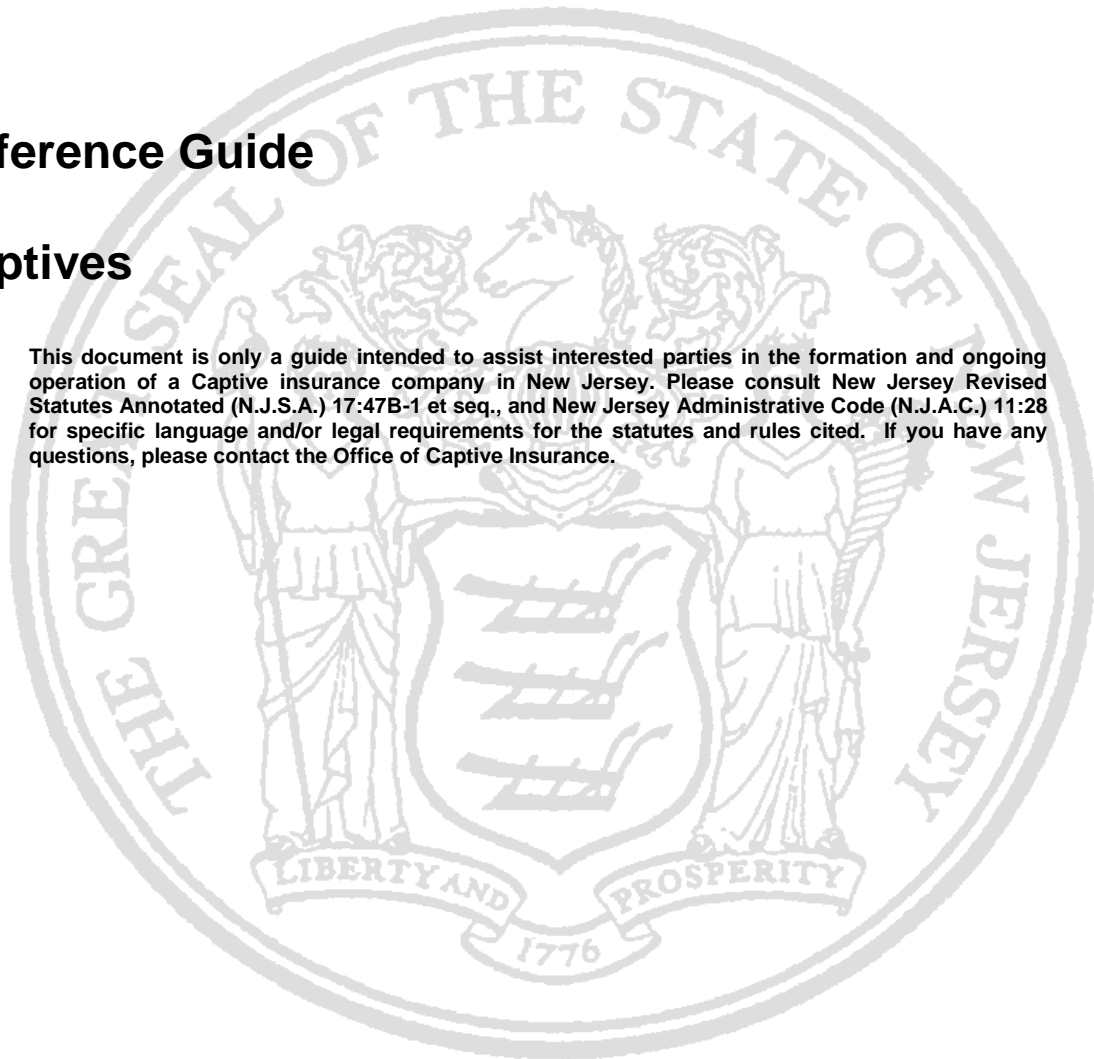


**State of New Jersey**  
**Department of Banking and Insurance**  
*Office of Captive Insurance*  
Telephone: (609) 292-7272 Facsimile: (609) 292-6765

## 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 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 statutes and rules cited. If you have any questions, please contact the Office of Captive Insurance.



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## Section 1 – CERTIFICATE OF AUTHORITY APPLICATION PROCESS

The process for incorporating a Captive insurance company in New Jersey and applying for a Certificate of Authority from the Department of Banking and Insurance involves steps as follows:

1. Contact William P. White, Assistant Commissioner, Office of Captive Insurance (609) 940-7412, to discuss the insurance operations of the proposed Captive insurance company and its purpose in terms of risk financing for the owner.
2. Prepare an [Executive Summary](#) to clarify key points of the proposed Captive for review by the Office of Captive Insurance (“OCI”). OCI will advise of any concerns or issues that need to be addressed prior to beginning the application process. OCI or the applicant may request a meeting to facilitate a discussion of the proposed Captive.

