120-2-45-.01 Statutory Authority.

This Chapter is promulgated by the Commissioner of Insurance pursuant to the authority set forth in O.C.G.A. § 33-41-23.

Authority - O.C.G.A. § 33-41-23.

120-2-45-.02 Purpose.

The purpose of this Chapter is to provide for the establishment and regulation of captive insurance companies.

Authority - O.C.G.A. § 33-41-23.

120-2-45-.03 Definitions.

(1) "Commissioner" means the Commissioner of Insurance of the State of Georgia.

(2) "Captive manager" means a third party person that is designated to manage a captive insurance company and to correspond with the Commissioner regarding the business of such company.

(3) "Captive insurance company" or "company" means a captive insurance company as defined in O.C.G.A. § 33-41-2(4).

(4) "Employee captive manager" means an employee of the company who is designated to manage the company and to correspond with the Commissioner regarding the business of such company.

(5) "Person" means an individual, corporation, limited liability company, partnership, association, joint-stock company, trust, unincorporated organization, any similar entity, or any combination of the foregoing acting in concert.

(6) "Service provider" means a captive manager, producer, third party administrator, managing general agent, or an insurance intermediary for a company.

(7) All other terms as defined in O.C.G.A. § 33-41-1 et seq. or, as appropriate, Title 33 of the Official Code of Georgia Annotated, which are used in this Regulation shall have the same meaning as in such references.

Authority - O.C.G.A. § 33-41-23.

120-2-45-.04 Application for Certificate of Authority; Renewal.

(1) Each application for a certificate of authority shall be made on the appropriate form prescribed by the Commissioner and found on the Commissioner's website. It shall be

accompanied by all required documents. The application and related documents are subject to review and written approval by the Commissioner.

(2) A company holding an active certificate of authority shall renew its certificate of authority by paying the required fee.

Authority - O.C.G.A. § 33-41-23.

120-2-45-.05 Captive Insurance Company Managers.

(1) Authorization Required.

No person shall, in or from within this state, act as a service provider without the authorization of the Commissioner. Application for such authorization must be made by completing the appropriate application form, which can be found on the Commissioner's website. The application shall be accompanied by all required documents. The application and related documents shall be filed with the application for certificate of authority and are subject to review and approval by the Commissioner.

(2) Service Provider Agreements.

(a) The agreement between any service provider and a company must be in writing. The written agreement with a service provider, and any amendment thereto, shall be filed with the Commissioner at least thirty (30) days prior to the effective date of the agreement unless such initial agreement(s) is filed with the company's Application for Certificate of Authority for a Captive Insurance Company, or any amendment to an agreement.

(b) If the captive manager performs the duties of an insurance managing general agent, reinsurance intermediary, third party administrator, broker or agent, the captive manager must also be specifically authorized by the Commissioner to perform any or all of these functions.

(c) Any agreement filed pursuant to this Rule 120-2-45-.05(2) shall be held as confidential as required by O.C.G.A. § 33-41-16(c).

(3) Designation of a Captive Manager.

Unless a company's plan of operation, as approved by the Commissioner, provides for an employee captive manager, company shall report to the Commissioner in writing, the name and address of the person designated as captive manager and retained to manage the company. The captive manager shall apply, on a form adopted by the Commissioner, for approval by the Commissioner. The form is available on the Commissioner's website.

(4) Designation of Third Party Administrator.

Each company shall report to the Commissioner in writing, the name and address of the person designated as the third party administrator performing the claims administration and loss reserve functions for the company. The third party administrator shall register on a form adopted by the Commissioner, for approval by the Commissioner or the Georgia Department of Insurance. If the person acting as the third party administrator is the captive manager, then this form is not required. The form is available on the Commissioner's website.

(5) Affirmative Duty of Captive Manager.

The designated captive manager shall have an affirmative fiduciary duty to report and disclose to the Commissioner any violation of the laws of this state or these regulations by the company or any conduct by the officers and directors of the company that threatens the solvency of the company. Failure to report or disclose any violation to the Commissioner may result in the termination of the approval of such captive manager as an authorized service provider to companies in this state. Any report or disclosure by a captive manger submitted to the Commissioner shall be held as confidential pursuant to O.C.G.A. Section 33-41-16(c).

