

“Foreign insurer” means an insurer formed under the laws of a jurisdiction of the United States of America, other than the State of New Jersey.

“Hazardous financial condition” means a financial condition deemed to exist when the standards contained in N.J.A.C. 11:1-10.4(a)1 indicate, either singly or in combination of two or more, that the financial condition of any insurer which has applied to transact, or is already transacting the business of insurance in any jurisdiction, is considered by the Commissioner to be precarious to the policyholders, claimants, creditors, or the public.

“Hazardous operations” means operations deemed to exist when the standards contained in N.J.A.C. 11:1-10.4(a)2 indicate, either singly or in combination of two or more, that the operations of any insurer transacting the business of insurance in any jurisdiction is considered by the Commissioner to be precarious to the policyholders, claimants, creditors or the general public. “Insurance holding company system” means two or more affiliated persons, one or more of whom or which is an insurer.

“Insurer” means any person or persons, corporation, partnership or company authorized by the laws of this State to transact the business of insurance in this State; except that it shall not include agencies, authorities or instrumentalities of the United States, its possessions and territories, the Commonwealth of Puerto Rico, the District of Columbia, or a state or political subdivision of a state.

“NAIC” means the National Association of Insurance Commissioners.

“Person” means an individual, a corporation, a partnership, an association, a joint stock company, a trust, an unincorporated organization, any similar entity or any combination of the foregoing acting in concert, but shall not include any securities broker performing no more than the usual and customary broker’s function.

“Subsidiary” of a specified person means an affiliate controlled by such person directly or indirectly through one or more intermediaries.

Amended by R.2003 d.209, effective May 19, 2003.
See: 35 N.J.R. 66(a), 35 N.J.R. 2182(a).

Rewrote “Authorized insurer”, “Certificate of authority”, “Commissioner of Insurance” or “Commissioner”, “Committee on Admissions”, and “Department”.

11:1-10.4 General eligibility requirements

(a) In order for a foreign or alien company engaged in the business of property and casualty insurance to be admitted to transact the business of insurance in the State of New Jersey, the requirements in this section shall be satisfied in addition to any other requirements in this subchapter or any other provision of law.

1. The insurer shall satisfy the Commissioner that it is not in a hazardous financial condition.

2. The insurer shall satisfy the Commissioner that its financial condition is not such as would render its operations hazardous to the policyholders, stockholders or the general public. In determining whether a hazardous financial condition exists, the factors set forth in N.J.A.C. 11:2-27.3 shall be considered. A hazardous financial condition shall be deemed to exist when those factors indicate, either singly or in combination of two or more, that the operations of any insurer transacting the business of insurance in any jurisdiction is considered by the Commissioner to be hazardous to the policyholders, stockholders or the general public.

3. The insurer shall satisfy the following capital and surplus licensure requirements:

i. An applicant shall satisfy, at a minimum, the statutorily-prescribed minimum capital and surplus requirements for all lines of insurance that it is authorized to write pursuant to the Certificate of Authority issued by its state or country of domicile, whether or not the applicant desires to transact any of those lines of insurance in the State of New Jersey. The Department shall make an adjustment of surplus regarding all applicant companies as follows:

(1) There shall be deducted from unassigned funds special deposits not held for the protection of all policyholders; and

(2) All applicants shall include in their Annual Statement a provision for unauthorized reinsurance for unearned premiums and losses in connection with the reinsurance in all companies not authorized to transact business in New Jersey. An amount in these items slightly larger than that required for New Jersey shall be acceptable where the liability is based on the calculation for some other state. These penalties may be adjusted for subsequent legal action on license status in the State of New Jersey or in other jurisdictions.

ii. Requirements for an application to meet the minimum capital and surplus amounts for all lines of insurance that it is authorized to write pursuant to the Certificate of Authority issued by its state or country of domicile may be modified by the Commissioner if the applicant:

(1) Does not transact one or more of the kinds of insurance contained in the Certificate of Authority issued by its state or county of domicile; and

(2) Submits a resolution by its board of directors stating that it will refrain from transacting the kind(s) of insurance permitted by the Certificate of Authority issued by its state, districts, territories, commonwealth, possessions or country of domicile.