After review and discussion, OCI will notify the applicant if they should proceed with preparing incorporation documents and the Captive insurance company application as follows:

- Select a Captive manager firm from the listing provided on OCI’s website. If the applicant has retained a Captive manager firm not listed, a Captive manager application should be submitted to OCI.
- Prepare incorporation documents. Reference *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 information about the documents and procedure. The completed incorporation documents should be included with the submitted application.
- The applicant should provide one original paper copy, with signatures, of all required documents with the completed [application form](#). An electronic copy of the complete [Admissions Application Package](#) should be emailed to OCI ([captives@dobi.nj.gov](mailto:captives@dobi.nj.gov)). Forms for completing the application and certain other documents are available on the Department’s website along with a [checklist](#) of required documents. The Admissions Application Package should be arranged with a table of contents and all document pages should be numbered, dated and have the name of the preparer (firm or individual) and the name of the Captive on each page.
- Submit the completed Admissions Application Package to OCI along with (1) the application fee of \$4000, and (2) the completed business formation documents and the appropriate business formation fee payable to the Treasurer, State of New Jersey, Division of Revenue:
  - Filing fee \$125
  - Certified copy fee \$25
  - Expedited handling fee \$15

Note: For a Limited Liability Company (LLC)

- Filing fee \$125
- Certified copy fee \$25
- Expedited handling fee \$25

Applicants should include with the Admission Application Package a Petition to the Commissioner to issue a Certificate of Public Good.

Important components for completing and filing the Captive application include:

1. **Application Costs** (N.J.A.C. 11:28-1.5). Payment of the required application fees should be submitted with the application.
2. **Business Plan**. A detailed description of the proposed business plan utilizing the outline provided on the Department's website.
3. **Biographical Affidavits**. Captives must provide biographical affidavits for all officers and directors. If the Department already has a biographical affidavit on file that was completed within three years of the date of the application filing, it may be incorporated by reference. Please do not submit multiple copies of the same biographical affidavit.
4. **Designee for Receipt of Department Documents**.
5. **Designee for Receipt of Service of Process**.
6. **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.
7. **Pro Forma Financial Statements (including Parent Company Financial Statements)**
8. **Actuarial Feasibility Study**. Actuarial feasibility studies must accompany all applications. The feasibility study should:
  - a. Be prepared on the actuary's letterhead;
  - b. Document the data and market information the actuary used to review the business plan and analyze the proposed insurance transactions; describe the feasibility study findings that support the Captive business plan in terms of coverages provided and the proposed Captive ability to cede, retain, and/or assume risks;
  - c. Provide a comparative analysis of the proposed Captive projected loss history with industry/market segment loss history for the 5 years reflected in the Captive business plan proforma financial statements;
  - d. Identify the methodology used in preparing the feasibility study including confidence levels, credibility, expected results, best and worst-case scenarios with premium and loss components; and,
  - e. Include conclusions on proper capitalization and pricing.
9. **Statement of Benefit to New Jersey**
10. **Capital & Surplus Requirements** (N.J.S.A. 17:47B-3). Receiving a Captive Certificate of Authority requires the Captive 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. The Commissioner will determine if additional capital and surplus (initial or ongoing) will be required after a complete review and evaluation of all required information, including pro forma financial statements, sponsor's/members' financial condition, actuarial feasibility study, annual reports, etc.

Captives may use an irrevocable letter of credit for their initial capitalization upon approval of the Commissioner. The letter of credit must be issued by a bank chartered by the State of New Jersey or a member bank of the Federal Reserve System located in this State. The form for the [letter of credit](#) is provided on the Department's website.

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

- a. Certified copy of organization documents and a statement under oath of its president and secretary describing the organization's financial condition;
- b. Description of the coverage and limits of liability to be provided by the Captive, premium rates, and any additional descriptive information the Commissioner may reasonably require;
- c. Amount and liquidity of assets relative to the risks to be assumed by the Captive;
- d. Expertise, experience and background of Captive operations staff and managers reporting to Captive owner(s) or parent company;
- e. Adequacy of the insured/policyholder loss prevention programs; and,
- f. Other factors deemed relevant by the Commissioner in determining the ability of the proposed Captive insurance company to meet its policy obligations.