Authority - O.C.G.A. § 33-41-23.

120-2-45-.06 Biographical questionnaire.

(1) General Requirement – Direct or Indirect Control.

Each officer, director, and each owner of more than ten percent (10%) of the outstanding shares of stock of a company with management rights and duties, including, but not limited to the right to vote upon and appoint members to the board of directors of the company (the "voting stock"), either directly or indirectly through ownership of other persons, shall submit the appropriate biographical form prescribed by the Commissioner and found on the Commissioner's website.

(2) Trusts, Partnership, and Other Limited Control Arrangements – Non-Owner Control.

Where the power to direct or cause the direction of the management and policies of the company on behalf of the owners of the company is held by one or more individuals then the following individual(s), by entity type, will provide the biographical form required in this Regulation 120-2-45-.06(1) as the controlling owner:

(a) Trust – The trustee(s) of the trust or trusts that own, directly or indirectly, more than ten percent (10%) of the outstanding shares of stock of the captive insurance company; or

(b) Partnership/Limited Liability Company/Other like entities ("conduit entity(ies)") – The general partner(s), manager(s), or managing-member(s) of conduit entity(ies) that own, directly or indirectly, more than ten percent (10%) of the outstanding shares of voting stock of the company.

If this Regulation 120-2-45-.06(2) is applicable to a company and the controlling owner files the biographical form required by Regulation 120-2-45-.06(1), then all other owners are exempt from the requirements of Regulation 120-2-45-.06(1).

Authority - O.C.G.A. § 33-41-23.

120-2-45-.07 Financial Reporting; Annual Statement; Quarterly Statements.

(1) Annual Reports Requirement for Pure Captives. On or before March 1, all companies doing business in this state shall annually submit to the Commissioner a report of its financial condition as of December 31 of the calendar year preceding then verified by oath by an executive officer. The company shall utilize the appropriate form prescribed by the Commissioner for the annual report. The form is available on the Commissioner's website.

(2) Financial Statements Generally.

Financial Statements shall include:

(a) Balance sheet reporting assets, liabilities, capital and surplus/retained earnings;

(b) Statement of gain or loss from operations;

(c) Statement of changes in capital and surplus/retained earnings;

(d) Statement of changes in capital paid up, gross paid in and contributed surplus/capital and unassigned funds (surplus/retained earnings); and

(e) The notes to financial statements shall be those required by the applicable accounting principles.

(3) Annual Reports for Industrial Insured and Association Captive Insurance Companies and Risk Retention Groups.

(a) Each industrial insured or association captive insurance company and all risk retention groups shall file on or before March 1 of each year a financial report of its business and affairs as of December 31 of the calendar year then preceding. Such report shall be filed on the Property and Casualty "Blank" as adopted for use by the National Association of Insurance Commissioners ("NAIC"). Such companies shall compile and report all information or data necessary to truthfully and fully complete the "Blank" listed above.

(4) Additional Reports.

(a) The Commissioner may by order obtain monthly financial reports from a company. Such financial information shall be truthfully and completely reported in such form as adopted for use by the NAIC or such other form as may be approved by the Commissioner and shall comply with

such guidelines and conditions as the Commissioner may require for the proper supervision and monitoring of the financial condition of the company.

(b) Each industrial insured or association captive insurance company directly writing workers' compensation risks and all risk retention groups shall file quarterly report utilizing the NAIC prescribed blank. Such reports of its business and affairs shall be as of March 31, June 30 and September 30 and shall be due May 15, August 15 and November 15 respectively.

(5) Accounting Principles.

(a) Pure Captives must elect either generally accepted accounting principles ("GAAP") or statutory accounting principles which are set forth in the NAIC accounting practices and procedures manual ("SAP") in the preparation of financial statements.

(b) Industrial and association captives must utilize SAP.

(c) Any change to the accounting principles must be filed and approved by the Commissioner in accordance with Regulation 120-2-45-.11(2).

(6) Compliance Required for Renewal.

Compliance with this Regulation shall be a condition of the renewal of a certificate of authority under O.C.G.A. § 33-41-10.

Authority - O.C.G.A. § 33-41-23.

