

**TITLE 365. INSURANCE DEPARTMENT
CHAPTER 25. OTHER LICENSEES**

SUBCHAPTER 15. CAPTIVE INSURANCE COMPANIES REGULATION

365:25-15-1. Purpose and authority

This subchapter provides rules for administering the Oklahoma Captive Insurance Company Act, 36 O.S. §§ 6470.1, et seq., and applicable provisions of the Oklahoma Insurance Code. This subchapter sets forth the financial, reporting, and other requirements which the Insurance Commissioner deems necessary for the regulation of captive insurance companies, as authorized by the Oklahoma Insurance Code and the Oklahoma Captive Insurance Company Act. References to "company" in this subchapter shall mean captive insurance company or companies, unless otherwise specified.

[Source: Added at 22 Ok Reg 2045, eff 7-14-05; Amended at 31 Ok Reg 1902, eff 9-15-14]

365:25-15-2. Annual reporting requirements

(a) Except as provided in 36 O.S. § 6470.11, a captive insurance company doing business in this State shall annually, prior to March 1, submit to the Insurance Commissioner a report of its financial condition, verified by oath of two of its executive officers. The report shall be that prescribed by the Insurance Commissioner as "Oklahoma Captive Insurance Company Annual Report."

(b) A company that elects to file its annual report on a fiscal year basis pursuant to 36 O.S. § 6470.11(C), shall file such report no later than 60 days following the close of such fiscal year.

(c) A company that elects to file its annual report on a fiscal year basis shall submit, concurrently with each premium tax return required in connection with premium taxes due under 36 O.S. § 6470.19 pages 1 through 7 of the "Captive Annual Statement: Pure or Industrial Insured," verified by oath of two of its executive officers.

(d) In order to verify results reported in the company's annual report, each company shall cause its books and records to be audited annually by an independent certified public accounting firm approved in accordance with Section 4 of this Subchapter.

(e) In order to further verify results reported in the company's annual report each company shall cause to be prepared an actuarial opinion by a qualified actuary certifying the accuracy of the company's life, health, or annuity insurance reserves, or its loss reserves and loss expense reserves, as reported in the annual report. "Qualified actuary" means an individual who is a member of the American Academy of Actuaries and who has met the Qualification Standards for Actuaries Issuing Statements of Actuarial Opinions in the United States promulgated by the American Academy of Actuaries.

(f) A risk retention group doing business in this State shall annually submit to the Insurance Commissioner a report of its financial condition, verified by oath of two of its executive officers. The report shall be that required by Section 311 of Title 36 of the Oklahoma Statutes.

[Source: Added at 22 Ok Reg 2045, eff 7-14-05; Amended at 31 Ok Reg 1902, eff 9-15-14; Amended at 32 Ok Reg 1964, eff 9-15-15]

365:25-15-3. Annual Audit

(a) All companies shall have an annual audit by an independent certified public accountant, authorized by the Insurance Commissioner, and shall file such annual audited financial report with the Insurance Commissioner on or before June 30 for the year ending December 31 immediately preceding.

(b) A pure captive insurance company may make written application to file its annual report on a fiscal year basis and, if approved by the Commissioner, shall file such report no later than one hundred eighty (180) days following the close of the fiscal year.

(c) A company that elects to file its annual report on a fiscal year basis shall submit, concurrently with each premium tax return required, a schedule detailing the net direct written premium and assumed premium for the fiscal year in question.

(d) The annual audited financial 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 Insurance Commissioner.

(e) The annual audited financial report shall consist of the following:

(1) **Opinion of Independent Certified Public Accountant**

(A) Financial statements furnished pursuant to this section shall be examined by independent certified public accountants in accordance with generally accepted accounting principles, or as required by any other comprehensive basis of accounting in use by the company and approved by the Insurance Commissioner.

(B) The opinion of the independent certified public accountant shall cover all years presented.

(C) The opinion shall be addressed to the company on stationery of the accountant showing the address of issuance, shall bear original manual signatures and shall be dated.

(2) **Report of Evaluation of Internal Controls**

(A) In addition to the annual audit, each company shall furnish the Commissioner with a written report, prepared in accordance with SAS No. 112, or any successor thereto, by the independent certified public accounting firm describing significant deficiencies and material weaknesses in the company's internal control structure.

(B) The review shall be conducted in accordance with generally accepted accounting principles, or as required by any other comprehensive basis of accounting in use by the company and approved by the Insurance Commissioner, and the report shall be filed with the Insurance Commissioner.

(C) The company is required to provide a description of remedial actions taken or proposed to correct material weaknesses and, at the Commissioner's discretion, significant deficiencies, if such actions are not described in the independent certified public accounting firm's report.

