Reference Guide

Captives

This document is only a guide intended to assist interested parties in the formation and ongoing operation of a Captive insurance company in New Jersey. Please consult Bulletin No. 11-08, New Jersey Revised Statutes Annotated (N.J.S.A.) 17:47B-1 et seq., and New Jersey Administrative Code (N.J.A.C.) 11:28 for specific language and/or legal requirements for the rules and statutes cited. If you have any questions, please contact the Office of Captive Insurance.
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Section 1 – CERTIFICATE OF AUTHORITY APPLICATION PROCESS

In order to license a captive insurance company in New Jersey, please follow these steps:

**Step 1: Pre-Application Phone Call.** Please call Thomas Herriger, Office of Captive Insurance, (609) 292-7272 ext. 50559, to briefly discuss your proposed captive. Upon the recommendation of the Office, please proceed to Step 2.

**Step 2: Pre-Application Material.** Please prepare the following information for the initial pre-application meeting:

1. **Draft Admissions Packet.** “Confidential” drafts of the Admissions Packet, the content of which can be found on the Department’s website.

2. **Business Plan.** A brief summary of the intended business plan, including as much of the following information as possible:
   a. Proposed effective date;
   b. Proposed coverage and coverage limits;
   c. Disclosure regarding whether parties intend to direct write or reinsure the proposed lines of coverage;
   d. Proposed reinsurance structure with identification of reinsurers if known;
   e. Range of expected gross and net premium levels;
   f. An organizational chart reflecting the relationship between the captive and the insured parties; and
   g. Proposed capital structure, initial amount and source of funding.

3. **Corporate Governance.** The proposed structure of the Board of Directors and any subcommittees, as well as the initial officers who will manage the operations.

4. **Feasibility Study.** The name of the actuary that will perform the feasibility study and the status of that evaluation. Include a description of the nature and extent of specific historical loss experience available to the actuary in conducting the feasibility study.

5. **Service Providers.** The name of the proposed captive manager and principal service providers. If any of the service providers are related parties, please explain their relationship with the captive.

**Step 3: Pre-Application Meeting.** Be prepared to present and discuss the pre-application material. You may bring the proposed captive manager and a principal service provider to the meeting.

**Step 4: Application (N.J.S.A. 17:47B-2).** After meeting with the Office of Captive Insurance, applicants should submit one paper copy and one PDF copy of all final materials in the Admission Packet to the Department for review, along with (1) the application fee of $4000; and (2) their completed business formation documents and the appropriate business formation fee payable to the Treasurer, State of New Jersey, Division of Revenue. The fee shall be $165 ($125 filing fee, $25 certified copy and $15 expedited handling fee). Note: For a Limited Liability Company, LLC, the fee shall be $175 (($125 filing fee, $25 certified copy and $25 expedited handling fee).
Applicants should include with the Admission packet a Petition to the Commissioner to issue a Certificate of Public Good.

Significant elements of filing the captive application include:

1. **Application Costs** (N.J.A.C. 11:28-1.5). Required application costs should be submitted with the application.

2. **Biographical Affidavits.** Captives must provide biographical affidavits for all officers and directors. If we already have a biographical affidavit on file that was completed within three years of the date of your application filing, you may incorporate it by reference. Please do not file multiple copies of the same biographical affidavit.

3. **Bylaws.** The captive’s bylaws shall specifically provide for one Board of Directors meeting in the State of New Jersey annually, principal place of business in New Jersey, quorum requirements, compliance with New Jersey resident director requirements and other statutory requirements as appropriate.

4. **Capital & Surplus Requirements** (N.J.S.A. 17:47B-3). Receiving a captive insurer license requires the captive insurer to possess and maintain MINIMUM unimpaired paid-in capital & surplus as follows:

   - Pure Captive, $250,000
   - Association Captive, $750,000
   - Industrial Captive, $500,000
   - Sponsored (protected cell) Captive, $500,000

The Commissioner has discretionary authority to prescribe capital and surplus requirements above the statutory minimum based upon the type, volume and nature of insurance offered. We will determine if additional capital and surplus (initial or ongoing) will be required after a complete review of all necessary information, including pro forma financial statements, sponsor’s/members' financial condition, actuarial feasibility study, annual reports, etc.

