



**NEW YORK STATE
DEPARTMENT OF FINANCIAL SERVICES**

**CAPTIVE INSURANCE COMPANY
LICENSE APPLICATION INSTRUCTIONS**

GENERAL

Before submitting this application, please contact Captive Insurance Coordinator Jody Wald to arrange a meeting with New York's Captive Group. During that meeting, we will address all issues related to the incorporation and licensing of a captive insurance company in New York. You will meet the Group that will be your direct point of contact throughout this process. We will explain the incorporation and licensing of your captive in New York and explain what is required under New York law once your captive is formed. In this "Information and Application Package," you will find the information and forms necessary to apply for your captive license in the State of New York. All of this information is available in an electronic format at our website, www.nycaptives.com.

The completed and executed License Application form, with all material requested, should be submitted to:

Jody Wald
Captive Insurance Coordinator
New York State Department of Financial Services
25 Beaver Street, Room 367
New York, New York 10004

Any incomplete submission may delay the licensing process.

For more information about forming a captive insurance company in New York, contact Jody Wald by telephone at (212) 480-2757, by fax at (212) 480-2310 or by e-mail at jody.wald@dfs.ny.gov. This "Information and Application Package" can be accessed on the New York State Department of Financial Services Captive website www.nycaptives.com.

The submitted application should include the following:

- Completed biographical for each officer and/or director
- Plan of operation
- Pro forma financials for the next five years
- Proposed charter and by-laws
- Actuarial analysis
- Loan agreement
- An independent valuation of a subsidiary may also be required

Plan of Operation

The plan of operation submitted with the License Application must include an actuarial report feasibility study prepared by a qualified independent actuary. The content for the plan of operation is set forth in the Application Form. Any proposed changes to the plan of operation subsequent to licensing shall be submitted to the Superintendent thirty days before becoming effective.

Letters of Credit

If letters of credit are used to meet capital and surplus requirements, the sample Letter of Credit form should be adhered to by the institution issuing the letter of credit.

Incorporation

After review of the proposed charter and by-laws by the New York State Department of Financial Services, the applicant will submit an executed copy of the charter. For stock insurers, an incorporation tax of one-twentieth of one percent of the par value of capital stock must be submitted to the New York State Department of Financial Services (New York Tax Law -- Section 180) at this time. The executed copy of the charter will be forwarded by the Department of Financial Services to the New York State Attorney General for recording and the Department of Financial Services will issue a Certificate of Incorporation to the captive company. After the company has been incorporated it must submit a copy of its by-laws, which shall be certified by the corporate secretary or assistant corporate secretary.

Biographical Affidavit

The License Application requires submission of biographical affidavits for directors and executive officers of the proposed captive insurer. One Biographical Affidavit form is included in this package. Copies should be made, completed, executed and submitted with the Application. Each Biographical Affidavit form should be filled out entirely.

After incorporation, the applicant must submit:

- A certified notarized copy of the by-laws

- Appointment of Superintendent of Financial Services as attorney
- Certificate of designation by captive insurer
- Board of Directors resolutions for the appointment and designation
- Proof of funding

Appointment of Superintendent as Agent for Service of Process

The captive insurance company shall submit a power of attorney designating the Superintendent as agent for service of process. This shall be accompanied by a designation naming the person to whom any process served upon the Superintendent can be forwarded to and by a certified copy of a resolution by the Board of Directors authorizing both the appointment and the designation. Forms for the appointment, designation and board resolution are included in this package.

OTHER REQUIREMENTS TO NOTE

Principal Office and Records

All of the books and records of the captive insurance company must be maintained at the insurer's principal office, which shall be located in New York. Books and records consist of all information and files necessary to perform an audit or examination of the captive insurer.

Board of Directors

The Board of Directors must hold at least one meeting in New York. In addition, two members of the Board must be residents of New York.

Manager

The manager of a captive insurance company shall be a person or firm resident in New York and shall be either: (1) licensed as an agent or broker in New York; or (2) approved by the Superintendent to act as a captive manager.

REPORTING REQUIREMENTS SUBSEQUENT TO LICENSING

Captive Annual Report

All captive insurance companies must file an annual statement with the DFS Captive Group by March 1st. The form used shall be the New York Captive Annual Report.

Audited Financial Statement

An independent certified public accountant must opine on the financial condition of the captive insurance company on an annual basis.

Certification of Reserves

Loss reserves and loss expense reserves as reported in the annual statement must be certified by an actuary, who shall be a Fellow of the Casualty Actuarial Society, a member in good standing of the American Academy of Actuaries or an individual who has demonstrated his competence in loss reserve evaluation and has been approved by the Superintendent. It is incumbent upon the captive insurance company to select an actuary meeting these requirements.

Tax and Assessment Filings

Tax filings and payments are made to the New York State Tax Department in accordance with the provisions of Article 33 of the New York Tax Law. Captive insurers are subject to a premium tax (referred to as a “franchise tax” under NY Tax Law) as set forth in Section 1502-b of the Tax Law. Licensed captive insurers are not taxed under any other provision of the New York Tax Law.

Captive insurance companies must also pay an assessment pursuant to Section 332 of the New York Insurance Law, which is used to defray the operating expenses of the New York State Department of Financial Services. The assessment is based upon the direct premiums written in New York only; non-New York and reinsurance premiums are not used in calculating the assessment. The estimated rate based upon the latest assessment available is .25% of New York direct premiums written. A Report of Premiums is filed on an annual basis with the New York State Department of Financial Services.

Financial Examination

Each captive shall be subject to an examination at least once every five years.