

FSM CAPTIVE INSURANCE LAWS AND REGULATIONS

EXTRACTED FROM TITLE 37 OF THE CODE OF THE FEDERATED STATES OF
MICRONESIA

CHAPTER 1 Interpretation

SECTIONS

- § 101. Short title.
- § 102. Definitions.
- § 103. Exemption of Social Security Program and Health Plan.
- § 104. Transition.
- § 105. Manner of record keeping.

§ 101. Short title.

This subtitle shall be known as the “Insurance Act of 2006.”

§ 102. Definitions.

In this subtitle, unless the context otherwise requires:

- (1) “actuary” means an individual qualified as an actuary by such qualifications as the Commissioner may recognize;
- (2) “affiliated entity” means a subsidiary, a holding company, a trust controlled or administered by a company, or another company whose board of directors acts in accordance with the directors or instructions of the first company;
- (3) “agent” means a person with the authority of an insurer to solicit applications, receive proposals, receive premiums, deliver policies, and to make contracts of insurance;
- (4) “auditor” means an independent accountant approved by the Commissioner;
- (5) “broker” means a person who acts on behalf of a prospective customer and with the prospective customer’s authority arranges insurance business with insurers, including making proposals and paying premiums;
- (6) “Commissioner” means the individual appointed as the Insurance Commissioner under this subtitle;
- (7) “company” means a body corporate formed under the laws of and having its head office in the Federated States of Micronesia;
- (8) “domestic insurer” means a company that is licensed under this subtitle to carry on an insurance business in the Federated States of Micronesia;
- (9) “domestic policy” means a policy issued on property, lives or other risks located in the Federated States of Micronesia;
- (10) “foreign insurer” means an entity constituted and licensed to conduct an insurance business by a jurisdiction other than the Federated States of Micronesia, that has been registered or licensed under this subtitle to carry on insurance business in the Federated States of Micronesia;
- (11) “insurance” means a contract whereby one undertakes to indemnify another or pay a specified amount upon determinable contingencies;

(12) “insurance business” means the soliciting, effecting or carrying out of contracts of insurance, including re-insurance, and the following transactions:

- (a) making or negotiating an insurance policy;
- (b) making or negotiating a guaranty or surety contract not merely incidental to another legitimate business or activity;
- (c) taking, forwarding or receiving an insurance application;
- (d) disseminating information concerning coverage and rates;
- (e) receiving or collecting any consideration for insurance;
- (f) issuing or delivering an insurance policy to a resident of, or a person authorized to do business in, the Federated States of Micronesia;
- (g) directly or indirectly acting as an agent, broker or solicitor, or any other form of representative of an insurer;
- (h) setting rates;
- (i) inspecting a risk;
- (j) investigating or adjusting a claim or loss;
- (k) doing or proposing to do any activity that is in substance equivalent to conduct described in this provision.

(13) “insurer” means a domestic or foreign insurer;

(14) “life insurance” means insurance of human lives and insurance appertaining thereto or connected therewith and includes the granting of annuities, endorsement benefits, sinking fund benefits and benefits in the event of death or disability by accident or sickness, provided that such insurance against disability by accident or sickness is included as an additional benefit in a life insurance policy;

(15) “marine, aviation and transportation policy” means an insurance policy that covers a risk relating to

- (a) the possession, use or ownership of a vessel, aircraft or other craft;
- or
- (b) the conveyance of persons or goods by air, space, land or water; or
 - (c) the storage, treatment or handling of goods so conveyed or to be so conveyed.

(16) “officer” means, in relation to a partnership, corporation, association, trust or any other business entity, a director, manager or secretary of that body, or any person having or exercising powers or duties substantially similar to any of those officers;

(17) “person” means any person, natural or legal, including individuals, partnerships, and corporations;

(18) “policy” means any written contract of insurance whether contained in one or more documents;

(19) “policy-owner” means a person who is entitled to claim any benefit provided for in a policy;

(20) “premium” means the money to be paid in return for an undertaking to provide policy benefits;

(21) “reinsurance” means a contract by which an insurer insures any part of the risk insured by the insurer with another insurer;

(22) “related person” with respect to any natural person means his spouse, child, parents, brothers, or sisters, or any partnership, corporation, or firm in which he owns more than a ten percent interest;

(23) “regulations” means regulations made by the Insurance Board under this

subtitle.

(24) “solicitor” means an individual who solicits applications for insurance or negotiates insurance business on behalf of an insurer or an agent and earns commissions for each successful sale, but is neither an insurer, an insurance agent, nor an employee of an insurer or agent.

CHAPTER 10

Captive Insurance Act of 2006

SECTIONS

- § 1001. Definitions.**
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§ 1001. Definitions.

As used in this chapter, unless the context otherwise requires:

(1) “Affiliated Company” means any company in the same corporate system as a parent or member organization by virtue of common ownership, control, operation, or management.

(2) “Association” means any legal association of individuals, corporations, partnerships, associations, or other entities that own, control, or hold with power to vote all of the outstanding voting securities of the captive insurance company.

(3) “Captive Insurance Company” means an insurance company formed or licensed under this chapter.

(4) “Commissioner” means the individual appointed as the Insurance Commissioner under this title.

(5) “Domestic captive insurance company” means a captive insurance company organized under the laws of the Federated States of Micronesia.

(6) “Foreign captive insurance company” means a captive insurance company organized under the laws of a jurisdiction other than the Federated States of Micronesia.

(7) “Insurance Manager” means an individual or company which provides insurance expertise to or for captive insurance companies and which has in its bona fide

employment a person who is a current member in good standing of the applicable professional body or of some other professional insurance association recognized by the Commissioner for the purpose of providing insurance expertise and has been approved by the Commissioner.

(8) “Member Organization” means any individual, corporation, partnership, association, or other entity that belongs to an association.

(9) “Parent” means a corporation, partnership, other entity, or individual that directly or indirectly owns, controls, or holds with power to vote more than 50 percent of the outstanding voting securities of a captive insurance company.

