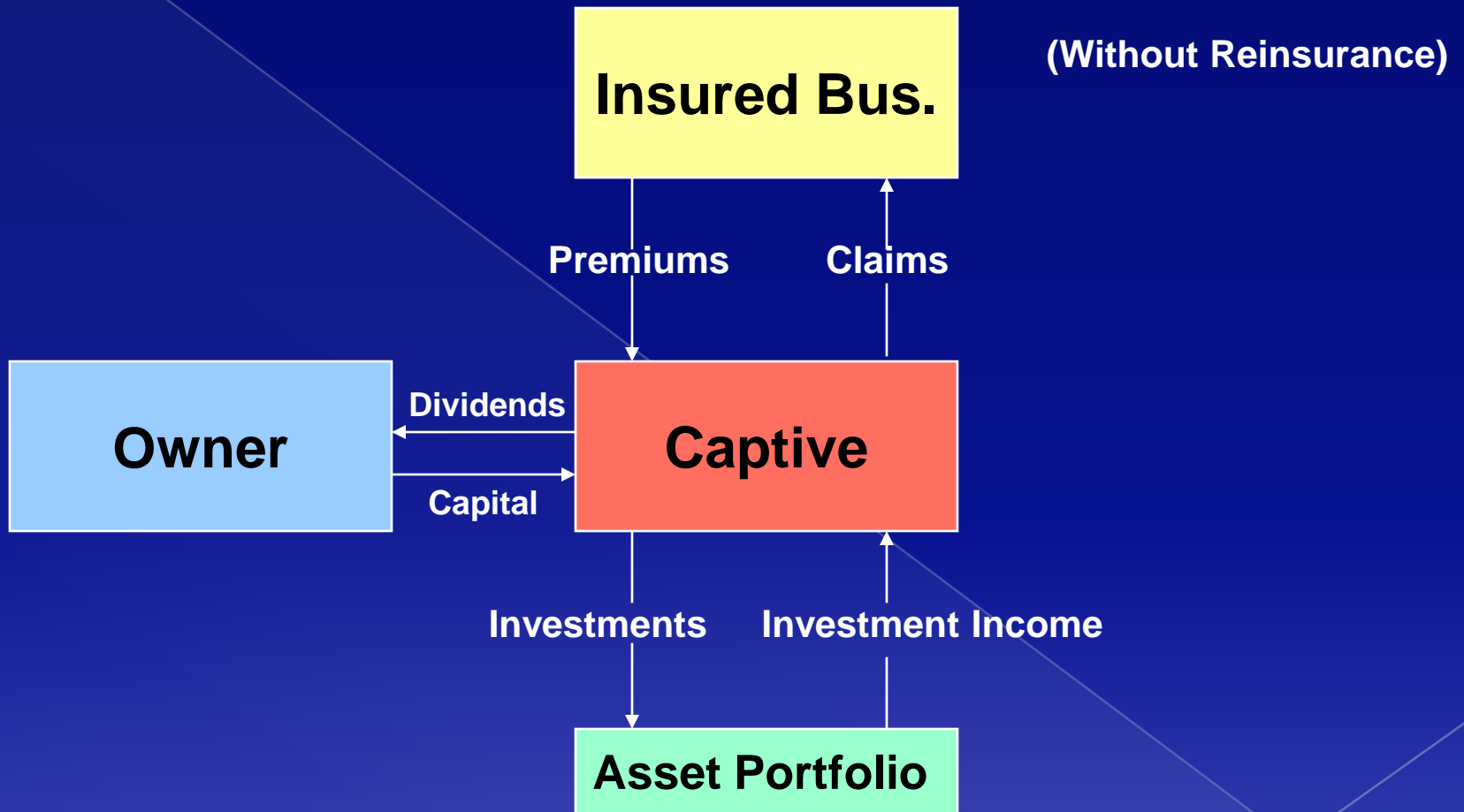
# Understanding Delaware Captive Regulation

