

**TITLE 11. INSURANCE
CHAPTER 28. CAPTIVE INSURANCE
SUBCHAPTER 1. CAPTIVE INSURANCE**

N.J.A.C. 11:28-1.1 (2012)

§ 11:28-1.1 Purpose and scope

(a) The purpose of this subchapter is to set forth the admission procedures and financial reporting requirements which are necessary to implement N.J.S.A. 17:47B-1 et seq.

(b) This subchapter shall apply to all captive insurance companies licensed under N.J.S.A. 17:47B-1 et seq.

§ 11:28-1.2 Definitions

The following words and terms, as used in this subchapter, shall have the following meanings, unless the context indicates otherwise.

"Alien captive insurance company" means an insurance company formed to write insurance business for its parents and affiliates and licensed pursuant to the laws of a jurisdiction other than this State which imposes statutory or regulatory standards in a form acceptable to the Commissioner on companies transacting the business of insurance in that jurisdiction.

"Association captive insurance company" means a company that insures risks of the member organizations of the association and their affiliated companies.

"Branch captive insurance company" means an alien captive insurance company licensed by the Commissioner to transact the business of insurance in this State through a business unit with a principal place of business in this State.

"Captive" or "captive insurance company" means any pure captive insurance company, association captive insurance company, sponsored captive insurance company or industrial insured captive insurance company formed or licensed pursuant to N.J.S.A. 17:47B-1 et seq. For the purposes of this subchapter, a branch captive insurance company shall be a pure captive insurance company with respect to operations in the State, unless otherwise permitted by the Commissioner.

"Commissioner" means the Commissioner of the New Jersey Department of Banking and Insurance.

"Department" means the New Jersey Department of Banking and Insurance.

"Industrial insured captive insurance company" means a company that insures risks of the industrial insureds that comprise the industrial insured group, and their affiliated

companies.

"Pure captive insurance company" means a company that insures risks of its parent and affiliated companies or controlled unaffiliated businesses.

"Sponsored captive insurance company" means a captive insurance company:

1. In which the minimum capital and surplus required by applicable law is provided by one or more sponsors;
2. That is formed or licensed under N.J.S.A. 17:47B-1 et seq.;
3. That insures the risks of separate participants through the contract; and
4. That segregates each participant's liability through one or more protected cells.

"Work papers" include, but are not necessarily limited to, schedules, analyses, reconciliations, abstracts, memoranda, narratives, flow charts, copies of company records or other documents prepared or obtained by the accountant and his or her employees in the conduct of their examination of the company.

§ 11:28-1.3 Captive formation; general admission requirements

(a) A captive that intends to be formed and licensed to do business in any of the lines of insurance authorized by N.J.S.A. 17:47B-1 et seq., shall submit the following to the Department, as applicable:

1. A captive application for admission (form can be found on the Department's website at http://www.state.nj.us/dobi/division_insurance/captive/app_formation.htm). The application requests the name of the proposed captive, the type of captive, the parent, the directors, capital and surplus information and the names and addresses of professional service providers;
2. The appropriate costs for license application review as set forth in N.J.A.C. 11:28-1.5;
3. An irrevocable letter of credit (a sample of which can be found on the Department's website at the address indicated above);
4. A detailed business plan (form outline can be found on the Department's website at the address indicated above);
5. Biographical affidavits (form can be found on the Department's website at the above address) - one for each incorporator, officer, and director of a corporate applicant or each manager and member owning a 10 percent or greater interest in a L.L.C. applicant;
6. Designee to receive Department documents (form can be found on the Department's

website at the above address);

7. Designee for Receipt of Service of Process in accordance with N.J.S.A. 17:47B-2b.(4) (which form can be found on the Department's website at the above address);

