

CAPTIVE INSURANCE DIVISION
SOUTH CAROLINA DEPARTMENT OF INSURANCE

GENERAL INSTRUCTIONS FOR LETTERS OF CREDIT

1. The letter of credit shall be printed on the issuing banks stationary or other format customarily used by the bank for letters of credit.
2. The format may be modified by the bank to suit its customary letter of credit format, however the beneficiary, applicant, and for the benefit of, must be clearly shown.
3. The beneficiary shall be the South Carolina Department of Insurance; the applicant shall be the entity, usually the parent of the captive insurance company, who will be securing the letter of credit; for the benefit of, is the captive insurance company.
The applicant is not the captive insurance company.
4. The wording in the letter of credit must exactly match that provided in the sample attached to these instructions.
5. Paragraph two in the sample letter of credit is often misunderstood. It means the issuing bank may not seek recourse against the assets of the captive insurance company if the letter of credit is drawn upon in whole or in part. However, the bank may seek recourse against the applicant.
This distinction is very important because §38-90-40 of the South Carolina Code of Laws requires capital and surplus to be free and unencumbered. Permitting the bank to seek recourse against the captive would encumber the capital and surplus thereby preventing the letter of credit to be used for capital and surplus by the captive insurance company.
6. Any questions about the South Carolina Letter of Credit Form may be directed to the Captive Insurance Division at captivemail@doi.sc.gov or by calling Lauren Robertson, Chief Financial Analyst, at 803-737-0190.

SAMPLE IRREVOCABLE LETTER OF CREDIT FOR A SOUTH CAROLINA CAPTIVE INSURANCE COMPANY

[Name of Bank]
[Address]
[City], [State] [ZIP Code]

Director
South Carolina Department of Insurance
1201 Main St., Suite 1000
Columbia, South Carolina 29201

Applicant _____
Letter of Credit No. ____
Issue Date _____

Director:

1. We hereby establish this clean, Irrevocable Letter of Credit in your favor for the account of _____ in the amount of \$_____ available by your draft(s) drawn on us, at sight, bearing the number of this Irrevocable Letter of Credit number _____. This Letter of Credit shall expire at our Letter of Credit Department [bank address, city, state, ZIP code], at our close of business on [date], unless as hereinafter extended.

2. This Letter of Credit is issued pursuant to the provisions of Chapter 90 of Title 38 of the Code of Laws of South Carolina 1976, as amended, on behalf of the company referenced in (1) above, which possesses or is applying for a license as a captive insurance company domiciled in South Carolina. We understand and agree that [name of captive] has no obligation to reimburse us and we have no right of set off against any funds held by us for [name of captive] in the event this Letter of Credit is drawn down, in whole or in part. By issuing this Letter of Credit, we waive any common law, statutory or contractual right of reimbursement or set off against [name of captive] that may arise in the event this Letter of Credit is drawn down, in whole or in part.

3. It is a condition of this Letter of Credit that it shall be automatically extended for additional periods, each of one year, unless at least ninety (90) calendar days prior to the then relevant expiration date we have advised you in writing that we elect not to extend. In that event, you may draw hereunder on or prior to the then relevant expiration date, up to the full amount then available hereunder, against your sight draft(s) on us, bearing the number of this Letter of Credit. Our notification will be sent to you by certified mail, return receipt requested, at the address set forth above. It is a further condition of this Letter of Credit that each automatic extension shall be measured from the then relevant expiration date, even though such date is not a business day in Columbia, South Carolina for this Bank. It is also a condition of this Letter of Credit, for the purpose of drawing hereunder, if the then relevant expiration date is not a business day for our Bank, drawing may be made not later than our next immediately following business day.

4. The foregoing provision is not meant to limit your ability to draw hereunder, up to the full amount then available hereunder, in the event of court-ordered receivership or otherwise, at any time.

5. Except as stated herein, this undertaking is not subject to any requirement or qualification. Our obligation under this Letter of Credit is the individual obligation of the Bank, in no way contingent upon reimbursement with respect thereto, or upon our ability to perfect any lien or security interest. This Letter of Credit sets forth in full the terms of our undertaking, and such undertaking shall not in any way be modified, amended or amplified by reference to any note, document, instrument, statute, regulation or agreement referred to herein or in which this Letter of Credit is referred to or to which this Letter of Credit relates and any such reference shall not be deemed to incorporate herein by reference any note, document, instrument, statute, regulation or agreement.

6. Each sight draft so drawn and presented shall be promptly honored by us if presented by you or your designee on or prior to the above-stated expiration date or any extension thereof as provided above.

7. This Letter of Credit is subject to the Uniform Customs and Practices for Documentary Credits (2007 Revision) International Chamber of Commerce Publication No. 600 (UCP600). Notwithstanding Article 36 of said Publication, in the event that one or more of the occurrences specified in Article 36 of said Publication occurs, then the bank hereby specifically agrees this letter of credit shall be extended so as not to expire during such interruption of business and shall extend for ten days after such resumption of business.

Very truly yours,

[Name of Issuing Bank]

Authorized Signature of Bank Official