(3) **Accountant's Letter.** The independent certified public accountant shall furnish the company, for inclusion on the filing of the annual audited financial report, a letter stating:

(A) That he or she is independent with respect to the company and conforms to the standards of his/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.

(B) The general background and experience of the staff engaged in audit including the experience in auditing captives or other insurance companies.

(C) That the accountant understands that the audited annual report and his opinions thereon will be filed in compliance with this regulation with the Department, and that the Commissioner will be relying on this information in the monitoring and regulation of the financial position of the company.

(D) That the accountant consents to the requirements of 365:25-15-4(c) of this regulation and that the accountant consents and agrees to make available for review by the Insurance Commissioner, or his appointed agent, the work papers as defined in 365:25-15-4(c).

(E) That the accountant is properly licensed by an appropriate state licensing authority and that he or she is a member in good standing in the American Institute of Certified Public Accountants.

(4) **Financial Statements.** Statements required shall be as follows:

(A) Balance sheet,

(B) Statement of gain or loss from operations,

(C) Statement of changes in financial position,

(D) Statement of changes in capital paid up, gross paid in and contributed surplus and unassigned funds (surplus), and

(E) Notes to financial statements. The notes to financial statements shall be those required by generally accepted accounting principles, or as required by any other comprehensive basis of accounting in use by the company and approved by the Insurance Commissioner, and shall include:

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

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

(iii) A narrative explanation of all material transactions and balances with the company. "Material transactions" means sales, guarantees, purchases, exchanges, loans or extensions of credit or investments which, based upon an annual aggregate, involve more than three percent (3%) of the insurer's admitted assets or twenty-five percent (25%) of the insurer's surplus as regards policyholders, whichever is less, as of the latest annual financial statement filed with the Commissioner.

(5) **Certification of Loss Reserves and Loss Expense Reserves**

(A) The annual audit shall include an opinion as to the adequacy of the company's life, health, or annuity reserves, or its loss reserves and loss expense reserves.

(B) Certification shall be in such form as the Insurance Commissioner deems appropriate.

(f) Upon request by the company and for good cause shown, the Commissioner may grant an exemption from the annual audit requirement for any company having direct written and assumed premiums of Two Million Dollars (\$2,000,000.00) or less in the preceding year.

[Source: Added at 22 Ok Reg 2045, eff 7-14-05; Amended at 31 Ok Reg 1902, eff 9-15-14; Amended at 32 Ok Reg 1964, eff 9-15-15]

365:25-15-4. Independent Certified Public Accountant

(a) **Designation of Independent Certified Public Accountant.** Each company shall provide to the Commissioner the name and address of the independent certified public accounting firm retained to conduct the annual audit required under this regulation not less than six months before the date on which the first annual audit conducted by such firm is to be filed with the Commissioner in accordance with Section 3 of this Subchapter. The certified public accountant that is retained to conduct the annual audit must be selected from the list of approved certified public accounting firms or individual certified public accountants maintained by the Insurance Commissioner.

(b) **Notification of Adverse Financial Condition.** A company shall require the independent certified public accountant conducting its annual audit to immediately notify in writing an officer and all members of the Board of Directors of the company of any determination by the independent certified public accountant that the company has materially misstated its financial condition in its report to the Insurance Commissioner as required in Sections 311 or 6470.11 of Title 36 of the Oklahoma Statutes. The company, or its designated captive insurance manager, shall furnish such notification to the Insurance Commissioner within five working days of receipt thereof.

(c) **Availability and Maintenance of Working Papers of the Independent Certified Public Accountant.**

(1) Each company shall require the independent certified public accountant to make available for review by the Insurance Commissioner, or his appointed agent or examiner, the work papers prepared in the conduct of the audit of the company. The company shall require that the accountant retain the audit work papers for a period of not less than seven (7) years after the period reported upon.

(2) The aforementioned review by the Insurance Commissioner shall be considered investigations and/or examination and all working papers obtained during the course of such investigations and/or examination shall be confidential pursuant to 36 O.S. § 6470.13(B). The company shall require that the independent certified public accountant provide copies of any of the working papers which the Insurance Commissioner considers relevant. Such working papers may be retained by the Insurance Commissioner.

(3) "Working Papers" as referred to in this section means procedures followed, the tests performed, the information obtained, and the conclusions reached pertinent to its audit of the financial statements of a company, including but 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 employees in the conduct of their examination of the company.

