



## ST. CHRISTOPHER AND NEVIS

### CHAPTER 21.20

## CAPTIVE INSURANCE COMPANIES ACT and Subsidiary Legislation

### Revised Edition

showing the law as at 31 December 2017

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The Regional Law Revision Centre Inc.,  
P.O. Box 1626, 5 Mar Building,  
The Valley, AI-2640, Anguilla,  
West Indies.

Available for purchase from—

Attorney General's Chambers,  
Government Headquarters, P.O. Box 164,  
Church Street, Basseterre, St. Kitts,  
West Indies

Tel: (869) 465-2521

Ext. 1013

Tel: (869) 465-2127

Fax: (869) 465-5040

Email: [attorneygeneral@gov.kn](mailto:attorneygeneral@gov.kn)

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## **CHAPTER 21.20**

### **CAPTIVE INSURANCE COMPANIES ACT**

AN ACT TO PROVIDE FOR THE ESTABLISHMENT, OPERATION AND MANAGEMENT OF CAPTIVE INSURANCE COMPANIES; AND TO PROVIDE FOR RELATED OR INCIDENTAL MATTERS.

#### **PART I**

##### **PRELIMINARY**

###### **Short title.**

1. This Act may be cited as the Captive Insurance Companies Act.

###### **Commencement.**

2. This Act shall come into force on such date as the Minister may by Order appoint.

###### **Interpretation.**

3. In this Act, unless the context otherwise requires—

“Act” means the Captive Insurance Companies Act, Cap. 21.20;

“affiliated company” means any company in the same corporate system as a parent or a member organisation by virtue of common ownership, control, operation, or management;

“affiliated person” means an entity or individual which is related to a parent or owner of a captive insurance company by virtue of being—

- (a) a spouse, father, mother, child, brother or sister of any such individual person; or
- (b) an owner, parent or affiliated company, with respect to any such person which is an entity, attributing to each person the person’s pro-rata share of the ultimate beneficial ownership of the captive insurance company, whether held directly or indirectly and “affiliated persons” includes controlled unaffiliated businesses;

“association” means any legal association of individuals, corporations, limited liability companies, partnerships, associations, or other entities that has been in continuous existence for at least one year, the member organisations of which, or which does itself, whether or not in conjunction with some or all of the member organisations—

- (a) own, control, or hold with power to vote all of the outstanding voting shares of an association captive insurance company incorporated as a stock insurer; or
- (b) have complete voting control over an association captive insurance company incorporated as a mutual insurer; or

- (c) constitute all of the subscribers of an association captive insurance company that insures risks of the member organisations of the association, and their affiliated companies;

“association captive insurance company” means any company that insures risks of the member organisations of the association, and their affiliated companies;

“captive insurance company” means any pure captive insurance company, association captive insurance company, or group captive insurance company, formed or licensed under the provisions of this Act. For purposes of this Act, a branch captive insurance company shall be a pure captive insurance company with respect to operations in the State, unless otherwise permitted by the Registrar;

“controlled unaffiliated business” means any company—

- (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 pure or group captive insurance company in accordance with section 34 of this Act;

“Court” means the Eastern Caribbean Supreme Court, or any Court with similar jurisdiction established in succession to that Court;

“group captive insurance company” means any company that insures risks of its parent, owners or other affiliated persons and, with respect to not more than one-third of its insurance business, risks of unaffiliated persons;

“member organisation” means any individual, corporation, limited liability company, partnership, association, or other entity that belongs to an association;

“mutual corporation” means a company or a corporation organised without stockholders and includes a nonprofit corporation with members;

“Minister” means the Minister responsible for Finance;

“owner” of an entity means a person holding title to any portion of the shares, partnership interests, membership interests or other securities of an entity;

“parent” means a corporation, limited liability company, partnership, other entity, or individual that directly or indirectly owns, controls, or holds with power to vote more than fifty (50) per centum of the outstanding voting securities of a pure captive or group captive insurance company;

“participant” means any individual or organisation, and any affiliates thereof, that are insured by a captive insurance company with one or more segregated accounts if the covered losses of the person are limited through a participant contract to the assets of a segregated account;

“participant contract” means a contract by which a captive insurance company with one or more segregated accounts insures the risks of a participant and limits the covered losses of the participant to the assets of the segregated account;

“pure captive insurance company” means any company that insures only risks of its parent and affiliated companies or controlled unaffiliated businesses;

“Registrar” means the St. Christopher Registrar of Captive Insurance Companies appointed under section 4 of the Act;

“segregated account” means a separate account established and maintained by a captive insurer—