8. Bylaws;

9. Articles of incorporation or the equivalent for non-corporate forms of business;

10. Pro forma financial projections (five-year expected and five-year adverse);

11. Actuarial feasibility study;

12. Statement of benefit to New Jersey;

13. Minimum capital and surplus guidelines;

14. As required pursuant to N.J.S.A. 17:47B-1 et seq.:

i. A statement under oath of its president and secretary showing its financial condition;

ii. A description of coverage limits and rates together with any additional information as the Commissioner may reasonably require. In the event of any subsequent material change in an item in the description, the captive insurance company shall submit to the Commissioner for approval an appropriate revision and shall not offer any additional lines of insurance until a revision of the description is approved by the Commissioner. The captive shall notify the Department of any proposed material change not later than 30 days prior to the effective date of the adoption of any such change; and

iii. Documents evidencing the following:

(1) The amount and liquidity of its assets relative to the risks to be assumed;

(2) The adequacy of the expertise, experience and character of the person who will manage it;

(3) The overall soundness of its plan of operation; and

(4) The adequacy of the loss prevention programs of its insureds (only applicable to property casualty); and

15. Statement of net worth.

(b) The Commissioner in his or her discretion may request alternative and additional documents and information as he or she deems necessary in order to make a finding that the application submissions demonstrate that: "the establishment and maintenance of the

proposed captive will promote the general good of the State" pursuant to N.J.S.A. 17:47B-5d; or that the applicant sufficiently meets the financial requirements necessary for admission in this State as a captive insurance company. Information contained in any submissions made as set forth in this subsection or in (a) above that is specified in N.J.S.A. 17:47B-2c.(3) shall remain confidential as set forth therein.

(c) A captive shall not write any insurance business in this State unless, in accordance with N.J.S.A. 17:47B-2b.(3), it maintains its principal place of business in this State, which may be the New Jersey office of the captive insurer's manager, and utilizes an appropriate number of in-State professional service providers to carry out the business of the captive, including, but not limited to, attorneys, accountants, managers, actuaries, and, if applicable, brokers and third party administrators.

§ 11:28-1.4 Redomestication of captive insurance companies

(a) All captive insurance companies redomesticating to New Jersey shall file the following documentation with the Department:

1. A captive application for admission (form can be found on the Department's website at http://www.state.nj.us/dobi/division_insurance/captive/app_redomestication.htm). The application requests the name of the proposed captive, the type of captive, the parent, the directors, capital and surplus information and the names and addresses of professional service providers;
2. A detailed business plan (form outline can be found on the Department's website at the above address);
3. Biographical affidavits (form can be found on the Department's website at the address above) - one for each incorporator, officer, and director of a redomesticating corporate captive, or each manager and member owning a 10 percent or greater interest in a L.L.C. applying to redomesticate as a captive;
4. Designee to receive Department documents (which form can be found on the Department's website at the above address);
5. Designee for Receipt of Service of Process in accordance with N.J.S.A. 17:47B-2b.(4) (form can be found on the Department's website at the above address);
6. Current examination reports;
7. A year-end financial statement and any subsequently issued quarterly statements;
8. The last audited financial statement;
9. The appropriate cost as set forth in N.J.A.C. 11:28-1.5;

10. A statement of good standing and letter from domicile stating that there are no open issues; and

11. The Commissioner may, in lieu of any of the documents listed in (a)1 through 10 above, request alternative and additional documentation, on the basis of which the Department may determine that the applicant has demonstrated that it sufficiently meets the financial requirements necessary for admission in this State as a captive insurance company.

(b) The Commissioner in his or her discretion may request alternative or additional documents and information as he or she deems necessary in order to make a finding that the application submissions demonstrate that: "the establishment and maintenance of the proposed captive will promote the general good of the State" pursuant to N.J.S.A. 17:47B-5d; or that the applicant sufficiently meets the financial requirements necessary for admission in this State as a captive insurance company. Information contained in any submissions made as set forth in this subsection and in (a) above that is specified in N.J.S.A. 17:47B-2c.(3) shall remain confidential as set forth therein.