(10) “Principal Representative” means any individual or corporation registered and in good standing with the Federated States of Micronesia, operating in or from within the Federated States of Micronesia who, not being a *bona fide* employee of the captive insurance company, maintains for the captive insurance company full and proper records of the business activities of the captive insurance company.

(11) “Unaffiliated business” means any company:

(a) that is not in the corporate system of a parent and affiliated companies;

(b) that has a business relationship with a parent or affiliated company; and

(c) whose commercial risks are located outside of the Federated States of Micronesia.

(1) Do not include homeowners insurance, or personal automobile insurance; or

(2) Personal lines insurance of citizens of the Federated States of Micronesia; and

(d) Whose commercial risk is only reinsured by a class 4 captive insurance company in accordance with this chapter and derives a maximum of 30% of its net written premium after deducting ceded premium for this source.

(12) “Related Third-Party Business” means any company or other legal entity:

(a) That is not in the corporate system of a parent and affiliated companies;

(b) That has an existing contractual relationship with a parent or affiliated company; and

(c) Whose risks are managed by a captive insurance company in accordance with this chapter.

(13) “Multiple Corporate Captive Insurance Companies” or “MCC” means one or more corporations organized, or with the intent to organize, as a group of corporate captive insurance companies under the laws of the Federated States of Micronesia:

(a) where each member captive insurance company is formed and owned by a different parent company for the purpose of insuring risks of its parent company or related third party businesses respectively; and

(b) where all member captive insurance companies are together deemed to constitute a group under the laws of the Federated States of Micronesia subject to the following condition:

(i) the core member captive insurance company shall hold 5% or more of the shares of each of the other member captive insurance companies;

(ii) each member captive insurance company shall permit one or more directors from the core member captive insurance company on its board of directors;

(iii) a core member captive insurance company must maintain a minimum paid in capital and surplus of at least \$1,000,000; and

(iv) each member captive insurance company must maintain a minimum paid in capital and surplus of at least \$100,000.

(c) Each member captive insurance company making up an MCC is deemed an individual captive insurance company for purposes of the laws of the Federated States of Micronesia.

(d) The license issued to the core member captive insurance company meeting the capital requirements of subsection (13)(b)(iii) of this section shall precede issuance of licenses to any of the member captive insurance companies meeting the capital requirements of subsection (13)(b)(iv) of this section.

§ 1002. Determination of class of captive insurance companies.

Each captive insurance company formed under this chapter shall be designated and licensed as one of the following classes of captive insurance companies:

(1) A class 1 company shall be a captive insurance company that insures the risks of its parent and affiliated companies or associations;

(2) A class 2 company shall be a captive insurance company that insures the risks of its parent and affiliated companies or associations and/or related third-party businesses.

(3) A class 3 company shall be a captive insurance company that constitutes part of a Multiple Corporate Captive Insurance Company as defined in section 1001(13) of this chapter.

(4) A class 4 company shall be a captive insurance company that insures the risks of its parent and affiliated companies and/or associations and/or related third-party business and/or unaffiliated business and/or Multiple Corporate Captive business.

(5) Additional classes of captive insurance companies may, from time to time, be created by amendment of this chapter.

§ 1003. Captive Insurance Company Licensing and Captive Insurance Manager's Licensing.

The Commissioner may issue two types of licenses with respect to the captive insurance companies pursuant to subsection 1-5 below; the other for business entities which engage in the business of managing captive insurance companies pursuant to subsection 6-9 below.

(1) Captive insurance companies shall be licensed in accordance with chapter 3 of this title; PROVIDED, HOWEVER, that the Commissioner, in lieu of the Insurance Board, is hereby authorized to review and approve or reject a captive insurance company license application pursuant to sections 302, 303, and 304, and this chapter..

(2) In considering whether to license a captive insurance company under this chapter, the Commissioner shall consider the following factors:

(a) Principal office and principal representatives;

(i) the principal office shall maintain a principal place of business within the Federated States of Micronesia;

(ii) appoint a principal representative that shall be approved by the Commissioner;

(iii) hold an annual board of directors meeting in the Federated States of Micronesia. In meeting the quorum requirements for this annual board meeting, only the principal representative is required to be physically present in the Federated States of Micronesia. The remainder of the quorum may be present via telephone;

(iv) the captive insurance company shall maintain in its principal office accurate documents in English of the insurance business and accounting for examination by the Commissioner.

(b) Application documents: the captive insurance company shall file the following documents with its application for an insurance license with the Commissioner and Insurance Board:

(i) the amount and liquidity of its assets relative to the risks to be assumed;

(ii) the adequacy of the expertise, experience, and character of the person or persons who will manage it;

(iii) the overall soundness of its plan of operation;

(iv) the adequacy of the loss prevention programs of its insured; and

(v) such other factors deemed relevant by the Commissioner in ascertaining whether the proposed captive insurance company will be able to meet its policy obligations.

(3) Fee schedule.

(a) Each captive insurance company shall pay a nonrefundable fee of \$500 for examining, investigating, and processing its application for licensing, and the Commissioner is authorized to retain legal, financial and examination services, the reasonable cost of which may be charged against the applicant.

(b) In addition each captive insurance company receiving a license from the Commissioner shall pay a license fee of \$500 for the year of registration or licensure due within 30 days after registration or licensure, and a yearly or annual fee of \$500 due on or before the registration or licensure day and month every year for each year thereafter. Such fees shall be deposited into a revolving fund established under Section 1017.

(4) Licensing. If the Commissioner is satisfied that the documents filed by the captive insurance company comply with this title, the Commissioner shall grant a license authorizing it to transact insurance business in the Federated States of Micronesia. The license shall be valid until terminated by surrender, suspension, revocation, or failure to comply with the law

(5) No captive insurance company licensed under this chapter shall be allowed to insure the risks of individual citizens of the Federated States of Micronesia.

