

**SOUTH CAROLINA DEPARTMENT OF INSURANCE  
CAPTIVE INSURANCE DIVISION**

**CAPTIVE MANAGER  
CODE OF CONDUCT**



**EFFECTIVE AS OF JULY 1, 2019**

# CAPTIVE MANAGER CODE OF CONDUCT

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NOTICE: This Code of Conduct supersedes and replaces any and all bulletins and policy statements previously issued by the South Carolina Department of Insurance related to the conduct of captive managers including, but not limited to, Bulletin 2008-03 and the “Statement of Policy: Principal Place of Business” dated July 1, 2013. These documents are hereby withdrawn officially by the South Carolina Department of Insurance.

**I. INTRODUCTION AND PURPOSE**

- A. This Code of Conduct (“Code”) sets forth the general qualifications, standards, and requirements applicable to Captive Managers (“CMs”) approved by the South Carolina Department of Insurance (“Department”) or seeking approval from the Department, to manage captives domiciled in South Carolina.
- B. Captive Managers are responsible for providing various administrative and management services to captive insurance companies licensed in South Carolina. They also serve as the primary point of contact with the Department for and on behalf of the captives they manage, as set forth in Sections IV.B and IV.D below. The consistent observance of high standards of professional service and overall conduct by CMs is vital to South Carolina’s credibility and good standing as a captive domicile and thus to the viability, growth and overall success of the State’s captive program.

Pursuant to SC Code Ann. §38-90-60 (2002), the “character, reputation, financial responsibility, insurance experience, and business qualifications” of the directors and officers of a captive insurance company are taken into account by the Department in determining whether to license a captive to transact business in this State. Similarly, the Department takes into account these same factors in

determining whether to approve a CM to manage captives domiciled in this State, whether to place restrictions or conditions upon such approval, or whether to suspend or rescind such approval once granted. In addition to the above factors, the Director may also consider evidence that the CM has been approved by the regulatory authorities of any other captive domiciles, and may ascribe to such evidence such weight as the Director sees fit.

- C. In determining whether an already approved CM is conducting its business in a sound and prudent manner such that it may remain on the Department's list of approved CMs ("Approved List"), the Department will take into account any failure on the part of a CM to comply with the provisions of this Code in both letter and spirit.

## **II. GUIDING PRINCIPLES**

### **A. Principle of Proportionality**

1. The Department recognizes that captives can have widely varying risk profiles depending on the nature, scale, and complexity of their business models, structures, coverages assumed, reinsurance programs, investment policies, etc.
2. Accordingly, CMs which manage captives with higher risk profiles and more complex and demanding programs and features will be expected to demonstrate a more comprehensive and robust framework of governance procedures and operational controls. In addition, it is expected that the management and staff of those CMs will possess a level of knowledge, skill, and experience commensurate with the risk profiles of the captives they manage or seek approval to manage.
3. The Department will take cognizance of these variations in captive risk profiles in assessing whether a CM demonstrates compliance with this Code by conducting its business in a consistently sound and prudent manner.

4. The Principle of Proportionality set forth in II.A.1 and 2 above is applicable to all sections of this Code regardless of whether the Principle is explicitly referred to in any given section.

## B. Cooperation with the Department

1. Every approved CM has certain obligations to the Department. These include meeting all filing and reporting requirements and deadlines set forth in the South Carolina Captive Statute, SC Code Ann. §38-90-10 et seq. Every CM seeking to be placed on the Approved List will be expected to be sufficiently knowledgeable of these requirements; and every approved CM is expected to meet them on a continuous basis, as well as to satisfy any other requirements imposed from time to time by the Department.
2. CMs should cooperate and communicate with the Department in an open, cooperative, and respectful manner. This includes the prompt and conscientious reporting of all “Reportable Events”, in accordance with Section IV.C below.

## C. Safeguarding South Carolina’s Reputation

1. South Carolina has a reputation as a world-class captive domicile with a regulatory environment that is reasonable, pragmatic, and business friendly on the one hand, and serious about the performance of relevant supervisory and prudential responsibilities on the other. Every approved CM has a role to play in safeguarding that reputation.
2. This means, among other things, that CMs must do a thorough and conscientious job of vetting prospective captive owners and refrain from introducing into South Carolina any companies or individuals that the CM reasonably believes might pose a significant risk of damaging our reputation as a top tier domicile and a trusted and respectable place to do business. CMs should conduct their business and manage their captive clients and client owner relationships in such a way as to avoid any impropriety or the appearance thereof, and should take reasonable steps to avoid

bringing the State of South Carolina, this Department, or the state's captive program into disrepute.