(d) **Rotation of Audit Partners.** A company shall not file an annual audit in which a partner or other person responsible for rendering such annual audit has acted in that capacity for more than seven (7) consecutive years. Each company filing an annual audit shall disqualify such person from acting in that or a similar capacity for the same company or its insurance subsidiaries or

affiliates for a period of two (2) years. A company may make application to the Commissioner for relief from the above rotation requirement on the basis of unusual circumstances.

[Source: Added at 22 Ok Reg 2045, eff 7-14-05, Amended at 31 Ok Reg 1903, eff 9-15-14; Amended at 32 Ok Reg 1965, eff 9-15-15]

365:25-15-5. Deposit Requirement

Whenever the Insurance Commissioner determines, pursuant to 36 O.S. § 6470.6, that the financial condition of a company warrants additional capital and surplus based upon the type, volume, and nature of insurance business transacted, he may require such additional capital in the form of a deposit with the Department. Such additional capital shall consist of cash, securities approved by the Insurance Commissioner, or a clean irrevocable letter of credit issued by a bank chartered by the State of Oklahoma or a member bank of the Federal Reserve System and approved by the Insurance Commissioner. The company may receive interest or dividends from said deposit or exchange the deposits for others of equal value with the approval of the Insurance Commissioner. If such company discontinues business, the Insurance Commissioner shall return such deposit only after being satisfied that all obligations of the company have been discharged.

[Source: Added at 22 Ok Reg 2045, eff 7-14-05; Amended at 31 Ok Reg 1903, eff 9-15-14; Amended at 32 Ok Reg 1966, eff 9-15-15]

365:25-15-6. Organizational examination

In addition to the processing of the application, an organizational investigation or examination may be performed before or after an applicant is licensed. Such investigation or examination may consist of a general survey of the company'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; biographical affidavits; and a review of such other factors as the Insurance Commissioner deems necessary.

[Source: Added at 22 Ok Reg 2045, eff 7-14-05; Amended at 31 Ok Reg 1904, eff 9-15-14; Amended at 32 Ok Reg 1966, eff 9-15-15]

365:25-15-7. Reinsurance [REVOKED]

[Source: Added at 22 Ok Reg 2045, eff 7-14-05; Revoked at 32 Ok Reg 1966, eff 9-15-15]

365:25-15-8. Insurance managers and intermediaries

No person shall, in or from within this State, act as an insurance manager, broker, producer, salesman, or reinsurance intermediary for captive business without the authorization of the Insurance Commissioner. Application for such authorization must be on a form prescribed by the Insurance Commissioner.

[Source: Added at 22 Ok Reg 2045, eff 7-14-05]

365:25-15-9. Executive officers and directors

(a) Every company shall report to the Insurance Commissioner within thirty days after any change in its executive officers or directors, including in its report a statement of the business and professional affiliations of any new executive officer or director. Every executive officer or director shall provide a biographical affidavit to the Insurance Commissioner within forty-five (45) days of his/her appointment as an executive officer or to the board of directors of the company.

(b) Except as otherwise permitted under the company's plan of operation approved by the Commissioner, no director, officer, or employee of a company shall, except on behalf of the company, 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 company, but such person may receive reasonable compensation for necessary services rendered to the company 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 company.

[Source: Added at 22 Ok Reg 2045, eff 7-14-05; Amended at 31 Ok Reg 1904, eff 9-15-14; Amended at 32 Ok Reg 1966, eff 9-15-15]

365:25-15-10. Conflict of interest

Each company chartered in this State shall adopt a conflict of interest statement for its executive officers and directors. Such policy shall require that each such person disclose to the company's governing body, at least annually, any outside commitments that have the potential to create a conflict of interest with respect to the duty of such person to further the interests of the company.

[Source: Added at 22 Ok Reg 2045, eff 7-14-05; Amended at 32 Ok Reg 1966, eff 9-15-15]

365:25-15-11. Rescission of captive license [REVOKED]

[Source: Added at 22 Ok Reg 2045, eff 7-14-05; Revoked at 32 Ok Reg 1967, eff 9-15-15]

365:25-15-12. Acquisition of control of or merger with domestic company

(a) All persons shall comply with Sections 1651-1653 of Title 36 and associated regulations when seeking to acquire control of or merge with a domestic captive insurer, notwithstanding that the Insurance Commissioner may waive or modify the requirements for public notice and hearing when the Insurance Commissioner concludes the public hearing is not necessary due to the limited public interest in the change of control.

(b) Definitions of terms found in Section 1651 of Title 36 shall apply when a captive insurance company seeks to acquire control of or merge with a domestic company. For purposes of this section, the definition of the term insurer as set out in Section 1651 of Title 36 shall include captive insurance companies.