(c) A captive shall not write any insurance business in this State unless, in accordance with N.J.S.A. 17:47B-2b.(3), it maintains its principal place of business in this State, which may be the New Jersey office of the captive insurer's manager, and utilizes an appropriate number of in-State professional service providers to carry out the business of the captive, including but not limited to, attorneys, accountants, managers, actuaries, and, if applicable, brokers and third party administrators.

§ 11:28-1.5 Costs of license application and renewal reviews

(a) The Commissioner may have the initial application reviewed by outside experts, with the costs of the review paid by the applicant. The applicant will be billed the actual costs for such a review, up to a maximum of \$ 4,000. The outside review is of an advisory nature only and the Commissioner will make the determination regarding approval or disapproval of an application. The cost for the review/analysis of an initial application for licensure as a captive conducted by Department staff shall be based upon the number of hours devoted by Department staff to the review/analysis of the application and the salary levels of the staff members who perform or support those functions. Such salary levels will range from approximately \$ 35.00 per hour for administrative/clerical support staff to approximately \$ 100.00 per hour for senior professionals in the Captives Unit. In no event shall the cost for such a review exceed \$ 4,000. The cost for a license renewal review shall be \$ 300.00. Payments for these costs are non-refundable.

(b) All checks or money orders shall be made payable to: State of New Jersey - General Treasury.

§ 11:28-1.6 Captive managers

(a) No person shall act as a captive manager in this State unless they are registered with the Department as a captive manager. The Department shall maintain a list of registered captive managers in this State and shall post on its website a list of all registered captive

managers who indicated on their application that their contact information may be published. Individuals seeking registration as a captive manager shall submit an application for captive manager and a Biographical Affidavit (forms can be found on the Department's website at http://www.state.nj.us/dobi/division_insurance/captive/serviceproviders.html) to the Department for approval. The application requests the name and address of the captive manager/firm, the date of formation and incorporation, and the names of any captives currently under management.

(b) Any person acting as a captive manager in this State shall have an office in New Jersey and shall maintain in this State the books and records of all licensed New Jersey captives being managed by that manager.

§ 11:28-1.7 Reporting requirements

(a) Pursuant to N.J.S.A. 17:47B-1 et seq., a captive insurance company doing business in this State shall annually submit to the Commissioner a report of their financial condition, verified by oath of two of the captive's executive officers, prior to March 1 of each year. An association captive shall file its report in the form required by N.J.S.A. 17:23-1 et seq.

(b) A captive insurance company that insures life and/or health insurance policies shall adhere to the following:

1. The captive insurance company shall use statutory accounting principles (that is, as documented in the National Association of Insurance Commissioners' Accounting Practices and Procedures Manual) and shall submit the annual report in the form of the annual statement approved by the National Association of Insurance Commissioners for life insurers. The captive shall submit to the Department for approval any requests for modification or supplement to the annual statement form.

2. If the captive desires to use generally accepted accounting principles including any and all modifications thereto, based upon the nature of the business insured and the captive parent's domestic regulator prior to filing a report, it shall request approval to do so from the Commissioner. With the Commissioner's approval, it shall submit an annual report which shall include the appropriate or necessary modifications or adaptations thereto.

(c) The Commissioner in his or her discretion may request quarterly reports or financial data from a captive as necessary to confirm that a captive continues to fulfill the financial requirements necessary to qualify for admission as a captive in this State pursuant to N.J.S.A. 17:47B-1 et seq. and 17:23-1 et seq.

§ 11:28-1.8 Annual audit

(a) All captives shall be subject to an annual audit by an independent certified public accountant, registered with the Commissioner, and subject to N.J.S.A. 17:47B-6b, shall annually file an audited financial report describing the results of the said audit with the Commissioner on or before June 30 for the calendar year ending December 31 immediately preceding.

(b) The annual audit report shall be considered part of the company's annual report of financial condition, except with respect to the date by which it must be filed with the Commissioner.