120-2-45-.08 Examinations and the Organizational Examination.

(1) Examinations Generally.

The Commissioner or his or her representative may examine a company at any time the Commissioner deems appropriate, but no less frequently than once every five (5) years unless the Commissioner makes a written finding that a longer period is warranted for a company.

(2) Organizational Examination.

In addition to processing the application, an organizational examination may be performed before company is licensed. Such examination shall 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; and a review of such other factors as the Commissioner deems necessary.

(3) Organizational Examination Fees.

If an organizational examination is required by the Commissioner, the company shall pay $3,000 to the Commissioner's appointed examiner to cover the expenses of the organizational

examination. The Commissioner may require, in writing, the captive insurance company to pay a higher amount based upon his or her finding that the complexity of the proposed plan of operation or the risk to the insured(s) or reinsured(s) requires additional initial review by the Commissioner's appointed examiner.

(4) Confidentiality.

Any examination undertaken under this Regulation 120-2-45-.08 shall be confidential in accordance with O.C.G.A. § 33-41-16.

Authority - O.C.G.A. § 33-41-23.

120-2-45-.09 Captive Insurance Company Audits.

(1) Audit Requirement. Each captive insurance company shall engage an independent certified public accountant authorized by the Commissioner to conduct a comprehensive audit and shall file such audited financial report with the Commissioner on or before June 30th of each year. The annual audit report shall be considered part of the company's annual report of financial condition.

(2) Designation of Independent Certified Public Accountant.

Within ninety (90) days of being licensed in Georgia, a company shall report to the Commissioner the name of the audit partner and certified public accountant that it retained to perform its annual audit.

(3) Standards Applicable to Designated Independent Certified Public Accountant.

The Commissioner will accept an audit from the independent certified public accountant subject to the conditions set forth in Regulation 120-2-60-.07(6).

(4) Notification of Adverse Financial Condition.

A company shall require the certified public accountant 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 Commissioner. The certified public accountant shall furnish such notification to the Commissioner within five (5) business days of the delivery of the written notice to Board of Directors.

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

(a) Each company shall require the independent certified public accountant to make available for review by the Commissioner or his or her appointed agent the work papers prepared in the

conduct of the audit of the company. The company shall require that the independent certified public accountant retain the audit work papers for a period of seven (7) years or the period of time covering one (1) year prior to the last examination, or from the date of the organizational examination if no subsequent examination has been completed, whichever period is longer.

(b) The aforementioned review by the Commissioner shall be considered examination work papers and shall be confidential in accordance with O.C.G.A. § 33-41-16(b). The company shall require that the independent certified public accountant provide photocopies or equivalent copy of any of the working papers which the Commissioner considers relevant. Such working papers may be retained by the Commissioner.

(c) "Work Papers" or "Working Papers" as referred to in this rule include, but are not limited to, schedules, analyses, reconciliations, abstracts, memoranda, narratives, flow charts, copies of company records or other documents prepared or obtained by the independent certified public accountant and the employees of such in the conduct of their examination of the company.

(d) The lead (or coordinating) audit partner (having primary responsibility for the audit) may not act in that capacity for more than five (5) consecutive years. The person shall be disqualified from acting in that or similar capacity for the same company or its insurance subsidiaries or affiliates for a period of five (5) consecutive years. An insurer may make application to the Commissioner for relief from the above rotation requirement on the basis of unusual circumstances. This application should be made at least thirty (30) days before the end of the calendar year. The Commissioner may consider the following factors in determining if the relief should be granted:

1. Number of partners, expertise of the partners or the number of insurance clients in the currently registered firm;

2. Premium volume of the company;

3. Number of jurisdictions in which the company transacts business;

4. Types of risks directly written;

5. Complexity of the company's operations; and

6. Whether the company is organized as a pure captive.

(6) Annual Audit Requirements

(a) Opinion of Independent Certified Public Accountant

Financial statements furnished pursuant to this Regulation shall be examined by independent certified public accountants in accordance with generally accepted auditing standards as determined by the American Institute of Certified Public Accountants in effect for the period

covered by the report. The opinion of the independent certified public accountant shall cover all years presented. The opinion shall be addressed to the company on stationery of the certified public accountant showing the address of issuance, signatures of opining accountants, and shall be dated.