(6) The Insurance Commissioner is authorized to issue a captive insurance manager's license, which may be signed by the Insurance Commissioner's or the Commissioner's authorized designee, and shall issue the same to any applicant that:

(a) has in its *bona fide* employment a person who is a current member in good standing of an accounting or insurance related professional body or

association; or,

(b) has in its *bona fide* employment a person that has minimum of five years' experience in the captive management field.

(7) The applicant shall be issued a captive insurance manager's license by the Insurance Commissioner upon compliance with subsection (6) of this section without regard to:

(a) whether the applicant has or has not applied for a license with a captive insurance company; or,

(b) whether the applicant is or is not currently managing a domestic captive insurance company.

(8) The captive insurance manager's license grants the captive insurance manager the authority to work with or manage:

(a) any person or entity intending to form a captive insurance company in the Federated States of Micronesia; or,

(b) any domestic captive insurance company licensed by the Insurance Board.

(9) The captive insurance manager's license shall be effective for a period of five years from the date of issuance.

§ 1003A. Captive Insurance Company Applications – Approval.

An application for a captive insurance company license submitted in accordance with chapter 3 and section 1003 of this title shall be deemed approved if the application is neither approved nor denied with 30 days of receipt of the application by the Insurance Commissioner.

§ 1004. Confidential treatment.

(1) No captive insurance company, or person who, in his past or current position with a captive insurance company has acquired information concerning an insured entity shall disclose such information except:

(a) to an affiliated entity in the usual course of business;

(b) with the written authorization of the policy owner or his legal personal representative;

(c) for the purpose of performing his duties under this chapter;

(d) when required to do so by a court in the Federated States of Micronesia;

(e) in order to comply with the provisions of this chapter or any other law.

(2) No member of the Insurance Board, the Insurance Commissioner or any employee or agent of the Insurance Board or Commissioner shall disclose to any person any information relating to any captive insurance company that he has acquired in the performance of his duties under this chapter except:

(a) for the purpose of the performance of his duties or the exercise of his functions;

(b) when lawfully required to do so by any court, or in proceedings for an offense against this subtitle;

(c) with the consent of the person to whom the information relates;

(d) to the extent that the information is available under any other law or in public documents;

(e) in aggregated or summary form, in such a manner as to prevent any information disclosed from being identified by any person as being related to a particular person, including for statistical purposes;

(f) in confidence to a supervisory authority in the Federated States of Micronesia or any other country so long as the Insurance Board is reasonably satisfied the recipient of the information will maintain confidentiality;

(g) in confidence to advisors from the private sector, international organizations or foreign governments for the purpose of improving the regulatory system and performance of the Insurance Board, so long as the Insurance Board is reasonably satisfied the recipient of the information will maintain confidentiality.

§ 1005. Names of Companies.

In addition to the requirements of chapter 5 of this subtitle, no captive insurance company shall adopt a name that is the same, deceptively similar, or likely to be confused with or mistaken for any other existing business name registered in the Federated States of Micronesia.

§ 1006. Redomestication; Approval as domestic captive insurance company.

Any foreign captive insurance company may become a domestic captive insurance company by meeting the following requirements:

(1) Compliance with all of the requirements relating to the registration and licensing of a captive insurance company as stated in this subtitle, and any additional requirements that the Commissioner or Insurance Board may require;

(2) The articles of incorporation or other organizational document shall be amended in compliance with the laws of the Federated States of Micronesia and restated in its entirety before submission to the Commissioner and Insurance Board. Before the amended and restated articles of incorporation and other organizational documents are transmitted to the National Registrar of Corporations, the redomesticating captive insurance company shall petition the Commissioner and Insurance Board to issue a certificate setting forth the Insurance Board's finding that the redomestication and maintenance of the captive insurance company shall promote the general good of the Federated States of Micronesia. In arriving at the finding, the Commissioner and Insurance Board shall consider:

(a) The character, reputation, financial standing, and purposes of the foreign captive insurance company;

(b) The character, reputation, financial responsibility, insurance experience, and business qualifications of the officers and directors; and

(c) Any other aspects as the Commissioner and Insurance Board deem advisable;

(3) The following shall be transmitted to the Registrar of Corporations for filing:

(a) Articles of redomestication;

(b) Certificate issued by the Commissioner;

(c) Certificate of good standing duly authenticated by the proper officer of the country under the laws of which the foreign captive

insurance company is incorporated; provided that the certificate shall be dated not earlier than 45 days prior to the filing of the articles of redomestication; and provided further that if the certificate of good standing is in a foreign language, a translation under oath of the translator shall accompany the certificate;

- (d) Amendments to the articles of incorporation or other organizational document in compliance with the laws of the Federated States of Micronesia; and
 - (e) Restatement of the articles of incorporation or other organizational document in its entirety;
- (4) The articles of redomestication shall set forth the following:
- (a) Name of the corporation;
 - (b) Date of incorporation and country of incorporation;
 - (c) Street address of the principal office in the Federated States of Micronesia;
 - (d) Name of the proposed principal representative;
 - (e) Names and titles of the officers and directors of the corporation;
 - (f) A statement that the corporation is moving its domicile from its present country to the Federated States of Micronesia;
 - (g) A statement that redomestication will occur upon filing the articles of redomestication and that the corporation shall be subject to the laws of the Federated States of Micronesia;
 - (h) A statement that copies of the articles of incorporation or other organizational documents and any amendments certified by the proper officer of the country under the laws of which the corporation is incorporated are attached; provided that if any of these documents are in a foreign language, a translation under oath of the translator shall accompany these documents; and
 - (i) Such other documents as may be required by this subtitle or title 36 of this code and regulations in force pursuant to those titles.

(5) The domestic captive insurance company shall be entitled to the necessary or appropriate certificates and licenses to do business in the Federated States of Micronesia and shall be subject to the authority and jurisdiction of the Federated States of Micronesia. No captive insurance company redomesticating into the Federated States of Micronesia need merge, consolidate, transfer assets, or otherwise engage in any other reorganization, other than as specified in this section.