(c) The annual audit report shall consist of the following:

1. An Opinion of Independent Certified Public Accountant, which shall:

i. Include financial statements which have been examined by an independent certified public accountant in accordance with generally accepted auditing standards as determined by the American Institute of Certified Public Accountants;

ii. Cover all years presented; and

iii. Be addressed to the captive on stationery of the accountant, bear the date and address of issuance and bear the original manual signature of the accountant;

2. A Report of Evaluation of Internal Controls:

i. This report shall include an evaluation of the internal controls of the captive relating to the methods and procedures used in the securing of assets and the reliability of the financial records, including but not limited to such controls as the system of authorization and approval and the separation of duties.

ii. The review shall be conducted in accordance with generally accepted auditing standards and the report filed with the Commissioner; and

3. An accountant's letter as set forth in (d) below.

(d) The accountant shall furnish the captive, for inclusion in the filing of the audited annual report, a letter describing the general background and experience of the staff engaged in the audit, including their experience in auditing captives or other insurance companies, and stating that:

1. He or she is independent with respect to the captive and conforms to the standards of his or her profession as contained in the Code of Professional Ethics and pronouncements of the American Institute of Certified Public Accountants and pronouncements of the Financial Accounting Standards Board;

2. The accountant understands that the audited annual report and his or her opinions thereon will be filed with the Department in compliance with this section;

3. The accountant consents to the requirements of N.J.A.C. 11:28-1.11 and consents to and agrees to make available for review by the Commissioner, his or her designee or his or her appointed agent, the work papers as defined in N.J.A.C. 11:28-1.11; and

4. The accountant is properly licensed by an appropriate state licensing authority and is a member in good standing in the American Institute of Certified Public Accountants.

(e) The annual audit shall also include financial statements.

1. The statements required shall be as follows:

i. A balance sheet; and

ii. A statement of gain or loss from operations;

2. A statement of changes in financial position;

3. A statement of changes in capital paid up, gross paid in and contributed surplus and unassigned funds (surplus); and

4. Notes to financial statements. The notes to financial statements shall be those required by generally accepted accounting principles or statutory accounting principles, as applicable, and shall include:

i. A reconciliation of differences, if any, between the audited financial report and the statement or form filed with the Commissioner;

ii. A summary of ownership and relationship of the company and all affiliated corporations or companies insured by the captive; and

iii. A narrative explanation of all material transactions and balances with the company;

(f) The annual audit shall include a Certification of Loss Reserves and Loss Expense Reserves (which can be submitted separately).

1. The annual audit shall include an opinion as to the adequacy of the company's loss reserves and loss expense reserves.

2. The individual who certifies as to the adequacy of reserves shall be:

i. A Fellow of the Casualty Actuarial Society, a member in good standing of the American Academy of Actuaries, or an individual who has complied with (f)4 below and has demonstrated to the Commissioner his or her competence in loss reserve evaluation for property and casualty insurance; or

ii. A Fellow of the Society of Actuaries, a member in good standing of the American Academy of Actuaries, or an individual who has complied with (f)4 below and has demonstrated to the Commissioner his or her competence in loss reserve evaluation for either life or health insurance.

3. The certification shall be in such form as the Commissioner deems appropriate.
4. No individual shall certify loss reserves and loss expense reserves for captives unless the individual is registered with the Department. The Department shall maintain a list of registered actuaries who may certify loss reserves and loss exposure reserves for captives and shall post this list on its website. An individual seeking such registration who is not on the Department's list shall submit an application for Authorization to Certify Loss Reserves and Loss Expense Reserves for Captives and a Biographical Affidavit (form can be found on the Department's website at http://www.state.nj.us/dobi/division_insurance/captive/serviceproviders.html) to the Department for approval.

§ 11:28-1.9 Designation of independent certified public accountant

(a) After becoming subject to the provisions of this subchapter, captives shall, within 90 days, report to the Commissioner in writing, the name and address of the independent certified public accountant retained to conduct the annual audit set forth in this subchapter.