## ❖ Incentives to Attract Captive Formation in Delaware

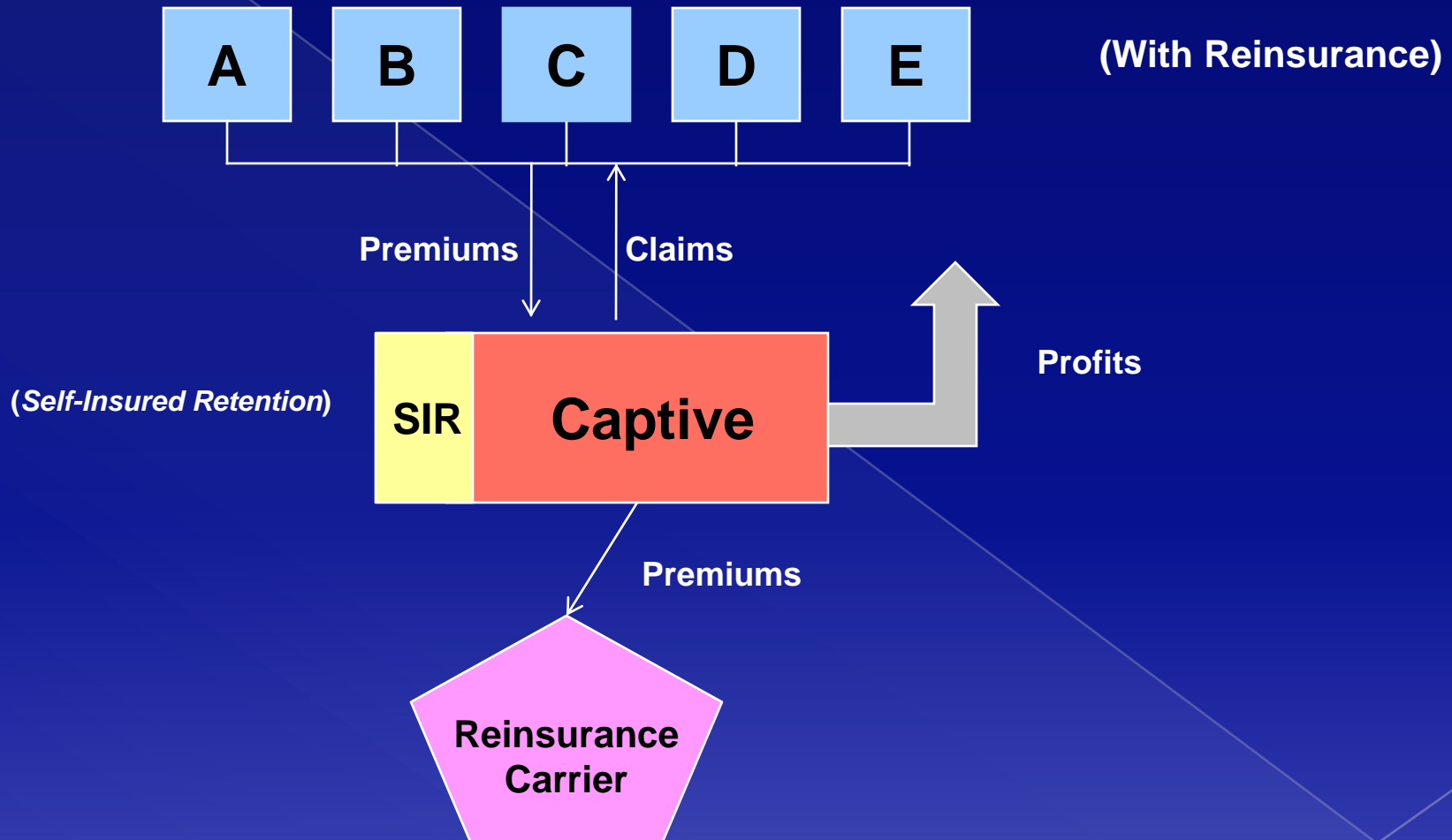
- ✓ A captive employing (5) full time employees in Delaware is exempt from the requirements to hold at least one board meeting annually in Delaware.
- ✓ A captive employing at least 25 full time employees in Delaware will have its premium tax capped at \$50,000.
- ✓ Two or more captive insurance companies under “common ownership and control” will be treated as a single company for premium tax purposes.