(6) Upon redomestication in accordance with this section, the foreign captive insurance company shall become a domestic captive insurance company organized under the laws of the Federated States of Micronesia and shall have all the rights, privileges, immunities, and powers and be subject to all applicable laws, duties, and liabilities of a domestic captive insurance company of the same type. The domestic captive insurance company shall possess all rights that it had prior to the redomestication to the extent permitted by the laws of the Federated States of Micronesia and shall be responsible and liable for all the liabilities and obligations that it was subject to prior to the redomestication. All outstanding policies of the captive insurance company shall remain in full force and effect.

§ 1007. Minimum Capital and Surplus Requirements.

(1) No captive insurance company shall be issued a license unless it maintains a minimum capital and surplus of \$100,000;

(2) Provided however with respect to multiple corporate captive insurance companies the core member shall maintain minimum in capital and surplus of \$1,000,000 and each non-core member shall maintain minimum capital and surplus of \$100,000.

(3) With respect to Class 4 captive insurance company, the minimum required capital and surplus is \$5,000,000.

(4) Notwithstanding subsections (1) through (3) of this section, the Commissioner may increase the minimum required capital and surplus after taking into account the type, volume, and nature of insurance business transacted, and the potential risk retained by the captive insurance company.

(5) Minimum required capital and surplus may be in the form of any combination of the following:

- (a) cash,
- (b) letter of credit,
- (c) investments pursuant to section 1013 of this chapter, or
- (d) any other security deemed appropriate by the Commissioner.

§ 1008. Dividends.

No captive insurance company may pay a dividend out of, or other distribution with respect to, capital or surplus without the prior approval of the Commissioner. A captive insurance company may submit to the Commissioner for approval, an ongoing plan for the payment of dividends or other distributions which will take into account the retention at the time of each payment, and capital or surplus in excess of amounts specified by, or determined in accordance with formulas approved by the Commissioner.

§ 1008A. Dividends – Approval.

A dividend proposed in accordance with section 1008 of this title shall be deemed approved if the dividend proposal is neither approved or denied within 30 days of receipt of the proposal by the Commissioner.

§ 1009. Formation of Captive Insurance Companies.

Captive insurance companies shall be formed pursuant to the requirements of title 36 of this code and National Corporation's regulations in force in the Federated States of Micronesia.

§ 1010. Reports and Statements.

(1) Captive insurance companies shall not be required to make any annual report or filings except as provided in this chapter.

(2) Captive insurance companies shall submit to the Commissioner and Insurance Board the following within six months of the companies fiscal year-end:

(a) A report of its financial condition verified by oath of two of its executive officers;

(b) Audited financial statements prepared according to generally accepted accounting principles or international accounting standards, unless the

Commissioner and Insurance Board approves any appropriate or necessary modifications or changes thereof required or approved or accepted by the Commissioner and Insurance Board for the type of insurance and kinds of insurers to be reported upon, and as supplemented by additional information required by the Commissioner and Insurance Board. The audited financial statements shall be completed by a person approved by the Commissioner and Insurance Board who qualifies as an accountant by examination of one of the Institutes of Chartered Accountants, or Japanese Institute of Certified Public Accountants, or American Institute of Certified Public Accountants, or other qualified accountant as recognized by the Commissioner and Insurance Board;

(c) Opinion of loss reserve specialist, regarding reserves for the insurance business underwritten by the captive insurance company. The opinion of loss reserves shall be completed by a person approved by the Commissioner and Insurance Board who is a member of the Institute of Actuaries, or the Institute of Actuaries of Japan, or the American Academy of Actuaries, or other qualified loss reserve specialist recognized by the Commissioner and Insurance Board;

(d) Any additional reports as prescribed and requested by the Commissioner and Insurance Board.

(e) Notwithstanding any other provision of this section, in the case of Multiple Corporate Captive Insurance Companies, the core member captive insurance company shall provide the reports, financial statements and opinions required by subsections (2)(a), (b), (c) and (d) of this section with respect to itself and its members shall not be required to separately report, provide financial statements or opinion.

Source: PL 14-88 § 12; PL 16-17 § 5.

§ 1011. Examinations and Investigations.

(1) At least once in three years, and whenever the Commissioner and Insurance Board determines it to be prudent, the Commissioner shall personally, or by some competent person appointed by the Commissioner and Insurance Board, visit each captive insurance company and thoroughly inspect and examine its affairs to ascertain its financial condition, its ability to fulfill its obligations and whether it has complied with the provisions of this chapter. The Commissioner and Insurance Board may enlarge the aforesaid three-year period to five years, upon petition by the captive insurance company. The expenses and charges of the examination shall be paid to the Insurance Board by the captive insurance company examined within 30 days of receipt of the Insurance Board's warrants for the proper charges incurred for the examination.

(2) It shall be the duty of the captive insurance company under examination or investigation and any past or present officer, employee or insurance manager of the captive insurance company to produce to the Insurance Board or Insurance Board's representative upon request, all books, records and documents relating to the captive insurance company under examination or investigation which are in its custody or control and otherwise to give to the Insurance Board or Insurance Board's representative all assistance in connection with the investigation which it is reasonably able to give.

(3) All examination reports, preliminary examination reports or results, working papers, recorded information, documents and copies thereof produced by,

obtained by or disclosed to the Insurance Board or any other person in the course of an examination made under this section are confidential and are not subject to subpoena and may not be made public by the Commissioner or Insurance Board or an employee or agent of the Commissioner or Insurance Board without the written consent of the company, except to the extent provided in this subsection. Nothing in this subsection shall prevent the Commissioner or Insurance Board from using such information in furtherance of the Commissioner's and Insurance Board's regulatory authority under this subtitle. The Commissioner and Insurance Board may, at their discretion, grant access to such information to public officers having jurisdiction over the regulation of insurance in any other nation, or to law enforcement officers of the Federated States of Micronesia or any other nation so long as such officers receiving the information agree in writing to hold it in a manner consistent with this section.

