



# **Self-Insurance Institute of America, Inc. (SILA)**

## **CAPTIVE MANAGER CODE OF CONDUCT**

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## Introduction

Captive insurance companies are successfully utilized by businesses, large and small, to solve their risk management and risk financing needs. The service provided by Captive Managers, their understanding of the complex issues related to captive insurance companies, their experience, their good judgment, and their personal and professional integrity all play an important role in this continued success. Captive Managers must observe high standards of ethical conduct to properly serve their clients and to increase the captive industry's role as a premier risk management and financing tool. The provisions of the ***Code of Conduct*** are designed to advance these objectives.

## Code of Conduct

The purpose of the ***Code of Conduct*** is to provide guidance to Captive Managers in the conduct of their captive insurance management and reinsurance business. The Code of Conduct is comprised of five Canons. The Code of Conduct is not intended to supplant or augment the laws and regulations of a specific jurisdiction, contracts between the Captive Manager and its clients, or the Captive Manager's general responsibility for ethical and prudent behavior. These Canons set forth considerations and behavioral standards that Captive Managers may share with clients and other interested parties. It is expected that Captive Manager's clients and advisors will adapt their own behavior to the standards set forth in the Canons to avoid placing Captive Managers in positions where they are at risk of contravening the Canons.

The Code of Conduct is a set of guidelines and is not intended to establish rigid rules or requirements. The appropriateness and applicability of each of the Canons to any captive program depends largely on the unique facts and circumstances associated with that program.

**Canon I. Integrity**

- A. Captive Managers should uphold and encourage the adherence to, development and improvement of laws and regulations that foster the integrity of, and confidence in, the captive industry.
- B. Captive Managers should not willfully violate any laws or regulations in either their professional conduct or dealings with the public. They should be familiar with the federal and state laws that regulate captives and insurance transactions, as applicable, while maintaining all necessary authorizations and licenses as required by the domicile(s) of the captives that they manage.
- C. Captive Managers should cooperate with the domicile regulators and inform their clients they have the obligation to do so.
- D. Captive Managers should represent accurately their qualifications and capabilities to serve prospective and current clients.
- E. Captive Managers should communicate accurately and clearly with their clients in all matters, including the terms of the engagement and any contracts or insurance related thereto.
- F. When advising prospective clients, Captive Managers should use their best efforts to gather all relevant facts, should evaluate the reasonableness of any assumptions or representations, and should assist the prospective client to decide whether a captive program is appropriate for its business risks.
- G. Captive Managers should avoid being drawn into giving advice on matters where they have limited qualifications or experience. In such circumstances, Captive Managers should seek advice from an expert or direct the client to one. Captive Managers may properly educate and inform clients and prospects on all matters on which they have knowledge.
- H. Captive Managers should be courteous and cooperative to other Captive Managers, captive owners, other service providers, and regulatory authorities. This cooperation should be upheld in all business dealings, especially if a change of captive management occurs, where Captive Managers should make best efforts to ensure that the transition is smooth and efficient. If Captive Managers communicate about other Captive Managers to prospective or current clients, they should be accurate and truthful.

## **Canon II. Conflicts of Interest**

- A. Captive Managers should avoid conflicts of interest.
- B. It is common practice in the captive insurance industry for a Captive Manager to provide multiple services to the same client, including without limitation captive management, reinsurance brokerage and risk pooling. Although the provision of multiple services can create a potential conflict of interest, the use of proper disclosures and checks and balances can prevent a potential conflict of interest from becoming an actual conflict of interest and allow a Captive Manager to properly and ethically provide multiple services to the same client. Where providing multiple services to the same client, a Captive Manager should ensure full disclosure and employ appropriate checks and balances.
- C. If a Captive Manager has an actual conflict of interest with a client or prospective client such that the Captive Manager's interests are adverse to the client or prospective client, the Captive Managers should disclose this conflict of interest in writing to the client or prospective client, and obtain the consent from the client or prospective client before continuing a business transaction or relationship.
- D. Captive Managers should retain the autonomy necessary to make independent decisions, to exercise judgment, and to offer advice, the goal always being to serve the best interests of the client.

## **Canon III. Confidentiality**

- A. Except when required by statute, regulation, regulatory or judicial order, Captive Managers should be faithful to the relationship of trust and confidentiality inherent in their relationship with their prospective and current clients.

## **Canon IV. Advertising**

- A. Captive Managers should be truthful in advertising their experience, capabilities and services. Captive Managers should not seek to obtain clients by advertising or other forms of solicitation that is false, misleading or deceptive.
- B. Captive Managers should endeavor to maintain a dignified and honorable public image of the captive insurance industry. They should seek positive and honorable relationships with other insurance professionals.

## **Canon V. Practice Management**

Captive Managers should follow reasonably prudent captive insurance business practices, which may include, as is necessary in individual circumstances and without limitation, the following:

- A. Internal Controls – The Captive Manager should provide the owner (or delegated officer) of the captive with an operations manual outlining key policies and procedures that should be put in place to safeguard assets, provide reliable financial information, promote efficient and effective operations, and adhere to the policy standards promulgated by the domicile. Further, the Captive Manager should have written operating procedures for the internal management of captives and use its best efforts to follow such procedures. Such procedures should be updated as necessary.
- B. Communication, Compliance, Annual Review
  1. Client Communication – The Captive Manager should facilitate ongoing communication between the board, captive owners or captive management, service providers, and regulators.
    - a) Client’s risk management goals and objectives – Should be reviewed regularly. As required, Captive Managers should promptly file with the domicile regulators any material changes in coverage, management, service providers or investment policy.
    - b) Third-party advisors (actuary, auditing firm, etc.) – If engaged to do so, the Captive Manager should effectively and prudently manage the various outside service providers necessary to operate the captive. Service providers should be appointed by the board annually.
  2. Regulatory compliance – The Captive Manager should comply with all domicile regulatory filings and other requirements and review regulatory compliance items with the board at least annually. The Captive Manager should document and timely correct any material non-compliance issues. To the extent feasible, Captive Managers should comply with regulatory deadlines and not routinely request “due date” extensions.

As the Captive Manager is the interface between the captive owner(s) and regulatory authorities, the Captive Manager should maintain regular communication with domicile regulators.

3. Insuring agreement(s) (policy, fronting, reinsurance, and similar agreements) - should be reviewed and reissued regularly, typically

annually. If changes to terms or coverage require a business plan change to be filed with the domicile, the Captive Manager should timely file such change.

4. Solvency and Financial Strength – Captive management should be familiar with and utilize appropriate procedures and tests to monitor solvency and financial strength as appropriate for the particular captive client and domicile.
  5. Investment strategy – The investment policy should be reviewed regularly.
- C. Record Retention Policy – Electronic or physical copies of all operational data should be maintained for the life of the captive or as required by law, and for the period of years legally required after termination of the captive management relationship. Appropriate electronic information technology should be utilized for access, back-up and security of captive records.
- D. Agreements – The Captive Manager and client should have an executed, written contract that describes the material terms and conditions of the agreement between the parties.