

# South Carolina Department of Insurance

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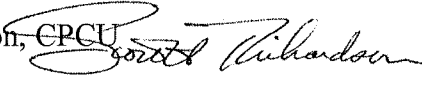
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## BULLETIN 2008-03

**TO:** All Captive Managers and Captive Insurers Authorized to Transact Captive Insurance Business in South Carolina

**FROM:** Scott H. Richardson, CPCU  
Director 

**SUBJECT:** South Carolina Captive Management Requirements

**DATE:** March 28, 2008

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### I. PURPOSE

This bulletin sets forth the general requirements to serve as a captive manager in South Carolina. Captive managers are responsible for providing a variety of administrative and management services to captives licensed in South Carolina. Effective captive management is important to the continued viability, growth and strength of the South Carolina captive insurance market. South Carolina law requires the Department to consider the character, reputation, financial responsibility, insurance experience and business qualifications of captive managers. *See* S.C. Code Ann. §38-90-60 (2002). The qualifications and experience of the managers and officers must be considered before a certificate of general good is issued for a captive insurance company to transact business in this state.

A captive manager may be an individual or a firm. To manage the affairs of a captive insurer licensed in this state, the individual or firm must be approved by the South Carolina Department of Insurance. S.C. Code Reg. 69-60 provides that "no person shall, in or from this state, act as an insurance manager, broker, agent, salesman, or reinsurance intermediary for captive business without the authorization of the director or his designee." *See* S.C. Code Reg. 69-60 (2000). In order to receive and maintain such approval and authorization, all captive managers must comply with the minimum requirements set forth below. The Department will periodically review the management firms operating in this state to ensure they and the captives they manage are operating in accordance with South Carolina law. Those managers found not to be in compliance will be immediately suspended from submitting new captive applications and given a specific period of time within which to correct any deficiencies. Failure to correct deficiencies by the established deadline may result in the imposition of regulatory sanctions against the

captive insurer and the withdrawal or suspension of approval for the captive manager to operate in this state.

## II. CAPTIVE MANAGER QUALIFICATIONS

Individuals or business organizations may apply to be approved for the management of captive insurance companies licensed in South Carolina.

Applications for approval shall be made using a form prescribed by the director. When considering the approval or disapproval of an application to serve as a captive manager, the South Carolina Department of Insurance considers the following: character, reputation, financial responsibility, insurance experience and business qualifications of the applicant.

**a. Character.** The applicant has not been the subject of, nor has the applicant been an officer or director or key management person in any insurance or reinsurance company or business venture which has been issued a restrictive or disciplinary order (suspension, supervision, revocation order, etc.) by any regulatory authority as a result of their direct action or inaction, nor has the applicant been convicted of any criminal activity involving insurance fraud, breach of trust or dishonesty.

**b. Reputation.** The individual or firm is known for its experience and expertise in insurance company or captive insurance financial management as evidenced by the CPA or other professional designations. The applicant must be able to establish that it has sufficient expertise and experience to exercise proper oversight over the financial and administrative affairs of the captive insurer.

**c. Financial responsibility.** The ability of the individual or firm to be financially accountable for its performance as evidenced by one or more of the following: self-insurance; the posting of a bond; errors and omissions coverage or directors and officers liability coverage; or both, in an amount specified by the Department.

**d. Experience.** The applicant has adequate experience in insurance and reinsurance operations to allow the individual or firm to oversee the activities and management of the captive insurance company. The applicant must also have sufficient knowledge of the line of business written by the captive insurer to demonstrate to the satisfaction of the director their ability to oversee the company's activities associated with the line of business being written.

Applicants approved as managers of captive insurance companies will receive a letter confirming approval from the Department of Insurance. Such approval shall be for an indefinite period and may be rescinded or withdrawn by the Department. A list of approved captive managers may be found on the Department's website at <http://www.doi.sc.gov>.

### **III. Captive Manager Responsibilities**

All captive managers in this state are charged with the following general responsibilities:

#### **a. Maintaining a Home Office for the Captive Insurer**

The captive manager will maintain a place of business that will be the home office of the captive in South Carolina. The captive manager shall inform the Department of Insurance of any changes in the contact names, addresses, and phone numbers for captive clients as well as changes in the management, officers, or directors of the captive within ten business days following the change.