(b) Report of Evaluation of Internal Controls

1. Every company shall include an evaluation of the internal controls of the company relating to the methods and procedures used in the securing of assets and the reliability of the financial records, including but not limited to such controls as the system of authorization and approval and the separation of duties. The review shall be conducted in accordance with generally accepted auditing standards and the report shall be filed with the Commissioner annually along with the audited financial report required by Regulation 120-2-45-.09(1).

2. An exemption from this evaluation may be granted on a case by case basis upon written request to the Commissioner.

(c) Accountant's Letter

The certified public accountant shall furnish the company, for inclusion in the filing of the audited annual report, a letter stating:

1. That the certified public accountant is independent with respect to the company and conforms to the standards of the certified public accountant's 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.

2. The general background and experience of the staff engaged in audit including the experience in auditing captive insurance companies or other insurance companies.

3. That the certified public accountant understands that the audited annual report and the certified public accountant's opinions thereon will be filed with the Commissioner.

4. That the certified accountant consents to the requirements of Regulation 120-2-45-.09(5) and that the certified public accountant consents and agrees to make available for review by the Commissioner, the Commissioner's designee or the Commissioner's appointed agent, the work papers as defined therein.

5. That the certified public accountant is properly licensed by an appropriate state licensing authority.

(d) Financial Statements.

Financial statements as required under Regulation 120-2-45-.07.

(e) Certification of Loss Reserves and Loss Expense Reserves

The annual audit shall include an opinion as to the adequacy of the company's loss reserves and loss expense reserves. The individual who certifies as to the adequacy of reserves shall apply, on a form adopted by the Commissioner, for approval by the Commissioner, and 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 or her competence in loss reserve evaluation to the Commissioner. The certificate of reserves shall be in such form as the Commissioner deems appropriate.

Authority - O.C.G.A. § 33-41-23.

120-2-45-.10 Letters of credit – Capital and Surplus.

(1) Compliance Generally.

Letters of credit must comply with this Regulation.

(2) Defined Terms.

As used in this Rule, the terms below shall have the following meaning:

(a) "Applicant" means the party who applies for and causes the bank to issue the letter of credit.

(b) "Beneficiary" means the Commissioner.

(c) "Clean and unconditional letter of credit" or "clean and unconditional confirmation" means a letter of credit or confirmation which makes no reference to any other agreement, document, or entity, and provides that a beneficiary need only draw a sight draft under the letter of credit or confirmation and present it to promptly obtain funds and that no other document need be presented.

(d) "Evergreen clause" means a provision in a letter of credit or its confirmation which prevents the expiration of the letter of credit or its confirmation without due written notice to the beneficiary and the Commissioner from the issuing or confirming bank.

(e) “Qualified United States financial institution” or “qualified bank” has the same meaning as set forth in O.C.G.A. § 33-7-14(c)(1).

(3) Specific Requirements.

For a letter of credit to be acceptable, it must:

(a) Be irrevocable;

(b) Be clean and unconditional;

(c) Be issued, presentable, and payable at an office of the qualified bank in the State of Georgia;

(d) Contain a statement that identifies the beneficiary and includes the definition set forth in Regulation 120-2-45-.10(2)(b);

(e) Contain a statement that is not subject to any agreement, condition, or qualification outside of the letter of credit;

(f) Contain a statement that authorizes only the Commissioner to draw the letter of credit;

(g) Contain a statement to the effect that the obligation of the issuing bank under the letter of credit is an individual obligation of such bank and is in no way contingent upon reimbursement with respect thereto;

(h) Contain an issue date and a date of expiration;

(i) Have a term of at least one year and contain an evergreen clause which provides at least sixty (60) days written notice to the beneficiary and the Commissioner prior to expiry date for nonrenewal;

(j) Shall states whether it is subject to and governed by the laws of the State of Georgia and the Uniform Customs and Practice for Documentary Credits of the International Chamber of Commerce Publication 600 (UCP 600) or International Standby Practices of the International Chamber of Commerce Publication 590 (ISP 98), or any successor publication, and all drafts drawn thereunder shall be presentable at an office in the United States of a qualified United States financial institution..