[Source: Added at 22 Ok Reg 2045, eff 7-14-05; Amended at 31 Ok Reg 1904, eff 9-15-14; Amended at 32 Ok Reg 1967, eff 9-15-15]

365:25-15-13. Change of business

(a) Except as otherwise provided, any change in the nature of the captive business from that stated in the company's plan of operation filed with the Insurance Commissioner upon application requires prior approval from the Insurance Commissioner.

(b) For purposes of this Section, "nature of the captive business" includes, but is not limited to, nonrecurring transactions such as loans or extensions of credit, reinsurance agreements or modifications thereto, management agreements, service contracts and all cost-sharing arrangements and changes in certificate of incorporation or bylaws.

[Source: Added at 22 Ok Reg 2045, eff 7-14-05; Amended at 31 Ok Reg 1904, eff 9-15-14; Amended at 32 Ok Reg 1967, eff 9-15-15]

365:25-15-14. Prior approval

Requests for the prior approval of the Insurance Commissioner of mergers, consolidations, conversions, mutualizations, redomestications or any other matter for which prior approval is required shall be made on the appropriate forms as set out in this Chapter for use by insurers or on forms as prescribed by the Insurance Commissioner.

[Source: Added at 22 Ok Reg 2045, eff 7-14-05; Amended at 31 Ok Reg 1904, eff 9-15-14; Amended at 32 Ok Reg 1967, eff 9-15-15]

365:25-15-15. Severability Provision [REVOKED]

[Source: Added at 31 Ok Reg 1904, eff 9-15-14; Revoked at 32 Ok Reg 1967, eff 9-15-15]

365:25-15-16. Consolidated or combined audits

A company may make written application to the Commissioner for approval to submit a consolidated annual audit in lieu of separate annual audits if the company is part of a group of entities that consolidates its annual audit. In such cases, a consolidating or combining worksheet shall be prepared with the annual audit as follows:

- (1) Amounts for each company subject to this section shall be stated separately.
- (2) Non-insurance operations may be shown on the worksheet on a combined or individual basis.
- (3) Explanations of consolidating and eliminating entries shall be included.
- (4) A reconciliation shall be included of any differences between the amounts shown in the individual company columns of the worksheet and comparable amounts shown on the annual reports of such companies.

[Source: Added at 32 Ok Reg 1967, eff 9-15-15]

365:25-15-17. Sponsored captive shares and dividends

(a) A sponsored captive insurer shall be a single legal entity and each protected cell of or within a sponsored captive insurer may be established as a separate legal entity, which shall constitute a legal entity separate from the sponsored captive insurer. Each protected cell shall be separately identified or designated as being a part of the sponsored captive insurer.

(b) A sponsored captive insurer may create and issue shares in one or more classes or series for one or more protected cells. The proceeds of the issue shall be included in the assets of the protected cell that issued the shares.

(c) The proceeds of the issue of shares, other than protected cell shares, shall be included in the sponsored captive insurer's general assets.

(d) Subject to prior approval by the Commissioner, a sponsored captive insurer may pay a dividend on protected cell shares of any class or series whether or not a dividend is declared on any other class or series of protected cell shares, or any other shares.

(e) Protected cell dividends may be paid on the protected cell shares from the protected cell assets. The dividends shall only be paid to the shareholders of the protected cell from which the protected cell shares were issued and otherwise in accordance with the rights of the shares.

(f) Any act, matter, deed, agreement, contract, instrument under seal, or other instrument or arrangement, which is to be binding on or to inure to the benefit of a protected cell, shall be executed by the sponsored captive insurer for and on behalf of such protected cell, and shall indicate that the execution is in the name of, by or for the account of, the protected cell.

[Source: Added at 32 Ok Reg 1967, eff 9-15-15]

365:25-15-18. Variable contracts

Any captive company that issues variable life or annuity contracts shall establish separate accounts subject to the requirements of 36 O.S. § 6061.

[Source: Added at 32 Ok Reg 1968, eff 9-15-15]

365:25-15-19. Qualification of sponsors

A sponsor of a sponsored captive insurance company may be any person approved by the Commissioner in the exercise of his or her discretion, based on a determination that the approval of such person as a sponsor is consistent with the purposes of this Subchapter. In evaluating the qualifications of a proposed sponsor, the Commissioner shall consider the type and structure of the proposed sponsor entity, its experience in financial operations, financial stability and strength, business reputation, and such other facts deemed relevant by the Commissioner. A risk retention group shall not be a sponsor of a sponsored captive insurance company.

[Source: Added at 32 Ok Reg 1968, eff 9-15-15]

365:25-15-20. Sponsored captive and cell assets

(a) The assets of a sponsored captive insurer shall be either protected cell assets or general assets. The protected cell assets shall comprise the assets of the sponsored captive insurer held within or on behalf of the protected cells of the sponsored captive insurer. The general assets of a sponsored captive insurer shall comprise the assets of the sponsored captive insurer which are not protected cell assets.