#### **b. Operating Under Written Service Agreements**

The captive manager will enter into a written services agreement with captives under management describing services to be provided by the manager and methods of compensation. If the captive manager performs the duties of an insurance managing general agent, reinsurance intermediary, third party administrator, broker or agent, the manager must also be specifically authorized by the Department of Insurance to perform any or all of these functions.

#### **c. Providing, at a Minimum, the Following Basic Services to All Captive Clients:**

##### **1) Record Retention**

The captive manager will maintain and make available for inspection by the Department of Insurance, at the captive's home office in South Carolina, copies of all policies or reinsurance agreements entered into by the captive, copies of organizational documents, shareholder and participant agreements, management agreements, approved business plan summaries and financial projections, copies of underwriting and claims records required to support payment of fees and taxes required by statute, and the financial information reported to the shareholder and to the Department.

In the event certain documents such as insurance policies, claim files, or underwriting files are handled by an MGA, MGU, TPA, or other third party, the manager shall maintain copies of in-force policy forms, endorsements, and other materials along with lists of policies, claims, and underwriting statistics sufficient to properly account for the insurance activity of the company and make available, to the Department any of the policies or files selected for examination by the Department within ten business days of the request or other timeframe approved by the director or his designee.

When board meeting minutes or other corporate documents are held by the company's legal counsel, the manager shall make these documents available to

the Department within ten business days of the request or other timeframe as approved by the director or his designee.

## **2) Reporting**

Captive managers shall comply with South Carolina law and the reporting requirements detailed in this bulletin and other directives from the South Carolina Department of Insurance.

## **3) Subcontracting**

The manager will keep copies of all service agreements entered into by or on behalf of the captive insurance company, including services subcontracted by the captive manager to affiliated and non-affiliated entities.

## **4) Meetings of Shareholders, Members, and Directors.**

The manager shall attend all board meetings and other meetings of shareholders, members, or directors, as appropriate. The manager, or legal counsel, shall distribute meeting agendas and discussion materials as appropriate, collect required documents, notify participants of meeting dates and times, hold meetings as required by law, prepare documents for use in the meetings, and prepare and maintain meeting minutes, resolutions, and other documents.

# **IV. REPORTING REQUIREMENTS**

Listed below are general reporting requirements for persons managing captive insurers in South Carolina.

## **a. Changes in Business Plans.**

Managers shall obtain prior written approval from the Department before implementing any proposed changes to a captive's plan of operations that will have a material impact on the captive's operations. A material change is a change to any information in the questions section of the captive insurance company license application that affects the nature of the insurance business conducted. Failure to comply with this requirement may constitute grounds for regulatory action including suspension or withdrawal of approval to serve as a captive manager in this state and regulatory action against the company that may include fines or suspension or revocation of its Certificate of Authority.

## **b. Financial Statements and Proformas.**

Managers shall file updated financial projections (expected basis) when there are material changes to the plan of operations that produce a material change to the company's financial statements, or as otherwise requested by the Department.

**c. Notification of Adverse Financial Condition.**

Within ten days following the completion of quarterly or annual reports, or when the manager otherwise becomes aware of material changes which would render the captive company to be out of compliance, the manager shall notify the Department that a captive is out of compliance with statutory capital requirements, or any other adverse financial condition. Procedures to be taken to ensure future compliance must be provided within 30 days.

**d. Violations of South Carolina Law.**

The captive manager must notify the Department within ten days' notice of the following conditions: 1) a captive is not operating in compliance with South Carolina law or applicable federal law, its business plan or the terms and conditions of licensure as set forth in writing by the South Carolina Department of Insurance; 2) there is a deficit in the funds held in trust for the benefit of the captive insurer; or 3) there has been a material change in the operations of the captive which has not been approved by the Department. In each instance, the captive manager must provide to the Department within the timeframe established by the Department the steps that will be taken to remedy the violation and to ensure future compliance.

**e. Statutory Reports.**

All statutory reports required by the Department must be filed by the captive manager. A captive manager shall file on behalf of the captive it manages, and submit to the Department, on or before March 1st of each year, a report of the financial condition of the captive insurer. These financial statements shall be prepared in accordance with generally accepted accounting principles, subject to any modifications approved or accepted by the director, unless otherwise directed or approved by the director or his designee. All other required filings shall be made in accordance with applicable state statutes and regulations.