(b) No person or firm shall act as an independent certified public accountant for a captive insurer unless they are registered with the Department. The Department shall maintain a list of registered independent certified public accountants and shall post this list on its website. A person or firm seeking such registration who is not on the Department's list shall submit an application for Authorization as an Independent Certified Public Accountant for Captive Insurance Business and a Biographical Affidavit to the Department for approval. (Forms are available on the Department's website at http://www.state.nj.us/dobi/division_insurance/captive/serviceproviders.html.)

§ 11:28-1.10 Notification of adverse financial condition

A licensed captive shall require the independent certified public accountant to immediately notify in writing an officer and all members of the board of directors of the captive of any determination by the independent certified public accountant that the captive has materially misstated its financial condition in its report to the Commissioner. The captive shall furnish such notification to the Commissioner within five working days of receipt thereof.

§ 11:28-1.11 Availability and maintenance of work papers of the independent certified public accountant

(a) Each captive shall require the independent certified public accountant to make available for review by the Commissioner or his or her appointed agent the work papers prepared in the conduct of the audit of the captive. The captive shall require that the accountant retain the audit work papers for a period of not less than seven years after the period reported upon.

(b) The reviews by the Commissioner referenced in (a) above shall be considered investigations and all work papers obtained during the course of such investigations shall be

confidential. The captive shall require that the independent certified public accountant provide portable document format (PDF) files of any of the work papers which the Department considers relevant. Such work papers may be retained by the Department and shall be confidential in accordance with N.J.S.A. 17:47B-2c.(3).

§ 11:28-1.12 Deposit requirement

(a) Whenever the Commissioner deems that the financial condition of a captive warrants additional security, he or she may require the captive to deposit with the Treasurer of this State cash or securities approved by the Commissioner or, alternatively, to furnish the Commissioner an irrevocable letter of credit issued by a bank chartered by the State of New Jersey or a member bank of the Federal Reserve System and approved by the Commissioner.

(b) The captive may receive interest or dividends from said deposit or exchange the deposits for others of equal value with the approval of the Commissioner. If such captive discontinues business, the Commissioner shall return such deposit only after being satisfied that all obligations of the company have been discharged.

§ 11:28-1.13 Organizational examination

In addition to the application review, an organizational investigation or examination may be performed before or after an applicant is licensed as a captive. Such investigation or examination shall 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 materials related to such an investigation or examination as set forth in N.J.S.A. 17:47B-2c.(3) shall be confidential as provided for therein.

§ 11:28-1.14 Reinsurance

(a) Any captive authorized to do business in this State may take credit for reserves on risks ceded to a reinsurer subject to the following limitations:

1. No credit shall be allowed for reinsurance where the reinsurance contract does not result in the complete transfer of the risk or liability to the reinsurer.
2. No credit shall be allowed, as an asset or a deduction from liability, to any ceding insurer for reinsurance unless the reinsurance is payable by the assuming insurer on the basis of the liability of the ceding insurer under the contract reinsured without diminution because of the insolvency of the ceding insurer.
3. Reinsurance under this section shall be effected through a written agreement of reinsurance setting forth the terms, provisions and conditions governing such reinsurance.

§ 11:28-1.15 Insurance producers and intermediaries

No person shall, in or from within this State, act as an insurance producer or broker for captive business without adhering to the requirements of N.J.A.C. 11:17-1 et seq. and the New Jersey Insurance Producer Licensing Act of 2001, N.J.S.A. 17:22A-26 et seq.

§ 11:28-1.15 Insurance producers and intermediaries

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§ 11:28-1.16 Directors

(a) Each captive shall report to the Commissioner within 30 days after any change in its executive officers, directors, or in its other principals as referenced on N.J.A.C. 11:28-1.3(a) and 1.4(a), including the submission of a biographical affidavit (forms available on the Department's website at the address indicated in N.J.A.C. 11:28-1.3(a)1) for any such new executive officer, director or principal.