(b) The assets of a protected cell are comprised of assets representing the capital stock and reserves attributable to the protected cell or all other assets attributable to or held within the

protected cell. For the purposes of this Section, "reserves" includes retained earnings, capital surplus, and paid-in capital.

[Source: Added at 32 Ok Reg 1968, eff 9-15-15]

365:25-15-21. Delinquency of sponsored captive insurance companies

(a) Upon any order of supervision, rehabilitation, or liquidation of a sponsored captive insurance company, the receiver shall manage the assets and liabilities of the sponsored captive insurance company pursuant to the provisions of this Subchapter.

(b) Notwithstanding any provision to the contrary:

(1) the assets of a protected cell may not be used to pay any expenses or claims other than those attributable to such protected cell; and

(2) a sponsored captive insurance company's capital and surplus shall at all times be available to pay any expenses of or claims against the sponsored captive insurance company; and

(3) in the event of an insolvency of a sponsored captive insurance company where the Commissioner determines that one or more protected cells remain solvent, the Commissioner may separate such cells from the sponsored captive insurance company, and may allow, on application of the sponsor, for the conversion of such protected cells into one or more new or existing sponsored captive insurance companies with a sponsor or sponsors, or one or more other captive insurance companies, pursuant to such plan or plans of operation as the Commissioner deems acceptable.

[Source: Added at 32 Ok Reg 1968, eff 9-15-15]

365:25-15-22. Reinsurance of life insurance policies

(a) This Section establishes reserve requirements and the form of the annual report required of a captive insurance company that reinsures life insurance policies, including term, universal, and variable life policies, and related guarantees and riders (collectively, "Life Insurance Policies").

(b) A captive insurance company described in Section 20 of this Subchapter shall maintain reserves that are actuarially sufficient to support the liabilities incurred by the captive insurance company in reinsuring life insurance policies.

(c) For purposes of the annual report required by 36 O.S. § 6470.11:

(1) a captive insurance company described in Section 20 of this Subchapter that uses statutory accounting shall submit the annual report in the form of the annual statement approved by the National Association of Insurance Commissioners for life insurers, as modified or supplemented by the Commissioner, unless the Commissioner requires or approves a different form of annual report; and

(2) a captive insurance company described in Section 20 of this Subchapter that uses generally accepted accounting principles, including any appropriate or necessary modifications or adaptations thereto approved by the Commissioner, shall submit the annual report in the form approved by the Commissioner.

[Source: Added at 32 Ok Reg 1968, eff 9-15-15]

365:25-15-23. Dormant captive insurance companies

(a) As used in this Section, unless the context requires otherwise, "dormant captive insurance company" means a pure captive insurance company which has:

- (1) at no time insured controlled unaffiliated business;
- (2) ceased transacting the business of insurance, including the issuance of insurance policies;
- (3) no remaining liabilities associated with insurance business transactions; and
- (4) no unpaid premium taxes.

(b) A pure captive insurance company domiciled in Oklahoma which meets the criteria of paragraph (a) of this Section may apply to the Commissioner for a certificate of dormancy. The certificate of dormancy shall be subject to renewal every five years and shall be forfeited if not renewed within such time.

(c) A dormant captive insurance company which has been issued a certificate of dormancy shall:

- (1) possess and thereafter maintain unimpaired, paid-in capital and surplus of not less than \$25,000.00;
- (2) prior to March 15 of each year, submit to the Commissioner a report of its financial condition, verified by oath of two of its executive officers, in a form as may be prescribed by the Commissioner; and
- (3) pay a license renewal fee as provided in 36 O.S. § 6470.3.

(d) A dormant captive insurance company shall not be subject to or liable for the payment of any premium tax.

(e) A dormant captive insurance company shall apply to the Commissioner for approval to surrender its certificate of dormancy and resume conducting the business of insurance prior to issuing any insurance policies.

(f) A certificate of dormancy shall be revoked if a dormant captive insurance company no longer meets the criteria of paragraph (a) of this Section.

(g) The Commissioner may establish guidelines and procedures as necessary to carry out the provisions of this section.

[Source: Added at 32 Ok Reg 1968, eff 9-15-15]

365:25-15-24. Severability

If any provision of this Subchapter or the application thereof to any person or circumstance is for any reason held to be invalid, the remainder of the regulation and the application of such provisions to other persons or circumstances shall not be affected thereby.

[Source: Added at 32 Ok Reg 1969, eff 9-15-15]