(k) Be issued by a qualified bank. The aggregate of all letters of credit issued or confirmed to one beneficiary by any one qualified bank on behalf of any one applicant must not exceed five percent (5%) of such bank's consolidated capital and surplus as shown in its annual report as of the end of its preceding fiscal year, as filed with the federal or state regulatory authority having jurisdiction over such bank; and

(l) The heading of the letter of credit may include a boxed section identifying the applicant and containing other appropriate notations as a reference for such letter of credit. The boxed section must be clearly marked to indicate that such information is "For Internal Identification Purposes Only" and does not affect the terms of the letter of credit or the bank's obligations thereunder.

(4) Example Provided. An example of an acceptable letter of credit and confirmation letter can be found on the Commissioner's website.

Authority - O.C.G.A. § 33-41-23.

120-2-45-.11 Plan of Operation; Notice of Change.

(1) Original Plan of Operation.

The plan of operation shall be submitted in accordance with the Commissioner's instructions which are available on the Commissioner's website.

(2) Changes to Plan of Operation.

Any material change to the company's management or operations, including without limitation any material change to the plan of operation required by O.C.G.A. § 33-41-10 and Regulation 120-2-45-.11(1) must be filed with the Commissioner at least thirty (30) days prior to the proposed effective date of the proposed amendment.

Authority - O.C.G.A. § 33-41-23.

120-2-45-.12 License and Renewal Fees.

(1) License Fee.

A license fee of $600 shall be paid at the time of the filing of an Application for Certificate of Authority, for a Captive Insurance Company.

(2) Renewal Fee.

A renewal fee of $500 shall be due for each year after initial licensure of a company.

Authority - O.C.G.A. §§ 33-8-1, 33-41-16, and 33-41-23.

120-2-45-.13 Premium Taxes.

(1) Premiums Collected Prior to July 1, 2015.

Companies shall file a premium tax return and pay premium taxes in accordance with Chapter 8 of Title 33 for all direct premiums collected prior to July 1, 2015.

(2) Premium Collected On or After July 1, 2015.

Companies shall file a premium tax return and pay premium taxes in accordance with O.C.G.A. § 33-41-22 utilizing the forms available on the Commissioner's website, for direct and assumed premium received July 1, 2015 to December 31, 2015. The annual premium tax return and tax shall be due on or before March 1, 2016.

On or after January 1, 2016, the annual premium tax return shall be filed in accordance with O.C.G.A. Section 33-41-22 utilizing the forms available on the Commissioner's website, for direct and assumed premium received from January 1 to December 31. The annual premium taxes required under this chapter shall be paid with the filing of the annual premium tax return due March 1 following the close of the preceding year.

Any insurance company that fails to report and pay the required tax with the annual premium tax return when due shall be subject to a monetary penalty of $5,000.00.

The Commissioner for good cause shown may extend for no more than 30 days the time for filing a tax return or paying any amount required to be paid with any return. The extension may be granted at any time, provided that a request therefor is filed with the Commissioner within or prior to the period for which the extension may be granted. Any taxpayer to whom an extension is granted shall pay, in addition to the tax, interest at the rate of 1 percent per month or fraction thereof until the date of payment.

(3) Risk Retention Group Premium Tax.

Companies that operate as a risk retention group shall file and pay premium taxes in accordance with O.C.G.A. § 33-40-5.

Authority - O.C.G.A. §§ 33-2-24, 33-2-31, 33-40-5, 33-41-22, 33-41-23.

120-2-45-.14 Conflict of Interest Statement.

(1) General Requirements.

Each company is required to adopt a conflict of interest policy statement for its officers, directors, and key employees. There shall be filed one informational copy filed with the Commissioner with the company's Application for Certificate of Authority for a Captive Insurance Company. Such policy statement shall require such officers, directors and key employees to disclose all positions, whether financial, personal or professional, direct or indirect, that may cause or be perceived to cause a conflict of interest for such person to act in such capacity or that the individual has no outside commitments, personal or otherwise, that would divert him or her from their duty to further the interests of the company he or she represents but this shall not preclude such person from being a director or officer in more than one (1) company. Each officer, director, and key employee shall file such disclosure with the board of directors yearly.

