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**BULLETIN NUMBER:** INS-06-002

**TITLE:** REGISTERING A CAPTIVE INSURANCE COMPANY IN BRITISH COLUMBIA

**LEGISLATION:** *INSURANCE (CAPTIVE COMPANY) ACT, INSURANCE (CAPTIVE COMPANY) ACT REGULATION, FINANCIAL INSTITUTIONS ACT, INSURANCE ACT, INTERNATIONAL FINANCIAL ACTIVITY ACT, AND BUSINESS CORPORATIONS ACT*

**DATE:** JANUARY 2006

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## **PURPOSE**

The purpose of this bulletin is to provide captive insurance applicants with:

- General information about the regulatory requirements of the British Columbia captive insurance legislation; and
- A description of the approval process for registering a captive insurance company in British Columbia.

## **GENERAL INFORMATION**

### **Legislation**

Captive insurance companies are governed in British Columbia by the *Insurance (Captive Company) Act* that incorporates, by reference, certain provisions of the *Insurance Act* and the *Financial Institutions Act*. (See Appendix)

The *Insurance (Captive Company) Act* allows three types of captives:

- A pure captive insurance company;
- An association captive insurance company; and
- A sophisticated insured captive insurance company.../2

All captive insurance companies must be incorporated under the *Business Corporations Act*.

A pure captive insurance company insures the risks of its parent; its parent's affiliated corporations; or its or their officers, directors, employees, agents, or independent contractors.

An association captive insurance company insures the risks of the association's members; their affiliated entities; or its or their officers, directors, employees, agents or independent contractors. The association's membership may be corporations, societies, partnerships or individuals. The association must have been in existence for at least one year.

All of the issued voting shares of the association captive must be owned by:

1. The members;
2. All the members that are insured by the captive or will be insured after purchasing shares in the captive;
3. The association when it is legally capable of owning shares; or
4. The association when it is legally capable of owing shares and either all the members or all of the insured members.

A sophisticated insured captive insurance company insures the risks of a group of "sophisticated insureds", their affiliated corporations or their or its, officers, directors, employees, agents or independent contractors. A sophisticated insured is an insured whose aggregate annual premiums total at least \$500,000 and who can demonstrate to the Superintendent of Financial Institutions ("Superintendent") expertise in insurance matters. A sophisticated insured group is a group of sophisticated insureds that owns all the voting shares in a sophisticated insured captive insurance company.

### **Permitted Classes of Insurance**

Captives may write property, casualty, liability (including directors' and officers' liability and product liability), errors and omissions, life, health, sickness, and accident insurance.

Captives are only prohibited from writing surety insurance, other than reinsurance of surety insurance, and are not permitted to carry on the class of motor vehicle insurance, other than fleet insurance by corporations.

### **Investment Restrictions**

No investment restrictions apply. However, the Superintendent annually reviews each captive's investment portfolio.

### **Capital Requirement**

Shareholders' equity may be in the form of cash or an irrevocable letter of credit. The minimum requirements are \$200,000 in shareholders' equity and \$100,000 in reserves. Additional equity and reserves may be required if needed to adequately support the program undertaken.

### **Special Taxes and Fees**

The initial non-refundable application fee is \$500 and the initial registration fee is \$2,500. The annual registration renewal fee is also \$2,500. Premium taxes are set according to the province where the insured risk is located. Captives are also subject to provincial and federal income taxes. Canadian insureds that purchase coverage from a British Columbia captive are exempt from the 10 percent federal excise tax on premiums paid to unlicensed offshore insurers.

A British Columbia captive who insures prescribed risks of non-residents of Canada relating to property situated or events occurring outside of Canada may register under the *International Financial Activity Act* in order to reduce its income taxes payable to the Province of British Columbia.

### **Reinsurance**

No restrictions are placed on reinsurance. However, the Superintendent annually reviews each captive's reinsurance arrangements.

### **Books and Records**

All books and records necessary for statutory inspection of the captive insurance company must be located in British Columbia at all times.

## **APPLICATION FOR REGISTRATION**

Under the *Insurance (Captive Company) Act*, a captive insurance company that wishes to carry on insurance business or risk management business in British Columbia must make an application to the Superintendent for registration. Those interested in forming a captive may first want to arrange a meeting with the Superintendent to discuss the proposed captive insurance company. This may be useful in situations where a prospective applicant may not be eligible to act as a captive or its proposal would not be feasible under the captive legislation.