5. **Detailed Business Plan** as submitted in draft form above.

6. **Designee to Receive Department documents and Service of Process.**

7. **Statement of Benefit to New Jersey**

8. **Pro Forma Financial Projection** (5 year expected and 5 year adverse).

9. **Feasibility Study.** Actuarial feasibility studies must accompany all applications. The feasibility study should:
   
   a. Be prepared on the actuary’s letterhead;
   
   b. Include a description of all documents and materials the actuary reviewed and an explanation of how the feasibility study comports with the business plan (e.g. risks, coverages, retentions, and whether the proposed captive will write business directly, cede, or assume business);
c. Review of 5 years of loss history specific to the proposed insured population and the business plan;

d. Identify the methodology used in preparing the feasibility study including confidence levels, credibility, expected results, worst and best case scenarios with premium and loss components; and

e. Include conclusions on proper capitalization and pricing.

10. **Financial Evidence** (N.J.S.A. 17:47B-2c (1) & (2)). The law requires that evidence of the following be filed:

   a. a certified copy of its organization’s documents, a statement under oath of its president and secretary showing its financial condition;
   b. a description of the coverage limits and rates, together with any additional information as the commissioner may reasonably require;
   c. the amount and liquidity of its assets relative to the risks to be assumed;
   d. the adequacy of the expertise, experience and character of the person who will manage it;
   e. the overall soundness of its plan of operation;
   f. the adequacy of the loss prevention programs of its insureds; and
   g. other factors deemed relevant by the Commissioner of Banking and Insurance in determining whether the proposed captive insurance company will be able to meet its policy obligations.

11. **Captive Name Availability.** You must check with the Department to determine the availability of your proposed name for the captive. Certificate of Incorporation for the captive must be pre-approved by the Department prior to the filing with the New Jersey Department of Treasury, Division of Revenue.

12. **Service Providers.** Provide the following information:

   a. Captive Manager’s name, address, phone number, fax number and contact person. Provide a complete management firm profile if this is the first New Jersey captive for this manager.
   b. Attorney’s name, address, phone number, fax number and contact person.
   c. Independent Certified Public Accountant’s name, address, fax number and contact person. If the company does not provide a name with the application, the company should, within ninety days of the issuance of a license as a New Jersey captive, report to the Commissioner in writing the name and address of the independent certified public accountant retained to conduct the annual.
   d. Actuary’s name, address, phone number, fax number and contact person.
   e. Financial Institution or bank’s name, address, phone number, fax number and contact person. Keep all operating funds in a New Jersey bank or financial institution account.

No person or firm should act as a captive manager, an independent certified public accountant, or an actuary for a captive insurer unless they are registered with the Department. The Department will maintain a list of Registered Service Providers and will post this list on its website.
**Re-domestication Application.** Captives wishing to re-domesticate to New Jersey must follow the same procedure as outlined above for newly formed captives. In addition to the filings required above, you must also file the following:

1. A written statement signed by the captive’s president and secretary that explains the reason(s) for the proposed re-domestication to New Jersey;
2. Stockholder(s) and Board of Director re-domestication resolutions;
3. Documentation of the current domicile’s approval of the re-domestication;
4. Current examination reports;
5. Year-end financial statement and any subsequent issued quarterly statements;
6. Last audited financial statement; and
7. Statement of Good Standing from regulator in current domiciliary jurisdiction.
8. Re-domestication application fee of not greater than $3,500. The applicant must contact the Captive Section to obtain the exact application fee.
9. In addition to completing the business formation document as a foreign corporation, the captive must submit Articles of Redomestication to be filed with the New Jersey Department of Treasury, Division of Revenue. The redomestication fee shall be $265 ($125 for business formation document, $100 Articles of Redomestication, $25 certified copy and $15 expedited handling fee). Note: For a Limited Liability Company, LLC, the fee shall be $175 (($125 filing fee, $25 certified copy and $25 expedited handling fee).