(2) Prohibited Remuneration.

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 captive insurance company in his or her usual private, professional, or business capacity.

(3) Recoverable Profits.

Any profit or gain received by or on behalf of any person in violation of this Regulation shall inure to and be recoverable by the company.

Authority - O.C.G.A. § 33-41-23.

120-2-45-.15 Dividends to Stockholders.

(1) Dividends Generally.

All shareholder dividends or distributions shall be filed with the Commissioner for approval using the form provided by the Commissioner at least thirty (30) days prior to the proposed payment or distribution date. No dividend payment or distribution can be made unless the Commissioner approved the payment or the Commissioner does not object to the payment or distribution prior to the lapse of the thirty (30) days' notice period.

(2) Extraordinary Dividends.

(a) For purposes of this Rule, an "extraordinary dividend " means any dividend or distribution of cash or other property, whose fair market value together with that of other dividends or distributions made within the preceding twelve (12) months exceeds the lesser of ten percent (10%) of such company's surplus or retained earnings with regard to policyholders as of December 31 next preceding, or the net income, not including realized capital gains, for the twelve (12) month period ending December 31 next preceding. Extraordinary dividend shall not include pro rata distributions of any class of the company's own securities.

(b) No company shall pay or distribute any extraordinary dividend until the Commissioner approves the proposed extraordinary dividend in writing.

(3) Rejection Due To Hazardous Financial Condition.

The Commissioner may reject any proposed dividend if he or she finds that the dividend or distribution would create a hazardous financial condition. For the purposes of this Regulation the standards set forth in Regulation 120-2-54-.03 to determine the existence of a hazardous condition may be relied upon by the Commissioner to determine if, after giving effect to the propose dividend or distribution, the company would create a hazardous financial condition.

Authority - O.C.G.A. § 33-41-23.

120-2-45-.16 Acquisition of Control of or Merger with Domestic Captive Insurance Company.

No tender offer for or a request or invitation for tenders of, or enter into any agreement to exchange securities for, seek to acquire, or acquire in the open market or otherwise, any voting security of a captive insurance company shall be effective without the prior written approval of the Commissioner. The repurchase of securities from shareholders shall be treated as a distribution and is governed by Regulation 120-2-45-.15. In considering any application for acquisition of control or merger with a domestic captive insurance company, the Commissioner

shall consider all of the facts and circumstances surrounding the application as well as the criteria for establishment of a captive insurance company set out in this Chapter.

Authority - O.C.G.A. § 33-41-23.

120-2-45-.17 Redomestication of a Foreign or Alien Captive Insurance Company.

(1) Authorized Redomestication Procedures.

A foreign or alien captive insurance company, upon approval of the Commissioner, may become a captive insurance company authorized to transact business in this state by complying with all of the requirements of the Georgia law relative to the organization and licensing of a captive insurance company in this state of the same or equivalent type in this state. The redomestication of a foreign or alien captive insurance company may be accomplished utilizing one of the following procedures:

(a) Filing of the foreign or alien captive insurance company's articles of association, articles of incorporation, charter, or other organizational document, together with appropriate amendments to them adopted in accordance with the laws of this state with the Commissioner;

(b) Filing of articles of merger or similar documents with the Commissioner merging the foreign or alien captive insurance company with a domestic corporation;

(c) Filing articles of incorporation for a domestic captive insurance company along with a plan of reorganization, plan of liquidation or similar reorganizational documents (including novation or transfer and assumption agreements) for any type of foreign or alien captive insurance company with the Commissioner; or

(d) Filing a plan of redomestication not otherwise addressed in this Rule with the Commissioner, which has received the approval of the current regulator of the foreign or alien captive insurance company if such approval is require.

Notice of the redomestication should be filed with the Commissioner utilizing forms prescribed by the Commissioner, which are available on the Commissioner's website.

(2) Redomestication Review Process.

The Commissioner shall approve or disapprove all applications filed in accordance with Regulation 120-2-45-.17(1) within forty-five (45) days of the date the application is received. The Commissioner shall examine the application to determine whether the company is compliant with the applicable insurance laws of this state. If the application is approved, then the Commissioner shall issue under his or her hand and official seal a certificate approving the granting of the charter for such captive insurance company and shall transmit a copy of the certificate of approval to the Secretary of State.

