



BEFORE SUBMITTING AN APPLICATION

Incorporation and licensing of a captive occurs with the direct assistance of the DFS Captive Group. **Before submitting a License Application** contact the DFS Captive Insurance Coordinator to arrange a preliminary meeting with the Department of Financial Services' Captive Group to discuss the proposed captive and to review the licensing and incorporation process.

DFS Captive Insurance Coordinator
George Babu
Phone: (212) 480-2046
Fax: (212) 709-3820
Email at George.babu@dfs.ny.gov.

APPLICATION PACKAGE

The **Captive Insurance Company License Application Package** contains much of the information and forms necessary to help you apply for your captive license in the State of New York. Additional information and forms can be found on our Captives website at <http://www.dfs.ny.gov/insurance/captive/captive.htm>

Four (4) completed and executed License Application forms, along with all material requested, should be submitted to:

George Babu
Captive Insurance Coordinator
New York State Department of Financial Services
One State Street
New York, New York 10004

This Application Package, associated forms, and further information about Captive Annual Statements, including associated Insurance Law, tax law etc., can also be found on our Captives website at <http://www.dfs.ny.gov/insurance/captive/captive.htm>

Upon a determination that the applicant has complied with the provisions of Article 70 of the Insurance Law, a License shall be issued to the captive insurer.

Incomplete submissions may delay the licensing process.

NOTE

DFS has called for a national moratorium on captive insurance transactions used to artificially lower reserve and collateral requirements, also known as "shadow insurance." DFS will not approve such transactions.

APPLICATION CHECK LIST

Submitted applications should include the following:

- A copy of the charter and bylaws or other similar documents
- A financial statement certified by two officers
- A Plan of Operation
- Letters of Credit (if required)
- Completed Biographical for each officer and/or director
- Pro forma financials for the next five years
- Actuarial analysis (actuarial report prepared by a qualified independent actuary)
- Loan agreement
- An independent valuation of a subsidiary (if 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. The Sample Letter of Credit form can be found on our DFS Captives website at:

<http://www.dfs.ny.gov/insurance/captive/captive.htm>

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. Additional copies of this form can be found on our DFS Captives website at <http://www.dfs.ny.gov/insurance/captive/captive.htm>

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 INCORPORATION

The applicant must submit:

- Executed copy of the charter
- Certified notarized copy of by-laws (certified by the corporate secretary or assistant corporate secretary).
- Proof of funding
- Appointment of Superintendent of Financial Services as agent
- Certificate of designation by captive insurer
- Board of Directors resolutions for the appointment and designation

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 certificate of 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 and can also be found on our Captive website at

<http://www.dfs.ny.gov/insurance/captive/captive.htm>

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.

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.