### **III. QUALIFICATIONS TO SERVE AS A CAPTIVE MANAGER**

Individuals or business organizations must apply for approval to act as a CM in South Carolina. Applications for approval shall be on a form prescribed by the Director. When considering approval or disapproval of an application to serve as a captive manager, the Department considers the following:

#### **A. Individual Qualifications**

##### **1. Fitness and Propriety**

The principals and staff of a CM engaged in providing services to captives must be fit and proper persons of high integrity and sound reputation and judgment, and must at all times act with due care, skill, and diligence.

##### **2. Competence – Relevant Knowledge, Skill, and Experience**

- a. The principals and staff of a CM engaged in providing services to captives must possess relevant knowledge, skill, and experience proportional to the nature, scale, and complexity of their respective tasks and functions and the business requirements of the captives they manage.
- b. They are also expected to possess sufficient knowledge of all accounting, filing, reporting, and other requirements to which their captive clients are subject pursuant to the South Carolina Captive Statute, SC Code Ann. §38-90-10 et seq., and any particular requirements which the Department may from time to time establish.

#### **B. Organizational Qualifications**

##### **1. Accounting, Record-keeping, and Internal Control Systems**

Every CM must maintain appropriate accounting, record-keeping, reporting, and internal control systems and procedures sufficient to enable the CM (i) to fully and faithfully discharge its responsibilities to its captive clients, and (ii) to consistently and continuously comply with all reporting and other legal and regulatory requirements.

## 2. Adequate Number of Capable Staff

In accordance with III.A.2.a and b above, the staff of the CM must be sufficient in number and possess the requisite knowledge, skill and experience to fulfill its contractual obligations to its captive clients and its regulatory obligations to the Department at all times.

## 3. Professional Indemnity Insurance

Every approved CM, and every CM seeking approval to be placed on the Approved List, shall maintain at all times professional indemnity insurance with limits of coverage sufficient to protect the CM against claims or legal actions arising from the conduct of its business. It is incumbent upon the principals and directors of the CM to assess the degree of errors & omissions risk to which the CM is exposed and purchase and keep in force at all times appropriate limits of coverage, but in no event less than \$250,000 or such other amount as the Director may stipulate, from one or more financially sound insurers.

Every CM seeking to be placed on the Approved List shall furnish the Department with evidence of such coverage in the form of a certificate of insurance or a copy of the declarations page of the in-force policy. Once placed on the Approved List, a CM shall provide further evidence of such in-force coverage if so requested by the Department.

## **IV. DUTIES AND RESPONSIBILITIES OF CAPTIVE MANAGERS**

### **A. Captive Management Contract and Fees**

The CM must have a written contract with each captive it manages. The contract must be executed by a duly authorized director or officer of the captive to signify agreement to its terms, which must include the following:

1. a clear and reasonably specific description of the services to be provided by the CM;
2. the fees to be charged and the timing and manner of payment expected;
3. a provision obliging both the captive and the CM to cooperate fully with the Department, including complying with any requests for the production of documents relating to the captive, and assisting the Department in the conduct of any review or examination, on-site or otherwise, of the CM's internal controls, systems, and procedures, of the financial condition of the captive, or the captive's compliance with the South Carolina Captive Statute and the regulations and requirements of the Department; and
4. provisions governing termination and its consequences, including disposition of the books and records of the captive.

If the CM also performs the services of an actuary, insurance managing general agent, managing general underwriter, reinsurance intermediary, third party administrator, broker or agent, or any other category of service for the performance of which prior approval of the Department is required, the CM must be specifically authorized by the Department to perform such functions. The CM must also disclose the fact that it is doing so to each captive client to which any such services relate, unless there is already in place a service agreement between the CM and the captive client governing such services.

The CM must provide the Department with a copy of each contract or agreement governing the provision of such other services.



## B. Principal Contact and Place of Business – Books and Records

1. The CM shall serve as the captive's Principal Contact for purposes of dealings with the Department, and in keeping with Guiding Principle II.B. above, shall cooperate with the Department to the fullest extent in all circumstances.
2. Each CM shall designate one individual member of the CM company staff to be the Account Manager for each South Carolina domiciled captive under management, and shall report to the Department that individual's name and contact details. The CM shall promptly notify the Department of any change in the Account Manager designated for any South Carolina domiciled captive which the CM manages.
3. The CM shall maintain or provide for a Principal Place of Business for each South Carolina captive it manages. The Principal Place of Business is defined as the physical location in the State of South Carolina where the complete books and records of the captive company are available for examination by the Director. This does not require the CM to establish an office within the State of South Carolina as a condition precedent to being approved to manage a South Carolina captive.
4. With respect to the preparation, filing, and maintenance of the accounting records and financial statements of a captive company, or of any other documents or materials requested by the Director, the CM shall comply with the laws and regulations of South Carolina, together with any other specific requirements the Department may establish.