(b) No director, officer, or employee of a captive shall, except on behalf of the captive, accept, or be the beneficiary of, any fee, brokerage, gift, or other emolument because of any investment, loan, deposit, purchase, sale, payment or exchange made by or for the captive, but such person may receive reasonable compensation for necessary services rendered to the captive in his or her usual private, professional or business capacity.

(c) Any profit or gain received by or on behalf of any person in violation of this section shall inure to and be recoverable by the captive.

§ 11:28-1.17 Conflict of interest

(a) Each captive licensed in this State is required to adopt a conflict of interest statement to be completed and signed by all officers, directors, and principals as referenced in N.J.A.C. 11:28-1.3(a) and 1.4(a) and key employees. The statement shall disclose whether the individual has any other commitments or involvements, personal or otherwise, that would divert him or her from his or her fiduciary duty to advance and further the interests of the captive he or she represents and, if so, the nature and extent of that commitment. This shall not necessarily preclude the individual, upon full disclosure, from being a director, officer or principal in more than one insurance company.

(b) Each officer, director, and key employee shall file such disclosure with the board of directors annually.

§ 11:28-1.18 Suspension or revocation of captive license

(a) The Commissioner may, subject to the provisions of this section, by order suspend or revoke 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 N.J.S.A. 17:47B-1 et seq.

(b) If the Commissioner finds, after notice and opportunity for a hearing pursuant to the provisions of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. and 52:14F-1 et seq., as implemented by the Uniform Administrative Procedure Rules, N.J.A.C. 1:1, that any captive insurance company has violated any provisions of N.J.S.A. 17:47B-1 et seq. or this subchapter, or pursuant to (a) above, the Commissioner may refuse to issue or renew the captive insurance company's license or may revoke or suspend the captive insurance company's license.

§ 11:28-1.19 Merger, consolidation or mutualization with domestic company

No person other than the issuer shall make a tender offer for or a request or invitation for tenders of, or enter into any agreement to exchange securities for, seek to acquire, or acquire in the open market or otherwise, any voting security of a domestic captive if, after the consummation thereof, such person would, directly or indirectly (or by conversion or by exercise of any right to acquire) be in control of such captive; and no person shall enter into an agreement to merge with or otherwise to acquire control of a domestic captive without the prior written approval of the Commissioner. In considering any application for merger, consolidation or mutualization with a domestic captive, the Commissioner shall consider all of the facts and circumstances surrounding the application as well as the criteria for the establishment of a captive set out in this chapter.

§ 11:28-1.20 Change of business

(a) Any change in the nature of the captive business from that stated in the captive's plan of operation filed with the Commissioner upon application for licensure as a New Jersey captive shall require prior approval by the Commissioner.

(b) Any change in any other information filed with the application for licensure as a captive shall be filed with the Commissioner but shall not require prior approval.

§ 11:28-1.21 Reserves required by law for reinsuring life insurance policies or annuities

(a) A captive insurance company shall maintain reserves that are actuarially sufficient to support the liabilities incurred by the captive insurance company reinsuring life insurance policies.

(b) A captive insurance company that issues annuity contracts shall maintain reserves that are actuarially sufficient to support the liabilities provided by the contracts.

§ 11:28-1.22 Establishment of separate accounts

A captive insurance company that issues contracts that provide variable benefits shall establish separate accounts for variable benefits.

§ 11:28-1.23 Investments

(a) Except as may be otherwise authorized by the Commissioner, association captive insurance companies shall comply with the investment requirements set forth in N.J.S.A. 17:24-1 et seq., except to the extent that doing so is inconsistent with the approved accounting standards in use by the captive. Notwithstanding any other provision of this subchapter, the Commissioner may approve the use of alternative reliable methods of valuation and rating.

(b) No pure captive insurance company or industrial insured captive insurance company shall be subject to any restrictions on allowable investments whatever, including those limitations contained in N.J.S.A. 17:24-1 et seq. (for property casualty captives) or N.J.S.A. 17:20-1 et seq. (for life health captives), provided, however, that the Commissioner may prohibit or limit any investment that threatens the solvency or liquidity of any such captive.