12. **Captive Name Availability.** The applicant must check with the Department to determine the availability of the proposed name for the Captive. Business formation documents for the Captive must be pre-approved by the Department prior to filing with the New Jersey Department of Treasury, Division of Revenue.

13. **Statement of Parent Company Net Worth**

14. **Consent of Incorporators**

15. **Service Providers.** Applications and biographical affidavits must be completed and approved for listing. Companies and individual(s) are listed. If the company does not include a named individual with the application, the company should report to the Commissioner in writing the name, address and other contact information of the named individual within ninety (90) days of the issuance of the Certificate of Authority. Forms are provided on the website.

No individual or company should act as a Captive manager, an independent certified public accountant, or an actuary for a New Jersey licensed Captive unless an application has been

filed with the Department. The Department will maintain and post a list of Service Providers on the OCI website.

**Redomestication Application.** Captive insurers wishing to redomesticate to New Jersey must provide a certified, complete copy of the original filing with the current domiciliary jurisdiction and copies of all subsequent updated information. The applicant should review the [redomestication application forms](#) on the OCI website and supplement their original filing with information required for New Jersey, as needed.

In addition, the redomestication application should include the following:

1. A written statement signed by the Captive's president and secretary, specifying the reason(s) for the proposed redomestication to New Jersey;
2. Stockholder(s) and Board of Director resolutions for redomestication;
3. Documentation of the current domiciliary jurisdiction approval of the redomestication request;
4. Current financial performance examination and any other regulatory compliance reports;
5. Most recent year-end annual report, financial statements and any subsequent issued quarterly statements;
6. Copy of the most recent audited financial statement; and
7. Statement of Good Standing from regulator in current domiciliary jurisdiction.

The redomestication application fee is \$3,500.

**In addition to completing business formation documents as a foreign or alien corporation, the Captive insurer 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).**

OCI will review the redomestication application and arrange to call or meet with the applicant to discuss any issues or concerns.

**Additional requirements for all Captive insurers.**

A Captive in New Jersey shall:

Submit to an organizational exam that may be conducted by the Department before or after the Certificate of Authority has been issued. The examination will consist of a general survey of the Captive insurer 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 shall be included in the application costs, unless the costs become extraordinary, in which case the applicant shall pay the cost of the examination in addition to the application cost.

## **Section 2 – ONGOING FINANCIAL FILING REQUIREMENTS**

**Annual Financial Statement Filings (N.J.S.A. 17:47B-6).** Captive insurers must submit a 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 paper copy and 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. See [New Jersey Captive Filing Requirements](#).

**Use of Generally Accepted Accounting Principles (GAAP).** The Captive insurer 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 the 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 insurer's annual statement, the Commissioner may require the parent of the Captive to file an annual financial statement. The financial 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. See [New Jersey Captive Filing Requirements](#).

## **Section 3 – ONGOING GENERAL MATTERS FOR CAPTIVES**

**Business Plan 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 filings sufficiently in advance to allow the Department adequate review time before the intended effective date. More complex changes may require significant analysis and management review. The Department will not approve a material change request without complete analysis and review. To facilitate the Department's review, please provide the most recent financial statement and any information pertinent to the Department's review of the change, i.e. policy forms, feasibility study, pro forma financial statements, draft agreements, etc. If there are questions about the need to submit any transaction, agreement or other proposal/change as a material change, please contact the Assistant Commissioner of OCI.

**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

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 review of changes to the Captive's business plan or financial reports.

**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 and is 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 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.** Licensed Captives can submit a request for Certificates of Compliance or certified copies of any charter documents by contacting OCI at [captives@doji.nj.gov](mailto:captives@doji.nj.gov).

**Dividends.** The Captive must obtain prior approval 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 and the scope of the annual audit is satisfactory to the Commissioner and is conducted by independent auditors approved by the Commissioner. The expenses and charges of the examination shall be paid to the State by the Captive insurance 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 Captive insurance 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. The Department does 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 the Commissioner's 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 an LLC, 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;
2. If the Captive ceases to carry on insurance business in or from within New Jersey;
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.** Prior approval to appoint or change a Captive's officers, directors or other principals is not required. 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 the Department already has the new officer's or director's affidavit on file (completed within the last three years), the Captive may incorporate it by reference, but the Captive 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, the Department recommends 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.** The Department recommends 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)** Captives are required to 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 annually obtain updated conflict of interest statements from its officers, directors, and principals for the Captive's information and records, and for its annual disclosure to the Department regarding director independence.