## C. Reportable Events

In addition to statutory filing and reporting requirements and any specific filing and reporting requirements the Director may impose, the CM shall notify the Department within thirty (30) days of discovering any of the following:

1. any condition or circumstances that may reasonably be considered to threaten the financial solvency of the captive;

2. any condition or circumstances that may reasonably be considered to impair the captive's liquidity or practical ability to meet its obligations to policyholders, service providers, reinsurance counterparties, and this Department as they fall due; or
3. evidence that the captive has violated any applicable laws or regulations of the State of South Carolina.

#### D. Outsourcing

1. Where a CM outsources or subcontracts any of its management functions externally to an unaffiliated third party, the CM shall remain responsible for ensuring proper performance of the outsourced functions.
2. Notwithstanding any outsourcing arrangements, the CM shall remain the captive's Principal Contact with the Department and shall retain full and primary responsibility for ensuring that the captive complies with all statutory and regulatory requirements.

#### E. Internal Controls, Systems, and Procedures

The CM must have in place systems and procedures to address the following:

1. to prevent and detect fraud in respect of its own business and that of the entities which it manages;
2. to identify, remedy, and disclose to all relevant parties any actual or potential conflicts of interest;
3. to provide for business continuity and disaster recovery reasonably sufficient to ensure the preservation of and access to the books and records of all captives under management and to enable the CM's captive clients to continue to operate and, to the extent possible, remain in compliance with applicable legal and regulatory requirements; and

4. to ensure the adoption and effective implementation of reasonable Anti-Money Laundering and Anti-Terrorism Financing policies and techniques.

#### F. Client Due Diligence

In conformity with Guiding Principle II.C.2 above, the CM must have detailed knowledge of the identity, business, and financial condition of the beneficial owners of any entity to which they provide management services. Accordingly, a CM must have in place procedures to ensure that proper due diligence is carried out on the owners and/or principals of any prospective new captive client prior to acceptance of a captive management engagement.

### V. **Grounds for Removal from Approved List**

A. A CM may be removed from the Approved List for any of the following:

1. The CM has not provided management services to any South Carolina domiciled captive for a period of three years.
2. The CM knowingly makes any material misrepresentation or untrue statement in any document filed with the Department, including without limitation its application for approval to serve as a CM, and any captive license application or supporting documents, or business plan change request, submitted on behalf of the CM's client.
3. The CM fails to comply with, or violates, any applicable insurance law, regulation, rule, or order of the Director of the South Carolina Department of Insurance.
4. The CM improperly withholds, misappropriates, or converts to its own use any funds belonging to any captive client, its policyholders, reinsurance counterparties, or any other party.

5. The CM fails to notify the Department within thirty (30) days of the discovery of any CM client's violation of any applicable statute, rule, regulation or order, or of any Reportable Event under Section IV.C above.
6. The CM has engaged in fraudulent, coercive, or dishonest practices in the conduct of any aspect of its captive management business.
7. The Director finds the CM is untrustworthy, financially irresponsible, or otherwise unfit to act as a CM.
8. The Director finds the CM has shown itself to be incompetent through a pattern of incomplete, inaccurate, and/or late filings and reporting, so as to demonstrate a careless disregard of the legal and statutory standards and requirements to which it is subject.
9. The CM or any of its principals, officers, or directors has been convicted of any felony or misdemeanor involving financial wrongdoing, breach of fiduciary duty, or moral turpitude.
10. An approved CM has committed any act or omission which would have caused its application to be placed on the approved CM list to be denied had the act or omission been known to the Department at the time the approval was granted.
11. The CM knew or reasonably should have known that any director, officer, or owner of any captive was engaged in conduct that violated state or federal law, or that would threaten the solvency of the captive, and failed to report such conduct to the Department in a timely manner.

The above list is not exclusive and does not preclude the possibility of removal from the Approved List for grounds other than those specified above.

- B. The Department shall notify the CM of any conduct or circumstances involving the CM that may, in the judgment of the Director, warrant removal from the Approved List or any other regulatory action against the CM. After having been given such notice and an opportunity to be heard, the CM, at the Director's discretion, may be given the

opportunity to correct the conduct or circumstances in question without further action by the Department.

If such conduct or circumstances are determined to be contrary to the interests of the captive, the captive's other service providers or counterparties, or the public, the Director may rescind the CM's authorization to act as a CM in this State and remove the CM from the Approved List.

## **VI. EFFECTIVE DATE**

This Code shall be effective as of **July 1, 2019**.