The following is a summary of steps to be done before registration as a captive insurance company can be approved:

1. Arrange to have the captive incorporated under the *Business Corporations Act* and obtain a certified copy of the captive's Certificate of Incorporation, Memorandum and Articles; and

2. Prepare the required application and related forms:
  - Application for Registration as a Captive Insurance Company; and
  - A Personal Information Return for each officer, director, and manager of the captive insurance company.
3. Submit a detailed business plan, including:
  - (a) The risks to be insured by line of business, projected for the next three years;
  - (b) The name of the fronting company (if applicant plans to operate as reinsurer);
  - (c) The projected net annual premium from insurance and reinsurance for the next three years, (the projected premium revenue must be broken down for each class of insurance and must include estimates for low, best estimate and high claims scenarios);
  - (d) The maximum retained risk (per loss and annual aggregate) projected for the next three years;
  - (e) The rating program;
  - (f) The reinsurance program;
  - (g) A description of the loss prevention program;
  - (h) Loss experience of the proposed insured for last five years and projected for the next three years;
  - (i) An organization chart; and
  - (j) A financial projection for next three years (including balance sheets and income statements).
4. If letters of credit are to be used in the capitalization of the captive insurance company, they must be submitted to the Superintendent for approval, as to form;
5. If the proposed captive insurance company enters into a guarantee or indemnity under which a parent, sophisticated insured, member organization or affiliated corporation may incur liability for the benefit of the captive insurance company, a copy of the guarantee or indemnity agreement must be filed with the application materials;
6. Provide the names of persons owning shares in the company, the type and extent of their ownership, and their voting power;

7. Provide the names, addresses and telephone numbers for the company's auditor and actuary;
8. Provide the name, address, and telephone number of a contact person; and
9. Submit a copy of all incorporation and registration materials to the Superintendent for review, together with the \$500 non-refundable application fee.

A captive may be required to provide additional information at the request of the Superintendent.

After meeting all application requirements, a certificate of registration is issued to the captive insurance company. Upon registration, an initial registration fee of \$2,500 is due.

The average time for review of complete applications is two weeks.

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## Contacts

For more information, please contact:

<p><b>Deputy Superintendent, Insurance And Pensions</b> Financial Institutions Commission 1200 – 13450 102<sup>nd</sup> Avenue Surrey, British Columbia V3T 5X3</p>	<p>Telephone: (604) 953-5300 Fax: (604) 953-5301 Web site: <a href="http://www.fic.gov.bc.ca">www.fic.gov.bc.ca</a> E-mail: <a href="mailto:ficom@ficombc.ca">ficom@ficombc.ca</a></p>
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Staff of the Financial Institutions Commission periodically issue interpretation bulletins to provide technical interpretations and positions regarding certain provisions contained in the *Financial Institutions Act* and Regulations. While the comments in a particular part of an interpretation bulletin may relate to provisions of the law in force at the time they were made, these comments are not a substitute for the law. The reader should consider the comments in light of the relevant provisions of the law in force at the time, taking into account the effect of any relevant amendments to those provisions or relevant court decisions occurring after the date on which the comments were made. Subject to the above, an interpretation or position contained in an interpretation bulletin generally applies as of the date on which it was published, unless otherwise specified.

## APPENDIX

Captive insurance companies are governed by the following legislation:

- *Insurance (Captive Company) Act*;
- *Insurance (Captive Company) Act Regulation*;
- *International Financial Activity Act*
- *Insurance Act*
  - Sections 1, 4, 5, 6, 7(1), 8, 16, 19, 21, 24, 25, 27 and 28; and
  - In addition, sections 9 to 15, 17, 18, 20, 22 and 23 apply to association and sophisticated insured captive insurance companies.
- *Financial Institutions Act*
  - Sections 34 to 37, 39 to 46, 63, 64(2), 70, 75, 80, 81, 105, 133, 211, 213, 215, 218, 243, 244, 246, 247, 259.

Captive insurance companies must be incorporated under the *Business Corporations Act*.

The *Insurance (Captive Company) Act*, *Insurance (Captive Company) Act Regulations*, *Insurance Act*, *International Financial Activity Act* and *Financial Institutions Act* can be purchased from:

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