§ 1012. Grounds and procedures for suspension or revocation of license.

(1) The license of a captive insurance company may be suspended or revoked by the Commissioner for any of the following reasons:

- (a) Insolvency or impairment of capital or surplus;
- (b) Failure to meet the requirements of section 1007 of this chapter;
- (c) Refusal or failure to submit an annual report, as required by this chapter, or any other report or statement required by law or by lawful order of the Commissioner;
- (d) Failure to comply with the provisions of its own charter, bylaws or other organizational document;
- (e) Failure to submit to or pay the cost of examination or any legal obligation relative thereto, as required by this chapter;
- (f) Use of methods that, although not otherwise specifically prohibited by law, nevertheless render its operation detrimental or its condition unsound with respect to the public or to its policyholders; or
- (g) Failure otherwise to comply with the laws of the Federated States of Micronesia.

(2) If the Insurance Board finds, upon examination, hearing, or other evidence, that any captive insurance company has violated any provision of subsection (1) of this section, the Insurance Board may suspend or revoke such company's license if the Insurance Board deems it in the best interest of the public and the policyholders of such captive insurance company, notwithstanding any other provision of this subtitle.

(3) Appeals from agency action may be made pursuant to title 17 of this code.

§ 1013. Legal Investments.

(1) Each captive insurance company shall be allowed to invest any of its funds without limitation in any government obligation issued by and backed by the full faith and credit of the Government of the United States of America or the Government of Japan.

(2) Each captive insurance company shall be allowed to invest in any type of investment subject to a limitation of ten percent of total captive insurance company assets in any one issuer, if that investment is rated by one of the following:

- (a) Rating and Investment Information, Inc. rating of BBB or higher;
- (b) Moody's rating of Baa3 or higher;

- (c) S&P rating of BBB- or higher;
- (d) Fitch rating of BBB- or higher;
- (3) Other investments as approved by the Commissioner;
- (4) A captive insurance company may make a loan to or an investment in its parent company or affiliates, subject to the approval of the Commissioner. Any such loan or investment must be evidenced by documentation approved by the Commissioner. Loans of minimum capital and surplus funds required by section 1007 of this chapter are prohibited.

(5) The Commissioner may prohibit or limit any investment that threatens the solvency or liquidity of any such captive insurance company.

§ 1013A. Loans and Investments – Approval.

A loan or investment proposed in accordance with section 1013 of this title shall be deemed approved if the loan or investment is neither approved nor denied within 30 days of receipt of the proposal by the Commissioner.

§ 1014. Reinsurance.

(1) Any captive insurance company may provide reinsurance on risks ceded by any other insurer only upon approval by the Insurance Board.

(2) Any captive insurance company may take credit for reserves on risks ceded to a reinsurer; provided that no captive insurance company shall cede risks without the approval of the Insurance Board.

(3) Any captive insurance company may take credit for the reinsurance of risks or portions of risks ceded to a pool, exchange or association acting as a reinsurer which has been authorized by the Insurance Board. The Insurance Board may require any other documents, financial information or other evidence that such a pool, exchange or association will be able to provide adequate security for its financial obligations. The Insurance Board may deny authorization or impose any limitations on the activities of a reinsurance pool, exchange or association that, in the Insurance Board's judgment, are necessary and proper to provide adequate security for the ceding captive insurance company and for the protection and consequent benefit of the public at large.

Source: PL 14-88 § 16.

§ 1015. Tax on Premium Collected.

(1) Each captive insurance company shall pay into the General Fund of the Federated States of Micronesia on or before June 1 of each year, a tax on gross premiums as follows:

(a) .05 percent of gross premiums for insurance written on all risks or property resident, situated or located within the Federated States of Micronesia, and on risks and property situated elsewhere upon which no premium tax is otherwise paid during the year ending on the preceding March 31, less return premiums and less any reinsurance accepted;

(b) The annual maximum aggregate tax on premiums to be paid by a captive insurance company calculated under subsection (a) of this section shall be \$20,000.00.

(2) Two or more captive insurance companies under common ownership and control shall be taxed, as though they were a single captive insurance company.

(a) For the purposes of this section common ownership and control shall mean:

(i) in the case of stock corporations, the direct or indirect ownership of 80 percent or more of the outstanding voting stock of two or more corporations by the same shareholder or shareholders; and

(ii) in the case of mutual corporations, the direct or indirect ownership of 80 percent or more of the surplus and the voting power of two or more corporations by the same member or members.

(3) Annually, ten percent of the premium tax revenues collected pursuant to this section or \$150,000, whichever is greater shall be transferred to the Insurance Board for the regulation of captive insurance companies under this chapter.

(4) The tax provided for in this section shall be calculated on an annual basis, notwithstanding policies or contracts of insurance or contracts of reinsurance issued on a multiyear basis. In the case of multiyear policies or contracts, the premium shall be prorated for purposes of determining the tax under this section.

§ 1016. Regulations.

The Insurance Board may establish and from time to time amend such regulations relating to captive insurance companies as are necessary to enable the Insurance Board to carry out the provisions of this chapter. Such regulations shall be made in accordance with title 17, chapter 1 of this code.

Cross-reference: Title 17 of this code is on Administrative Procedure.

§ 1016A. Business Plan Changes – Approval.

A business plan change proposed in accordance with regulations established or amended pursuant to section 1016 of this title shall be deemed approved if the business plan change is neither approved nor denied within 30 days of receipt of the proposed change by the Commissioner.

§ 1017. Dormancy.