4. The applicant shall have its application deferred if any one of the following conditions exist:

i. An applicant company which has failed four or more Insurance Regulatory Information System (IRIS) tests shall have its application deferred until it has demonstrated to the Commissioner and its state, districts, territories, commonwealth, possessions or country of domicile that these IRIS test results are not indicative of a financial condition that may be hazardous to the general public, policyholders, claimants, creditors and stockholders; or

ii. An applicant company which has failed to file with the NAIC an Annual Statement for the prior year shall have its application deferred until it has filed with the NAIC such Annual Statement.

5. The insurer shall satisfy the following seasoning requirements:

i. Subject to the provisions of this subchapter, no applicant shall be considered for a Certificate of Authority to transact the business of insurance in the State of New Jersey unless the Commissioner has been furnished with evidence that the applicant, under its present control, has been authorized by its/their state(s), district(s), territory(ies), commonwealth(s), possession(s) or country(ies) of domicile, to engage in the kind(s) of insurance business for which the applicant seeks a Certificate of Authority, and has in fact been actively engaged in such business for a period of at least five years prior to the date of the application for the New Jersey Certificate of Authority.

ii. An applicant insurer qualified under (a)5i above shall demonstrate that:

(1) During any three of the last five years, including therein either of the two most current years of business operations, it generated a net income from operations, after Federal taxes, as reported in the Underwriting and Investment Exhibit in the Annual Statement; and

(2) Surplus has not decreased due to operations over the five year period in question; and

iii. The Commissioner may, upon the request of an applicant, on a case by case basis, waive, in the case of (a)5iii(1), (2), (3), (5) and (6) below, or reduce, in the case of (a)5iii(4) below, the five year seasoning requirement required by (a)5i and ii above. In determining whether a reduction or waiver is appropriate in a particular case, the Commissioner shall consider whether the requirements of this section have been satisfied, and, in addition, whether any one of the applicable requirements provided in (a)5iii(1) through (6) below have been satisfied. These requirements include:

(1) Whether the applicant is a wholly-owned subsidiary of an insurer which has been authorized to transact the business of insurance in the State of New Jersey for at least five years. The Commissioner shall be satisfied as to the financial condition and methods of operation of the authorized insurer who shall effectively guaranty, by a resolution passed by its board of directors, the minimum capital and surplus requirements required by statute of the applicant during the first five years of its operation in this State; or

(2) Whether the applicant is a wholly-owned subsidiary of an insurer which has been authorized to transact the business of insurance in the State of New Jersey for at least one year, and secured admission into New Jersey by having been in operation for at least five years pursuant to (a)5i and ii above. The Commissioner shall be satisfied as to the financial condition and methods of operation of the authorized insurer, which shall effectively guaranty, by a resolution passed by its board of directors, the minimum capital and surplus requirements required by statute of the applicant during the first five years of its operation in this State. The insurer parent shall also be required to have one of the top three ratings, or, in the case of Dun and Bradstreet, an evaluation acceptable to the Department, from at least two of the following: Standard and Poor's; Dun and Bradstreet; Moody's and A.M. Best; or

(3) Whether the applicant is the continuing corporation resulting from a merger or consolidation of insurers, at least one of which has been authorized in its state or country of domicile to transact the kind(s) of insurance business for which the applicant seeks a New Jersey Certificate of Authority and has been actively engaged in such insurance business for at least five years and is currently in good standing; or

(4) Whether the applicant, being an insurance company with a non-insurance company parent, has completed three full years of operation, and, subsequent to its first two years of operation, has available a filed examination report conducted by its state of domicile, which report is in accordance with the New Jersey Department of Banking and Insurance standards for examinations. The first two full years of operations covered by the examination report shall be sufficient to make the report useful and meaningful to the Department. The applicant shall also be required to have experienced profitable operations in two of the three years, including the most current year of business. Additionally, the applicant shall obtain or satisfy all of the following:

(A) A financial guaranty from its ultimate parent that the applicant will meet the minimum required capital and surplus requirements on a quarterly basis, for a period of five years from the date of admission;

(B) The ultimate parent must be a United States corporation actively engaged in business for a period of not less than five years prior to the date of application for the New Jersey Certificate of Authority;