**f. Annual Audits.**

All captive insurance companies shall undergo an annual audit by an independent certified public accountant, and the captive manager shall file on behalf of the company it manages such audited financial report with the director on or before June 30th for the year ending December 31st immediately preceding. The manager shall file all returns for taxes due to the South Carolina Department of Insurance and remit payment of taxes and fees for captives under management.

Regulation 69-60 and §38-90-70 specify the reports that must be filed with the Department. In addition to the reports referenced in those sections and outlined above, the captive manager is required to submit with its annual financial statement an actuarial opinion to determine the adequacy of the loss and loss adjustment expense reserves for all captives under management, unless a written waiver has been applied for and granted

prior to the due date by the director or his designee. Failure to file the specified reports by the established deadline shall result in the imposition of administrative disciplinary action, up to and including revocation of the certificate of authority to transact business in this state.

#### **V. TERMINATION OF CAPTIVE MANAGEMENT AGREEMENT**

Following termination of a management agreement between an approved captive manager and a captive, the terminated manager shall inform the Department of the reasons for termination and the effective date of the change. The newly appointed manager shall notify the Department, in writing, confirmation of the effective date of change; the date that all books and records of the company will be in their possession; and at what South Carolina address. Within 30 calendar days following the change of manager, an executed management agreement shall be provided to the Department along with a board resolution approving the new appointment.

#### **VI. PROCEDURES FOR CREDIT FOR CAPTIVE REINSURANCE**

Captive companies are permitted to take credit for reinsurance in accordance with §38-90-110. The manager shall verify appropriate licensing of reinsurance intermediaries and determine whether a reinsurer is authorized. For unauthorized reinsurers, the manager shall maintain evidence of compliance with §38-90-110 and provide to the Department annual audited financial statements. The manager, reinsurance intermediary, or other qualified party shall review all reinsurance agreements.

#### **VII. RESCISSION OF CAPTIVE MANAGER APPROVAL**

The Department may withdraw or suspend approval of a captive manager if:

- a. The captive manager knew or should have known the officers or directors of the company were engaged in any conduct that, in connection with the captive entity, violated state or federal laws or engaged in any conduct that would otherwise threaten the solvency of the captive insurer and failed to report such conduct to the Department in a timely manner.
- b. The manager knew or should have known and failed to inform in a timely manner, the captive board of directors and the director of insurance of actions of a captive under management leading to revocation or suspension of the certificate of authority under §38-90-90 and other pertinent sections.
- c. The manager failed to perform the basic manager responsibilities or reporting requirements described in this Bulletin.
- d. The captive manager engaged in conduct detrimental to the interests of the captive insurer, including but not limited to, conduct that constitutes a breach of the fiduciary duty owed to the captive insurer or a conflict of interest.

The manager will be notified by the director or his designee of conduct by the manager that may warrant regulatory action by the Department. In most cases, the manager will be given the opportunity to correct the conduct without further action by the director. Should action be necessary, it may be informal, formal, or a notice of rescission of approval to act as a captive manager in this state.

The manager will be given an opportunity to respond to the notice of the rescission of approval as a captive manager. If the manager fails to provide evidence within 30 days of receipt of notification that deficiencies identified by the Department of Insurance are corrected, the captive manager will be removed from the list of approved captive managers in the State of South Carolina and all rights and privileges of a qualified captive manager for the state of South Carolina will be suspended or revoked. The captive manager may appeal the decision to withdraw approval to the Administrative Law Court in accordance with the provisions of S.C. Code Ann. § 38-3-210 (2002).

The information set forth in this Bulletin is based on current South Carolina law. Please do not hesitate to contact Jeff Kehler, Program Manager, Office of Alternative Risk Transfer Services if you have any questions<sup>1</sup> or concerns about compliance.

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<sup>1</sup> Bulletins are the method by which the Director of Insurance formally communicates with persons and entities regulated by the Department. Bulletins are departmental interpretations of South Carolina insurance laws and regulations and provide guidance on the Department's enforcement approach. Bulletins do not provide legal advice. Readers should consult applicable statutes and regulations or contact an attorney of your choice for legal advice or if additional information is needed.