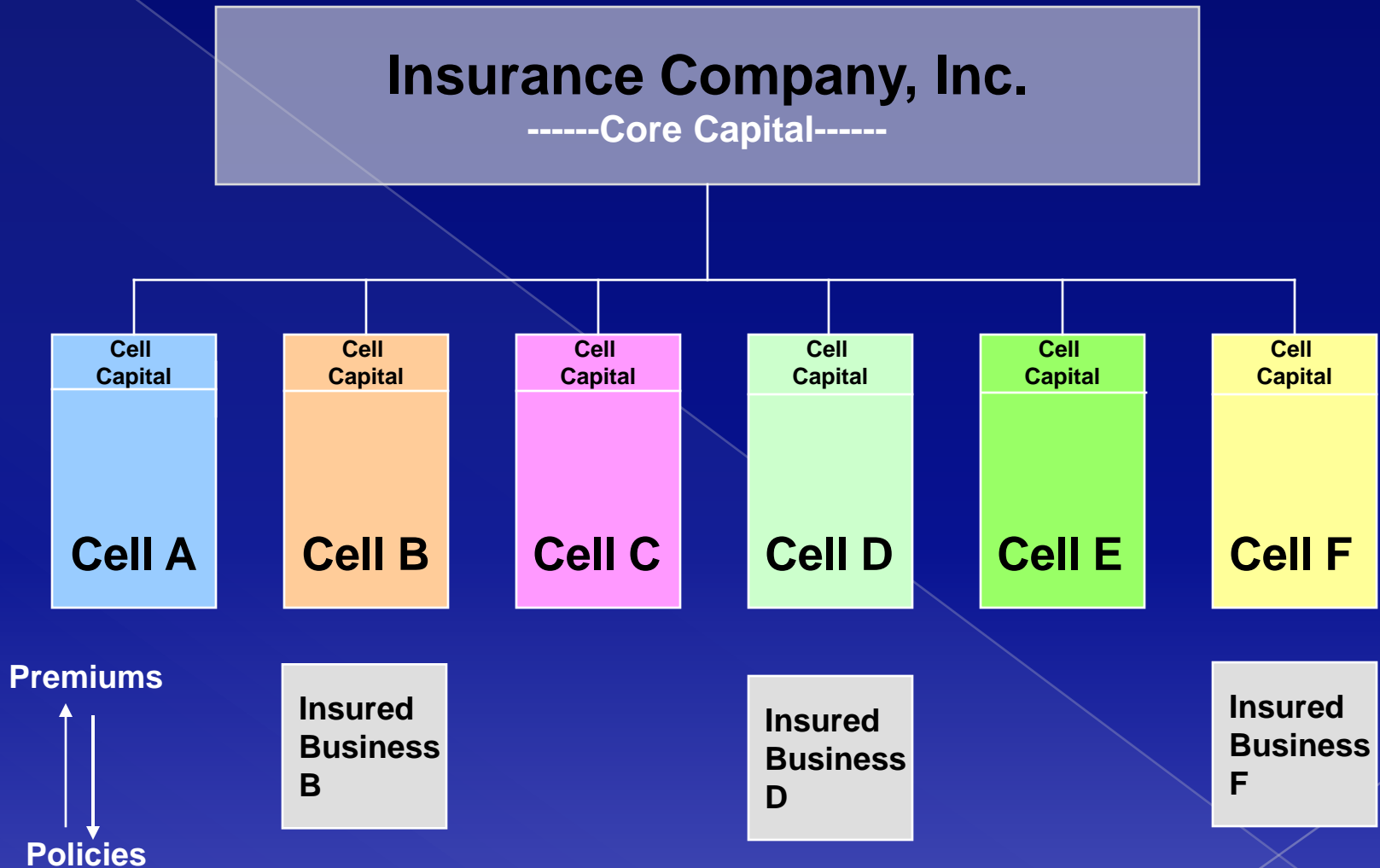
# Single Parent or Pure Captive



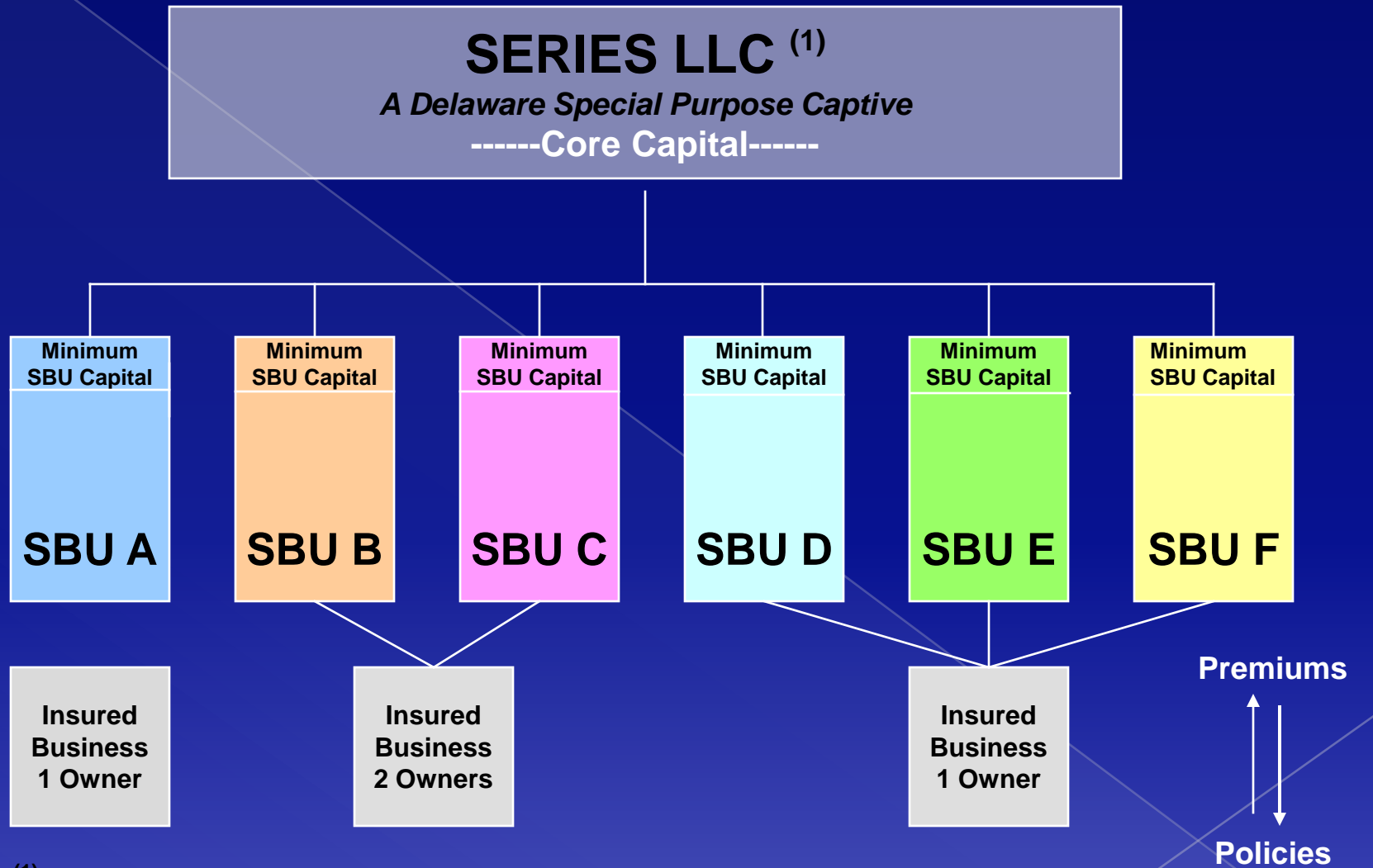
# Group Captive



# Protected Cell Structure



# Series LLC Captive Structure



(1) *One Entity*

*Flexible Governance & Economics  
Legal Separation of Series*

*One Premium Tax*

*Compared to Cell - Less General & Administrative Expenses  
Freedom of Contract*

# Understanding Delaware Captive Regulation

## ❖ Minimum Capital & Surplus

- ✓ Minimum capital & surplus must be maintained in Delaware.
  - Pure Captive \$ 250,000
  - Agency Captive \$ 250,000
  - Association \$ 750,000
  - Branch Captive \$ 250,000
  - Industrial Insured \$ 500,000
  - Risk Retention Group \$1,000,000
  - Sponsored \$ 500,000
  - Special Purpose \$ 250,000
  - Special Purpose Financial Captive \$ 250,000
- ✓ Commissioner has the discretion to prescribe additional capital & surplus.
- ✓ Capital & surplus may take the form of cash, irrevocable letter of credit, or any other assets as approved by the Commissioner.