- (1) A Captive Insurance Company that elects to temporarily cease conducting insurance business pursuant to this chapter may apply to the Commissioner to place its insurance license in a dormant status.
- (2) While in a dormant status, the Captive Insurance Company may not transact insurance business, including the issuance of new contracts of insurance or maintain any active contracts of insurance or reinsurance in force.
- (3) The Captive Insurance Company may continue to pay claims on any contracts of insurance or reinsurance that have expired or terminated.
- (4) While in dormant status:
 - (a) the requirements of sections 1003(2)(a) and 1003(3) shall not apply to the Captive Insurance Company except that any records of the Captive Insurance Company must be provided to the

- Commissioner upon request,
- (b) the requirements of section 1010 shall only apply to the first reports due following the captive insurance company's placement in dormant status and not apply thereafter while the captive insurance company continuously remains in dormant status, and
 - (c) the Commissioner may elect to defer the requirements of section 1011 until such time as the captive insurance company is no longer in a dormant status.
- (5) The Commissioner may grant a waiver to the requirements of sections 1007, 1008, and 1013 of this title to a captive insurance company in dormant status if it can certify to the satisfaction of the Commissioner that it is not subject to any outstanding insurance liabilities on any expired or terminated policies.
- (6) A Captive Insurance Company under dormant status may apply to the Commissioner for reinstatement upon demonstrating to the Commissioner that it is in full compliance with all applicable laws and regulations. The reinstated Captive Insurance Company's first filed report of its financial condition and audited financial statements must include all periods of time back to the coverage period of the last filed reports.

FSM CAPTIVE INSURANCE REGULATIONS

I. **Purpose and Authority.** The purpose of these regulations is to set forth the financial, reporting, record-keeping, and other requirements which the Commissioner deems necessary for the regulation of captive insurance companies, as authorized by 37 F.S.M.C. 1016.

II. **Definitions.** For purposes of these Regulations:

"Adverse financial condition" means one or more of the following conditions:

1. The impairment of capital resulting from an imbalance of liabilities and assets;
2. Financial ratios exceeding levels established by the Commissioner, or
3. The material degradation of financial results envisioned by the designated captive insurance manager or certified public accountant through predictive forecasting.

"Captive" means a captive insurance company or companies, as applicable, licensed by the FSM.

"Commissioner" means the Banking and Insurance Commissioner of the FSM or his duly authorized representative.

III. **Force and Effect.** These regulations and any amendments hereto shall have the force and effect of law.

IV. **Severability.** If any parts of these Regulations are held ineffective, void or otherwise inactive, the remaining regulations shall continue unaffected.

V. **Application Forms.** Forms for licensing of Captives shall be those set found under the Captive Insurance Company application package.

VI. **Annual Reporting Requirements.** All Captives shall have an annual audit, which shall be part of the Captive's annual report of financial condition, prepared by an Independent Certified Public Accountant, approved by the Commissioner, and shall file such audited financial report with the Commissioner within ninety (90) calendar days following the fiscal year-end of the Captive. The annual audit shall consist of the following:

- A. Opinion of Independent Certified Public Accountant
 - 1. Financial statements shall be examined by the independent certified public accountant in accordance with generally accepted auditing standards as determined by the Institutes of Chartered Accountants, American Institute of Certified Public Accountants, or Japanese Institute of Certified Public Accountants.
 - 2. The opinion of the independent certified public accountant shall cover all years presented.
 - 3. The opinion shall be addressed to the board of directors of the Captive on stationery of the accountant showing the address of issuance shall bear the original manual signatures and shall be dated.
 - 4. The opinion shall contain an evaluation of management (including the members of the board of directors, officers and/or insurance manager of the Captive) experience, ability and control.
- B. Report of Evaluation of Internal Controls
 - 1. This report shall include an evaluation of the internal controls of the Captive relating to the methods and procedures used in the securing of assets and the reliability of the financial records, including but not limited to such controls as the system of authorization and approval and the separation of duties.
 - 2. The review shall be conducted in accordance with generally accepted auditing standards and the report filed with the Commissioner.
- C. Accountant's Letter
 - 1. The independent certified public accountant shall furnish the Board of Directors of the Captive, for inclusion in the filing of the audited annual report, a letterstating:
 - a) That he is independent with respect to the Captive, its parent and subsidiaries and conforms to the standards of his profession as contained in the Code of Professional Ethics and pronouncements of the American Institute of Certified Public Accountants, Japan Institute of Certified Public Accountants, Institute of Chartered Accountants or other such professional accountancy body as approved by the Commissioner.
 - b) The general background and experience of the staff engaged in audit including the experience in auditing captives and other insurance companies.
 - c) That the accountant understands that the audited annual report and his opinions thereon will be submitted to the Insurance Board of the Federates States of Micronesia.
 - d) That the accountant consents to the requirements of Section 10 of this regulation and that the accountant consents and agrees to make available for review by the Commissioner, his designee or his appointed agent, the work papers as defined in

Section 10.

- e) That the accountant is properly licensed and/or authorized by and in good standing with Institutes of Chartered Accountants, American Institute of Certified Public Accountants or the Japanese Institute of Certified Public Accountants, or other qualified accountant as recognized by the Commissioner and Insurance Board.

D. Financial Statements, which shall include:

1. Balance sheet;
2. Statement of gains or losses from operations;
3. Statement of changes in financial position;
4. Statement of changes in capital paid up, gross paid in and contributed surplus and unassigned funds(surplus)
5. Notes to financial statements as required by generally accepted accounting principles, international accounting standards or other basis of accounting as approved by the Commissioner, including:
 - a) A summary of ownership and relationship of the company and all affiliated corporations or companies insured by the captive.
 - b) A narrative explanation of all material transactions and balances with the company.

E. Certification of Loss Reserves and Loss Expense Reserves

1. The annual audit shall include an opinion as to the adequacy of the Captive's loss reserves and loss expense reserves, such opinion shall be supported by appropriate data and analysis.
2. The individual who certifies as to the adequacy of reserves shall be approved by the Commissioner and shall be a member in good standing of the Institute of Actuaries, Institute of Actuaries of Japan, American Academy of Actuaries, or an individual who has satisfactorily demonstrated his competence in loss reserve evaluation to the Commissioner.
3. Certification shall be in such form as the Commissioner deems appropriate.

VII. **Designation of Independent Certified Public Accountant.** A Captive shall submit a written application (see attached Schedule H-1) to the Commissioner for his approval the name and address of the independent certified public accountant which it proposes to retain to conduct the annual audit.