**Additional requirements for all captives.** A captive in New Jersey shall:

1. Select a New Jersey registered captive manager;
2. As indicated above, identify the following registered service providers: actuary, CPA and captive manager. If the service provider(s) that an applicant chooses is not on the New Jersey Department’s list of Registered Service Providers, the service providers must file an application and biographical affidavit to be reviewed and approved by the Department; and
3. Submit to an organizational exam or investigation that may be performed by the Department before or after the captive receives the Certificate of Authority. Such exam or investigation will consist of a general survey of the captive’s corporate records, including charter, bylaws and minute books; verification of capital and surplus; verification of principal place of business; determination of assets and liabilities; and a review of such other factors as the Commissioner deems necessary. The cost of this examination or investigation shall be included in the application costs, unless such costs become extraordinary, then the applicant shall bear such examination or investigation cost in addition to the application cost.
Section 2 – ONGOING FINANCIAL FILING REQUIREMENTS

Annual Financial Statement Filings (N.J.S.A. 17:47B-6). Captives must submit an New Jersey Captive Annual Report Form (NJCARF) on the captive’s financial condition, verified under oath by two executive officers prior to March 1 of each year. The NJCARF shall be submitted in hard copy and an electronic copy unless the Department has instructed otherwise. An association captive shall file its report on the form required by N.J.S.A. 17:23-1 et seq.

Use of Generally Accepted Accounting Principles (GAAP). The captive shall use generally accepted accounting principles (GAAP) when preparing its financial statement filings unless the Commissioner approves the captive to use statutory accounting principles (SAP). The captive may use appropriate or necessary modifications or adaptations as may be approved or required by the Commissioner.

Audited Financial Report (N.J.A.C. 11:28-8) (AFR). The annual financial statement for every captive must be audited by an independent certified public accountant and a copy of their report must be filed with the Department on or before June 30 for prior calendar year ending December 31. As part of the AFR, the captive shall file an actuarial opinion certifying the adequacy of the captive’s loss reserves and loss expense reserves (N.J.A.C. 11:28-8(i)).

Supplemental Captive Parent Financial Statement (N.J.S.A. 17:47B-6). As a supplement to a Captive’s annual statement, the Commissioner may require the Parent of the captive to file a financial statement annually. The statement shall be filed no later than June 30 of each year and shall be kept confidential.

Annual Premium Tax and Annual License Renewal (N.J.S.A. 17:47B-6, N.J.S.A 17:47B-2f) The annual premium tax shall be filed no later than March 1 of each year. The premium tax form includes the payment for annual license renewal. If the captive did not have any premium (direct or reinsurance) for the prior year, the annual license renewal shall be submitted on a separate form and is due no later than April 1 of each year.

Section 3 – ONGOING GENERAL MATTERS FOR CAPTIVES

Plan of Operation Changes (N.J.A.C. 11:28-1.20). Any changes in business plans shall be submitted for review and approval prior to initiating the change. Please make your filings sufficiently in advance to allow the Department adequate review time before the intended effective date. More complex changes may require significant analyst and management review time. We will not approve a material change request without making an informed decision. To facilitate our review, please provide the most recent financial statement and any information pertinent to our review of the change, i.e. policy forms, feasibility study, pro forma financial statements, draft agreements, etc. If you have any questions about the need to submit any transaction, agreement or other proposal/change as a material change under, please call our Chief of Captive Insurance.

Capital & Surplus Requirements (N.J.S.A. 17:47B-3). A captive must at all times possess and maintain MINIMUM unimpaired paid-in capital & surplus amounts that are at least equal to the greater of the following or the minimum amount required by the Commissioner:

- Pure Captive, $250,000
- Association Captive, $750,000
- Industrial Captive, $500,000
• Sponsored (protected cell) Captive, $500,000

1. At any time, the Commissioner has discretionary authority to increase a captive's minimum capital and surplus if the Department determines additional capital is necessary upon financial review of the captive's business plan or financial reports.

2. Captives may use an irrevocable letter of credit for their initial capitalization upon approval of the Commissioner. The format for the letter of credit can be found on our website.

Captive Manager (N.J.A.C. 11:28-1.6). A captive shall engage a competent captive manager that does business at a location in New Jersey and maintains the captive's books and records at a location in New Jersey accessible to the Commissioner.

Other matters specific to captive managers include:

1. Captive managers must promptly notify the Commissioner if the captive fails to comply with any pertinent statutes, regulations, or licensure conditions.