Authority - O.C.G.A. § 33-41-23.

120-2-45-.18 Loans.

(1) Required Notice.

No company may make a loan to or an investment in its parent company or affiliates unless the company has notified the Commissioner in writing of its intention to enter into such transaction at least thirty (30) days prior thereto, or such shorter period as the Commissioner may permit, and the Commissioner has not disapproved it within such period.

(2) Standards of Review.

The standards set forth in O.C.G.A. § 33-13-5(a)(1) shall apply to any loan or investment under this Regulation 120-2-45-.18

(3) Prohibited Transactions.

Loans of minimum capital and surplus funds required by O.C.G.A. §33-41-8 are prohibited. In addition, any loan or investment that would create a hazardous financial condition is prohibited. For the purposes of this Regulation the standards set forth in Regulation 120-2-54-.03 to determine the existence of a hazardous condition may be relied upon by the Commissioner to determine if, after giving effect to the propose dividend or distribution, the company would create a hazardous financial condition.

Authority - O.C.G.A. § 33-41-23.

120-2-45-.19 Illegal Captive Insurance Company Operations.

A person is prohibited from transacting insurance in this state without first obtaining a certificate of authority to operate as a captive insurance company or registering as a risk retention group. Failure to obtain a certificate of authority or make the required registration is a violation of Georgia law and the procurement of insurance from any person that has not obtained a certificate of authority or has not registered with the Commissioner shall subject such person to procurement taxes imposed by the Georgia law.

Authority - O.C.G.A. §§ 33-40-4, 33-41-4 and 33-41-23.

120-2-45-.20 Severability.

If any provision of this Regulation or the application thereof to any person or circumstance is held invalid by a court of competent jurisdiction, the remainder of the Regulation or the applicability of such provision to other persons or circumstances shall not be affected.

Authority - O.C.G.A. § 33-41-23.

120-2-72-.05 Participation in Fund

(1) On or before July 1 of the year of the approval of the appropriation specified in O.C.G.A. § 33-1-17, the Commissioner shall assess each foreign, alien and domestic insurance company doing business in Georgia on the following basis:

(a) Each insurer whose Georgia written premium is less than $1,000,000.00, including those insurers whose Georgia written premium is zero or less than zero, will each be assessed a fixed amount not more than the minimum amount assessed an insurer with Georgia written premium of $1,000,000.00 or more;

(b) Each insurer whose Georgia written premium is greater than $40,000,000.00, but less than $100,000,000.00, an assessment equal to .0045 times the appropriated amount;

(c) Each insurer whose Georgia written premium is $100,000,000.00 or more, an assessment equal to .0075 times the appropriated amount;

(d) Each insurer not included in (a), (b), or (c) above or (f) below, an assessment shall be computed on a prorata basis of the remainder of the appropriation for each insurer whose Georgia written premium is greater than $1,000,000.00 but less than $40,000,000.00;

(e) Written premium is premiums written in GEORGIA ONLY, including annuity considerations and is determined prior to reinsurance transactions. Written premium is determined from the most recent annual statement on file with the Commissioner at the time the assessment calculations are made;

(f) Each captive insurer shall be assessed a fixed amount of $100.00, without regard to the amount of premium written.

(2) Assessments based on the annual appropriation shall be due on September 1 of the year of the assessment.

(3) In the event of a supplemental appropriation, the assessment will be made as soon as practicable after approval of the appropriation, and will be due thirty (30) days after the assessment.

(4) Any assessment levied pursuant to this Regulation Chapter which is not remitted to the Georgia Insurance Department on or before the due date shall be deemed delinquent and subject to a penalty of 10% of the amount owed, together with interest on the principal at the rate of 1% per month, or any part of a month, from the date due until the date paid. Such penalty and interest, if any, shall be transmitted by the Commissioner to the State Treasury and shall not act to increase the funds available for the purposes described in O.C.G.A. § 33-1-17.

Authority - O.C.G.A. §§ 33-1-17 and 33-2-9.