VIII. **Notification of Adverse Financial Condition.** A Captive shall require the certified public accountant to immediately notify an officer or the insurance manager and all members of the Board of Directors of the Captive in writing if it determines through the conduct of its audit that the Captive has materially misstated its financial condition or that, since its last financial report to the Commissioner the Captive has experienced results which lead the certified public accountant to the determination that the Captive is in adverse financial condition. The Captive shall forward such written notification by the certificated public accountant to the Commissioner within five (5) working days of receipt thereof.

IX. **Capital Requirements** The capital required for a Captive Insurance Company is:

- A. For a Class 1 Captive - \$100,000.
- B. For a Class 2 Captive - the greater of:
 - 1. \$100,000
 - 2. twenty percent (20%) of net premium income; or
 - 3. Amount determined by the Insurance Commissioner.
- C. For a Class 3 Core Captive – the greater of :
 - 1. \$1,000,000; or
 - 2. Amount determined by the Insurance Commissioner
- D. For a Class 3 Member Captive - \$100,000.
- E. For a Class 4 Captive – the greater of:
 - 1. \$5,000,000; or
 - 2. Amount determined by the Insurance Commissioner

X. **Solvency Margin.**

The minimum margin in solvency for a captive insurer is the amount by which the total value of the insurer's assets must exceed the total amount of its liabilities.

- A. The solvency margin of a captive insurer in any year is an amount equal to the greater of:
 - 1. Twenty percent (20%) of the net premium income; or
 - 2. Five percent (5%) of the value of loss reserves.
- B. If net premium income is greater than \$100 million, then the captive insurer may request that the solvency margin be determined by the Insurance Commissioner.

XI. **Loss Reserves.**

The reserves for unexpired risks, outstanding claims and contingencies to be maintained by captive insurance companies under the Act shall be;

- 1. For unexpired risks
 - a) On all business, using the 365th method on net premiums; and
 - b) Any other actuary approved method.
- 2. For outstanding claims, the total estimated amount of all outstanding claims plus 20% of the estimated amount of outstanding claims at the end of the last preceding year to cover claims incurred but not reported (IBNR).
- 3. For contingency, not less than 3% of the total premiums, if required by the Insurance Board.

XII. **Availability and Maintenance of Work Papers of the Independent Certified Public Accountant.**

- A. Each Captive shall require its independent certified public accountant to make available for review by the Commissioner or his appointed

agent the work papers prepared in the conduct of the annual statement and the audit of the Captive. The Captive shall require that the accountant retain the audit work papers for a period of not less than five (5) years after conclusion of transactions to which they relate.

- B. The review conducted in (a) above shall be considered to be an investigation and all work papers obtained during the course of that investigation shall be confidential in accordance with 37 F.S.M.C. Section 1004. The Captive shall require that the certified public accountant provide photocopies of arty and all work papers that the Commissioner deems relevant. These copies may be retained by the Commissioner.
- C. "Work papers" as referred to in this section include, but are not limited to, schedules, analyses, reconciliations, abstracts, memoranda, narratives, flow charts, copies of company records, or other documents prepared or obtained by the accountant in the conduct of the investigation of the Captive.

XIII. Documentation Required to be Held in FSM.

- A. All Captives licensed by the FSM shall maintain and have available for inspection and examination by the independent certified public accountant, the Commissioner, or the Commissioner's agent, any and all documents pertaining to the formation, operation, management, finances, insurance, and reinsurance of each Captive.
- B. Original documents may be kept in the offices of the Captive manager, the Captive's parent, or the Captive itself. Accurate and complete copies shall be held in a FSM office designated by the Captive and approved by the Commissioner. The documents shall include but are not limited to the following:
 - 1. Regulatory records:
 - a) Certificate of authority;
 - b) Certificate of public good;
 - c) Articles of incorporation and by-laws;
 - d) Corporate resolutions and minutes;
 - e) Full application for admission and related documents, and all changes and amendments to application;
 - f) All filings and correspondence with other jurisdictions;
 - g) Annual reports filed with the FSM Insurance Board since the Captive insurance company's commencement of business; and
 - h) Correspondence with the Commissioner, the FSM Insurance Board and its advisors.
 - 2. Loss and expense records:
 - a) Reports certifying loss reserves, allocated loss adjustment expense reserves and rates by an actuary in accordance with 37 F.S.M.C. Section 1010(c);
 - b) Incurred loss reports (loss runs) including:
 - (1) Claim numbers;

- (2) Occurrence dates
 - (3) Report dates;
 - (4) Lines of coverage;
 - (5) Payments to date;
 - (6) Reserve amounts;
 - (7) Date closed;
 - (8) Policy periods; and
 - (9) Loss valuation dates;
 - c) Schedule of subrogation, salvage reinsurance, or recoverables;
 - d) Claim file summaries and correspondence; and
 - e) Summary narrative review of each large loss (exceeding ten percent of retention).
3. Accounting files:
- a) Audited annual financial statements since start-up;
 - b) Auditors' opinion letters and reports ;
 - c) Charts of general ledger accounts;
 - d) Ledgers (general, payable, receivable)
 - e) Journals (general, cash receipts, disbursements)
 - f) Documentation supporting accounting records;
 - (1) Bank statements and reconcilements;
 - (2) Checks and deposit slips;
 - (3) Signature authorization cards and board resolutions of approval;
 - (4) Letters of credit and other approved securities of guarantees, with board approvals;
 - (5) Investment statements, documentation, including brokerage receipts, with board approvals;
 - (6) Premium invoices, deferrals, and payment plans;
 - (7) Deferred start-up/acquisition cost statements, with board approval; and
 - (8) Schedule of premium taxes and fees paid and payable.
4. Fronting arrangements:
- a) Signed, approved fronting agreements, with board approval;
 - b) Reports and correspondence with front or underwriters; and
 - c) Audit reports and board acceptances.
5. Reinsurance reports:
- a) Reinsurance agreements and amendments, with board approvals;
 - b) Binders, covered notes, slips;