2. A change in the captive manager is considered a material change in the captive’s plan of operations, subject to the Department’s prior approval. An officer of the captive must advise the Department of the captive’s intent to change the manager and provide reasons for replacement at least 30 days prior to the effective date of the change. If the proposed new captive manager is not registered in New Jersey, an application must be submitted for approval prior to the Commissioner’s approval of the captive manager change. The exiting captive manager should provide a letter to the Department indicating the circumstances attributing to its dismissal or resignation.

Certificates of Compliance or Certification of Documents. Submit your request for Certificates of Compliance or certified copies of any charter documents by mail.

Dividends. You must obtain prior approval for a captive to accrue and pay dividends.

Examinations (N.J.S.A. 17:47B-7). Captives are subject to a statutory financial examination at least once every three years and whenever the Commissioner determines it to be prudent. The Commissioner may increase the three-year period to five years, if the captive insurance company is subject to a comprehensive annual audit during that period of a scope satisfactory to the Commissioner by independent auditors approved by the Commissioner. The expenses and charges of the examination shall be paid to the State by the company examined. All examination reports, preliminary examination reports or results, working papers, recorded information, documents and copies thereof produced by, obtained by or disclosed to the commissioner or any other person in the course of an examination made under this section are confidential and are not subject to subpoena and shall not be made public by the Commissioner without the written consent of the company, except to the extent provided in the law.

Information Confidentiality (N.J.S.A. 17:47B-2c(3)). A captive’s information on file with the Department is confidential. We do not provide information to any other person without the written consent of the captive. Statutory exceptions include use of the information for regulatory purposes, producing the information pursuant to a subpoena and, if certain conditions are met, producing the information to a party to a civil action or contested case in which the captive is also a party.
Accountant Work Papers. Each company should require its independent certified public accountant to make available for review by the Commissioner or his appointed agent the work papers prepared in the conduct of the audit of the company. The company should require that the accountant retain the audit work papers for a period of not less than seven years after the period reported upon.

Notification Of Adverse Financial Condition. A licensed captive should require the certified public accountant to immediately notify in writing either an officer and all members of the Board of Directors of the corporation, or the corresponding parties in a L.L.C., as applicable, of any determination by the independent certified public accountant that the company has materially misstated its financial condition in its report to the Commissioner. The company should furnish such notification to the Commissioner within five working days of receipt thereof.

Suspension or Revocation Of Captive License.

The Commissioner may by order rescind the license of the captive:

1. If the captive has not commenced business according to its plan of operation within two years of being licensed; or

2. If the captive ceases to carry on insurance business in or from within New Jersey; or

3. At the request of the captive; or

4. For any reason provided in P.L. 2011, c. 25 (N.J.S.A. 17:47B-1 et. seq.).
Section 4 – CORPORATE GOVERNANCE

General Corporate Governance Standards. The following requirements are applicable:

1. **Directors and Officers.** Do not need prior approval to appoint or change a captive’s officers, directors or other principals. The captive must provide a notice within 30 days of any change in an officer, director or other principal and submit a biographical affidavit.

2. **Biographical Affidavits.** Captives must provide biographical affidavits for all officers, directors and trustees of the captive including new officers, directors or trustees appointed subsequent to issuance of the captive’s certificate of authority. If we already have the new officer’s or director’s affidavit on file (completed within the last three years), you may incorporate it by reference, but you must still notify the Department of the appointment. The Department reserves the right to request updated biographical affidavits for its files at any time.

3. **Qualifications.** Board members must demonstrate appropriate qualifications, expertise and experience to competently perform their duties; because they are responsible for direction and corporate governance, we recommend that the captive provide the Board of Directors with orientation and continuous training to assure knowledge of insurance principles and regulatory requirements.

4. **D&O.** We recommend that the captive provide board members with Directors and Officers insurance coverage.

5. **Conflict of Interest Statements (N.J.A.C. 11:28-1.17)** We require that captives adopt a conflict of interest statement to be completed and signed by all officers, directors and principals. The Captive must develop policies and procedures to periodically obtain updated conflict of interest statements from its directors, officers and principals for the Captive’s information and records, and for its annual disclosure to the Department regarding director independence.