(C) The ultimate parent shall have one of the top two ratings, or, in the case of Dun and Bradstreet, an evaluation acceptable to the Department, from at least two of the following for at least three years prior to application and shall maintain said rating for at least three years after admission: Standard and Poor's; Dun and Bradstreet; and Moody's. The Commissioner may initiate proceedings to revoke authorization for non-compliance with this requirement; and

(D) The ultimate parent shall have a net worth of at least \$25,000,000, which amount shall be set by the Commissioner upon his or her consideration of the general financial condition of the parent and relevant underwriting factors such as, but not limited to, the volume to be written and the type of risk, and any other factors which the Commissioner, in his or her discretion, shall consider to be appropriate; or

(5) Whether the applicant obtains a surety bond or bonds issued by an insurance company or insurance companies approved by the Commissioner and authorized in the State of New Jersey, in an amount to be determined by the Commissioner, with a minimum requirement of \$5,000,000 and issued for a period of time as shall be determined by the Commissioner, but which shall not exceed five years. The Commissioner shall exercise his or her discretion in setting an amount for a surety bond upon consideration of the factors noted in (a)5iii(4)(D) above. This bond shall be prepared in such a way as to meet the requirements of the Department concerning the protection of New Jersey policyholders, claimants and creditors of the applicant insurance company; or

(6) Whether the applicant demonstrates to the Commissioner that a line or lines of insurance in this State for which the applicant is seeking authority is underserved in this State at the time the request for waiver is made. For purposes of this provision "line of insurance" shall be construed to mean a sub-line of business or category of business within the line, and shall not be construed to mean an entire line of business. Any applicant seeking a waiver of the five year seasoning requirement set forth in (a)5i and ii above pursuant to this provision shall submit a written request for such waiver which shall include the following:

(A) Such information and documentation as may be necessary to demonstrate to the Commissioner that there is no reasonable or adequate market among authorized insurers for the type of

insurance coverage involved. In making this showing, the applicant shall demonstrate that there is, in fact, a market for the type of coverage involved in the request, that it is presently underserved, and that the applicant will serve that market. A showing that the coverage is presently listed on the Exportable List promulgated by the Commissioner pursuant to N.J.S.A. 17:22-6.43 and N.J.A.C. 11:1-34 shall be deemed to demonstrate that the coverage is presently underserved in this State;

(B) Documentation that the applicant possesses the requisite underwriting, managerial and financial capability and expertise to write the particular business involved in the request, to the extent the original application for admission does not so demonstrate; and

(C) A certification that the applicant acknowledges that if the request is granted and the applicant is admitted to transact business under such waiver, the applicant's authority to transact business shall be limited only to the type of coverage involved in the request, and that the applicant may not write any other business so long as it does not satisfy the seasoning requirements set forth (a)5i and ii above or any waiver therefrom set forth in (a)5iii (1) through (5) above. This shall not be construed to limit the ability of the applicant to request that the Commissioner remove the restriction upon a showing that it satisfies the seasoning requirements pursuant to (a)5i and ii above, or waiver therefrom set forth in (a)5iii(1) through (5) above, and that it is otherwise qualified to write such business pursuant to law, including, but not limited to, this subchapter.

6. The insurer shall procure a New Jersey Certificate of Authority by establishing compliance with the applicable requirements of N.J.S.A. 17:17-1 et seq. and shall successfully complete an admissions process which shall include a detailed review by the Commissioner of the business affairs and financial condition of the applicant as provided by this subchapter.

(b) An applicant company intending to make a formal application for admission shall first submit a letter of intent which shall consist of the preliminary information set forth in N.J.A.C. 11:1-10.5.

Amended by R.1995 d.347, effective July 3, 1995.

See: 27 N.J.R. 1737(a), 27 N.J.R. 2582(b).

Added (a)5iii(6).

Amended by R.2001 d.75, effective March 5, 2001.

See: 32 N.J.R. 4184(a), 33 N.J.R. 794(a).

Amended by R.2001 d.99, effective March 19, 2001.

See: 32 N.J.R. 4194(a), 33 N.J.R. 1004(a).