- c) Correspondence with brokers and underwriters;
 - d) Evidence of reinsurance premium payments with board approvals;
 - e) Reinsurance audit reports or letters with board approvals; and
 - f) Letters of credit with notice to the Commissioner if "call" is made.
6. Insurance policy records:
- a) Policy registers - numeric control;
 - b) Application summaries;
 - c) Declaration pages, forms, and endorsements;
 - d) Binders, cover notes, certificates of insurance;
 - e) Schedules of exceptions to normal underwriting/implementation process;
 - f) Risk control reports and policyholder response/implementation plans; and
 - g) Underwriting and rating plans, with board approvals.
7. Professional services providers:
- a) Contracts or agreements with providers of services, with board approvals, including but not limited to:
 - (1) Actuaries;
 - (2) Banker/trust departments;
 - (3) Insurance and reinsurance brokers;
 - (4) Claim managers;
 - (5) Investment managers/advisors/custodians;
 - (6) Lawyers (non-privileged reports and correspondence);
 - (7) Program/underwriting managers;
 - (8) Risk control advisors; and
 - (9) Risk management advisors.
8. Other information which the Commissioner deems pertinent.

XIV. Reinsurance.

- A. All reinsurance companies shall be subject to approval by the Commissioner and shall, at the Commissioner's discretion, be required prior to assuming the risk of any Captive licensed by the FSM to submit for review the following:
 - 1. A copy of its most recent interim or annual report;
 - 2. A current actuarial reserve opinion;
 - 3. A current audited financial report; and
 - 4. A copy of its license as issued by its home country supervisory authority.
- B. A Captive may take credit for reserves on risks ceded to a reinsurer subject to the following limitations:

1. No credit shall be allowed for reinsurance where the reinsurance contract does not result in the complete transfer of the risk or liability to the reinsurer.
2. No credit shall be allowed, as an asset or a deduction from liability, to any ceding insurer for reinsurance unless the reinsurance is payable by the assuming insurer on the basis of the liability of the ceding insurer under the contract reinsured without diminution because of the insolvency of the ceding insurer.
3. No credit shall be allowed for reinsurance ceded unless the reinsurer and amount of reinsurance has been approved by the Commissioner annually.
4. Reinsurance shall be effected through a written agreement of reinsurance setting forth the terms, provisions and conditions governing such reinsurance.
5. The Commissioner in his discretion shall require that complete copies of all reinsurance treaties and contracts be filed and/or approved by him.

XV. Changes of Business. A Captive shall request approval from the Commissioner prior to implementing any changes in its business plan or operations from that which was approved by the Insurance Board as part of its licensing. Any such request for changes in the business plan may be approved subject to an appropriate board resolution authorizing such changes being received.

XVI. Acquisition of Control of or Merger with Domestic Company. No person shall, without the prior written approval of the Commissioner, acquire an ownership interest in a Captive, either directly or indirectly, which would result in the person owning or controlling twenty percent (20%) or more of the outstanding shares of the Captive.

XVII. Directors, Officers and Insurance Managers.

- A. A Captive shall report to the Commissioner in writing prior to any change in director, officer, insurance manager and shall provide the completed Form G-1.
- B. A Captive shall submit a written application (see attached Schedule I-1) to the Commissioner for his approval the name and address of any person proposed as or any change in Insurance Manager for a Captive.
- C. No director, officer, insurance manager, or employee of a Captive shall, except on behalf of the company, accept, or be the beneficiary of, any fee brokerage, gift, or other emolument because of any investment,

loan, deposit, purchase, sale, payment or exchange made by or for the Captive but such person may receive reasonable compensation for necessary services rendered to the Captive in his or her usual private professional or business capacity.

- D. Any profit or gain received by or on behalf of any person in violation of this section shall inure to and be recoverable by the Captive.

XVIII. Appointment for Agent for Service of Process. Before commencing business, a Captive shall file with the Insurance Board an appointment of the Commissioner as its agent (see attached Schedule K-1) upon whom all process in any action or proceeding against it arising out of the operations or activities of its office or offices may be served, which appointment shall be by its terms perpetual and irrevocable.

XIX. Conflict of Interest.

- A. Each Captive licensed by the FSM shall adopt a written conflict of interest statement for officers, the insurance manager, directors and key employees. Such statement shall disclose that the individual has no outside commitments, personal or otherwise, that would divert him from his duty to further the interests of the company he represents but this shall not preclude such person from being a director, officer or insurance manager in more than one insurance company.
- B. Each officer, insurance manager, director, and key employee of a Captive shall annually in writing file such disclosure with the Board of Directors.

XX. Suspension or Revocation of License.

- A. The Commissioner may by order suspend or revoke the license of a Captive:
 - 1. if the Captive has not commenced business according to its plan of operation within six (6) months of being licensed; or
 - 2. if the Captive ceases to carry on insurance business in or from within the FSM; or
 - 3. at the request of the Captive; or
 - 4. for any reason provided in 37 F.S.M.C. 1012 or pursuant to the Captive's request
- B. Before the Commissioner suspends or revokes the license of a Captive, the Commissioner shall give the Captive notice in writing of the grounds on which he proposes to suspend or revoke the license, and shall afford the Captive an opportunity to make objection in writing within the period of fifteen (15) calendar days after receipt of notice. The Commissioner shall take into consideration any objection received by him within that period and, if he decides to cancel the license, cause the order of suspension or revocation to be served on the company.

- C. In case of suspension or revocation, the Commissioner will advise the Captive of procedures and requirements for ongoing operations and winding up of the Captive's business.

XXI. Money Laundering and Proceeds of Crime. Captives shall comply with the provisions of 11 F.S.M.C. 9, as amended.

NOTE: Schedule K-1, the resolution of the board of directors consenting to service of process on the Insurance commissioner, can be found in the FSM Captive Insurance Application Packet.