

**304.49-228 Establishment of protected cells by sponsored captive insurer --
Conditions.**

A sponsored captive insurer may establish and maintain one (1) or more protected cells to insure risks of one (1) or more participants, subject to the following conditions:

- (1) The owners of a sponsored captive insurer shall be limited to its participants and sponsors, provided that a sponsored captive insurer may issue nonvoting securities or interests to other persons on terms approved by the commissioner;
- (2) The assets of each protected cell shall be held and accounted for separately on the books and records of the sponsored captive insurer to reflect the financial condition and results of operations of the protected cell, net income or loss of the protected cell, dividends or other distributions to participants of the protected cell, and other factors regarding the protected cell as may be provided in the applicable participant contract or required by the commissioner;
- (3) The assets of a protected cell shall not be chargeable with liabilities of any other protected cell or, unless otherwise agreed in the applicable participant contract, of the sponsored captive insurer generally;
- (4) No sale or transfer of assets, or dividend or other distribution, may be made with respect to a protected cell by such sponsored captive insurer without the consent of the participants of each affected protected cell;
- (5) No sale, exchange, or transfer of assets, or dividend or other distribution, other than a payment to a sponsor in accordance with the applicable participant contract, may be made with respect to a protected cell to a sponsor or a participant without the commissioner's approval;
- (6) Each sponsored captive insurer shall annually file with the commissioner financial reports as the commissioner shall require, which shall include, without limitation, accounting statements detailing the financial experience of each protected cell;
- (7) Each sponsored captive insurer shall notify the commissioner, in writing, within ten (10) business days of any protected cell that has become insolvent or is otherwise unable to meet its claim or expense obligations;
- (8) No participant contract shall take effect without the commissioner's prior written approval. The addition of each new protected cell and withdrawal of any participant or termination of any existing protected cell shall constitute a change in the plan of operation of the sponsored captive insurer requiring the commissioner's prior written approval; and
- (9) (a) The business written by a sponsored captive insurer, with respect to each protected cell, shall be:
 1. Fronted by an insurance company licensed under the laws of this state or any other state;
 2. Reinsured by a reinsurer authorized or approved by this state;
 3. Secured by a trust fund in this state for the benefit of policyholders and claimants; or

4. Funded by an irrevocable letter of credit or other arrangement that is approved in writing by the commissioner.
- (b) The amount of security provided shall be no less than the reserves associated with those liabilities which are neither fronted nor reinsured, including reserves for losses, allocated loss adjustment expenses, incurred but not reported losses, and unearned premiums for business written through the protected cell.
 - (c) The commissioner may, for any reason, require the sponsored captive insurance company to increase the funding of any security arrangement established under this subsection in order to protect claimants or potential claimants.
 - (d) If the form of security is a letter of credit, the letter of credit shall be established, issued, or confirmed by a financial institution chartered by or licensed or otherwise authorized to do banking business in this state, or by any other financial institution approved by the commissioner.
 - (e) A trust maintained pursuant to this subsection shall be established in a form and upon such terms as approved by the commissioner.

Effective: July 15, 2010

History: Amended 2010 Ky. Acts ch. 24, sec. 1622, effective July 15, 2010. -- Created 2006 Ky. Acts ch. 252, Pt. XXXIV, sec. 4, effective April 25, 2006.