Rewrote (a).

Amended by R.2003 d.209, effective May 19, 2003.

See: 35 N.J.R. 66(a), 35 N.J.R. 2182(a).

In (a), deleted 5ii(3); in 5iii(2), substituted "three" for "two".

11:1-10.5 Letter of intent

(a) Prior to the acceptance of a final application for a Certificate of Authority in the State of New Jersey, all foreign and alien insurers engaged in the business of property and casualty insurance who desire to transact the business of insurance in the State of New Jersey shall submit, as a preliminary application, a letter of intent, which shall include the information required in (a)1 through 7 below.

1. The name of the applicant;
2. Where applicable, the name of any person, as defined in this subchapter, or other entity, by whom the applicant is controlled;
3. The applicant's current insurance holding company systems chart;
4. The type(s) of insurance proposed to be written by the applicant in the State of New Jersey;
5. A certified copy of the applicant's most recent Annual Statement, prepared on the NAIC annual and quarterly statements forms used by New Jersey domestic insurers;
6. A certified copy of the applicant's current Certificate of Authority from its state, district, commonwealth, territory, possession or country of domicile; and
7. The most recent report(s) from rating agencies, including, but not limited to, A.M. Best, Moody's, Standard and Poor's, Duff and Phelps, and Dun and Bradstreet.

Amended by R.2003 d.209, effective May 19, 2003.

See: 35 N.J.R. 66(a), 35 N.J.R. 2182(a).

In (a), substituted "7" for "8" in the introductory paragraph, deleted 4, recodified existing 5 through 7 as 4 through 6, deleted 8, added a new 7.

11:1-10.6 Final application

(a) After submission of the letter of intent as required by N.J.A.C. 11:1-10.5, the applicant shall be instructed by the Department to file the following items:

1. A copy of its charter as currently in force, certified by the lawful custodian of the original document;
2. A copy of its bylaws as currently in force, certified by a senior officer of the company;
3. Six copies of the statement of the company's financial condition as of December 31 of the preceding calendar year, in the NAIC format, including all required supplemental exhibits, signed and sworn to by the president of the company, its corporate secretary and its treasurer;
4. A Certificate of Compliance under the official seal of the commissioner of insurance of the company's domiciliary state or country;

5. A certified copy of a report of the most recent examination of the company's affairs by the department of insurance or its equivalent, of the state or country in which the company is domiciled;

6. An appointment, by the company, of the Commissioner as attorney for service of process;

7. An application for admission, on a form to be prescribed by the Department, including payment of a non-refundable application fee in the amount set forth in N.J.A.C. 11:1-32.6(a)1;

8. A "statement of opinion" by a qualified actuary relating to loss and loss adjustment expense reserves, pursuant to N.J.A.C. 11:1-21;

9. A copy of the applicant's quarterly financial statements for the current year, in the NAIC format, and for such other periods of time as shall be required by the Commissioner;

10. Where applicable, a certified copy of the filing made pursuant to the Holding Company Act of the state, district, territory, commonwealth, possessions or country of domicile, for the last fiscal period, supplemented as necessary to meet the requirements of N.J.S.A. 17:27A-3(a) and (b) and applicable Securities and Exchange Commission filing requirements;

11. A statement of ownership of the applicant. This statement shall include all shareholders of record who control five percent or more of the outstanding shares of the applicant, directly or indirectly;

12. Any tender offer materials (advertisements, invitations, etc.) if any tender offer has been made by the company or its parent to acquire another company within the three years preceding;

13. Biographical affidavits, to be completed by all directors and senior officers on a form prescribed and provided by the Department;

14. A corporate plan of operation consisting of:

i. A schedule listing the following:

(1) All jurisdictions in which the applicant has applied for authorization to transact the business of insurance during the preceding 10 years and the dates and results of such applications; and

(2) All jurisdictions from which the applicant has withdrawn during the preceding 10 years, and the reasons for withdrawal;

(3) If a license has been refused, suspended or revoked by any jurisdiction, the applicant shall furnish an explanation and a copy of any orders, proceedings, and determinations related thereto.

ii. A description of the applicant's present business plan or plan(s) for conducting an insurance business, including, but not limited to: