

304.49-040 Financial security requirements.

- (1) No captive insurer shall be issued a certificate of authority unless it shall possess and thereafter maintain unimpaired paid-in capital and surplus of:
 - (a) In the case of a pure captive insurer, not less than two hundred fifty thousand dollars (\$250,000);
 - (b) In the case of a consortium, sponsored, agency, or an industrial insured captive insurer, not less than five hundred thousand dollars (\$500,000); and
 - (c) In the case of a special purpose captive insurer, not less than two hundred fifty thousand dollars (\$250,000), or another amount determined by the commissioner.
- (2) Notwithstanding the requirements of subsection (1) of this section, no captive insurer organized as a reciprocal insurer under KRS 304.49-010 to 304.49-230 shall be issued a certificate of authority unless it shall possess and thereafter maintain free surplus of not less than five hundred thousand dollars (\$500,000).
- (3) The commissioner may prescribe additional capital and surplus based upon the type, volume, and nature of insurance business transacted.
- (4) Capital and surplus shall be in the form of cash, an irrevocable letter of credit issued by a bank approved by the commissioner and chartered by the Commonwealth of Kentucky or a member bank of the Federal Reserve System, a surplus note approved by the commissioner, or other assets as may be approved by the commissioner. A surplus note shall not be used for the initial minimum capital and surplus of a non-mutual captive insurer.
- (5) In the case of a branch captive insurer, as security for the payment of liabilities attributable to the branch operations, the commissioner shall require that a separate trust fund, funded by an irrevocable letter of credit or other acceptable asset, be established and maintained in the United States for the benefit of United States policyholders and United States ceding insurers under insurance policies issued or reinsurance contracts issued or assumed, by the branch captive insurer through its branch operations. The amount of this security may be no less than the capital and surplus required in this section and the reserves on the insurance policies or the reinsurance contracts, including reserves for losses, allocated loss adjustment expenses, incurred but not reported losses, and unearned premiums with regard to business written through the branch operations; provided, however, the commissioner may permit a branch captive insurer that is required to post security for loss reserves on branch business by its reinsurer to reduce the funds in the trust account required by this section by the same amount so long as the security remains posted with the reinsurer. If the form of security selected is a letter of credit, the letter of credit must be established by, or issued or confirmed by, a bank chartered in Kentucky or a member bank of the Federal Reserve System.

Effective: July 15, 2010

History: Amended 2010 Ky. Acts ch. 24, sec. 1608, effective July 15, 2010; and ch. 91, sec. 2, effective July 15, 2010. -- Amended 2006 Ky. Acts ch. 252, Pt. XXXIV, sec. 7, effective April 25, 2006. -- Created 2000 Ky. Acts ch. 434, sec. 4, effective July 14, 2000.

Legislative Research Commission Note (7/15/2010). A reference to the "executive director" of insurance in subsection (4) of this section, as amended by 2010 Ky. Acts ch. 91, sec. 2, has been changed in codification to the "commissioner" of insurance to reflect the reorganization of certain parts of the Executive Branch, as set forth in Executive Order 2009-535 and confirmed by the General Assembly in 2010 Ky. Acts ch. 24. This change was made by the Reviser of Statutes pursuant to 2010 Ky. Acts ch. 23, sec. 1938.

Legislative Research Commission Note (7/15/2010). This section was amended by 2010 Ky. Acts chs. 24 and 91, which do not appear to be in conflict and have been codified together.