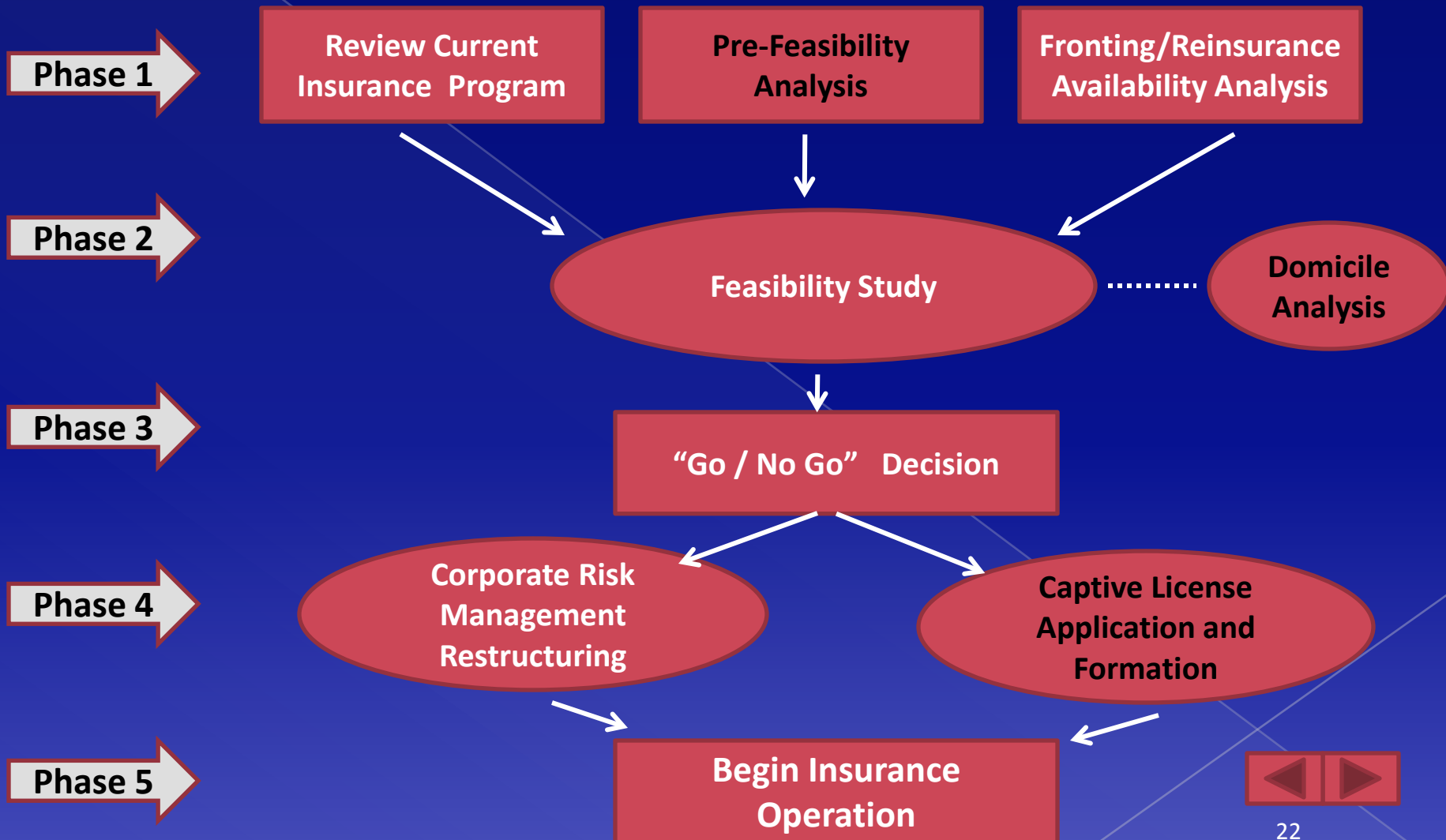


# Delaware Captive Licenses Issued as of June 30, 2011

<i><u>Variety of Captive Types Permitted</u></i>	<i><u>Licensed</u></i>
✓ Pure Captive	52
✓ Agency Captive	0
✓ Association Captive	1
✓ Branch Captive	0
✓ Industrial Insured	1
✓ Risk Retention Group	11
✓ Sponsored Captive Insurance Company	2
- <b>Protected Cells (7)</b>	
- <b>Incorporated Cells (3)</b>	
✓ Special Purpose	36
- <b>Series Business Units (52)</b>	
✓ Special Purpose Financial Captive	3



# Captive Design Life Cycle



# Why Delaware?



Philadelphia International Airport



- ✓ Delaware's Superior Corporation Law
- ✓ Delaware's Business-Friendly State Government
- ✓ Delaware's Chancery Court
- ✓ Delaware's Private/Public Partnerships
- ✓ Delaware's Location to Transportation



 **AMTRAK**



Boston, New York, Philadelphia,  
Baltimore & DC Corridor