- (a) in which the minimum capital and surplus required pursuant to this Act is provided by one or more persons;
- (b) that is formed or licensed under the provisions of this Act;
- (c) that insures risks of separate participants through contract;
- (d) with respect to which one or more of the participants are authorised to act on matters relating to the segregated account; and
- (e) that limits each participant's losses through one or more segregated accounts;

“small captive insurance company” means a captive insurance company with annual net written premiums, or, if greater, direct written premiums, not exceeding four million and fifty thousand dollars (EC\$4,050,000.00);

“State” means the Island of St. Christopher, also known as St. Kitts in the Federation of St. Christopher and Nevis;

“stock insurer” means an incorporated insurer with issued and outstanding shares whose capital and surplus is owned by its shareholders.

## PART II

### REGISTRAR

#### **Registrar.**

4. (1) For the purposes of the registration of captive insurance companies under this Act, there shall be appointed by the Minister a person to be known as the Registrar of Captive Insurance Companies and such other officers as may be necessary to assist the Registrar in the exercise of his functions under this Act.

(2) Any functions of the Registrar under this Act may, to the extent authorised by him, be exercised by any of the officers referred to in subsection (1).

In this section “officer” means a person on the staff of the Registrar.

## PART III

### CAPTIVE INSURANCE COMPANIES

#### **Formation of captive insurance companies in the State.**

5. (1) The formation of a captive insurance company in the State shall be subject to the provisions of sections 7, 8, 9, 11 and 12 of this Act and to the provisions of Part I of the Insurance Act, Cap. 21.11.

*(Amended by Act 1 of 2011)*

(2) Except for an association captive insurance company which shall be either a stock insurer or a mutual insurer, a captive insurance company may be formed in the State as any type of entity authorised under the Companies Act, Cap. 21.03.

(3) A captive insurance company formed in the State shall have at least two directors or managers.

(4) A captive insurance company formed in the State for the purpose of underwriting insurance risks within the State, or within and outside the State, shall have at least one director or manager who shall be resident in the State.

**Name of captive insurance company.**

6. A captive insurance company shall not 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 State.

**Captive insurance company to be licensed.**

7. A captive insurance company shall not do any insurance business in or from within the State unless—

- (a) it applies for and obtains from the Registrar a licence authorising it to conduct insurance business in or from within the State;
- (b) it maintains a registered office in the State; and
- (c) it appoints a registered agent to accept service of process and to otherwise act on its behalf in the State and whenever such registered agent cannot with reasonable diligence be found at the registered office of the captive insurance company, the Registrar shall be an agent of such captive insurance company upon whom any process, notice, or demand may be served.

**Application for licence.**

8. (1) A captive insurance company formed or registered in the State, may when permitted by its articles of association, charter, or other organisational document, apply to the Registrar for a licence to issue any and all classes of insurance referred to in section 2(1) of the Insurance Act, Cap. 21.11, except that—

- (a) a pure captive insurance company may not insure any risks other than those of its parent and affiliated companies or controlled unaffiliated businesses;
- (b) an association captive insurance company may not insure any risks other than those of the member organisations of its association, and their affiliated companies;
- (c) a group captive insurance company may not insure any risks other than those of its parent, owners and affiliated persons; provided, however, that not more than one-third of its insurance business may involve risks of unaffiliated persons;
- (d) a captive insurance company may not provide personal motor vehicle or homeowner's insurance coverage or any component thereof;
- (e) a captive insurance company may not accept or cede reinsurance except as provided in section 17 of this Act; and
- (f) a captive insurance company may provide excess workers' compensation insurance to its parent and affiliated companies, unless prohibited by the law of the state or country having jurisdiction over the transaction.

*(Amended by Act 1 of 2011)*

(2) An application for a licence by a captive insurance company shall be made to the Registrar in the prescribed form and shall be accompanied by—



- (a) a certified copy of the captive insurance company's organizational documents, a statement under oath of its president and secretary, or, if none, its directors or managers, showing its financial condition;
- (b) a description of the captive insurance company's three-year business plan including coverages, deductibles and coverage limits, together with such additional information as the Registrar may reasonably require to enable him to assess and approve the business plan;
- (c) evidence of the following—
  - (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 insureds;
  - (v) minimum unimpaired capital and surplus as specified in section 15; and
  - (vi) such other information and any other statements or documents required by the Registrar deemed relevant by the Registrar in ascertaining whether the proposed captive insurance company will be able to meet its policy obligations; and
- (d) a non-refundable application fee of one thousand, six hundred and twenty dollars (EC\$1,620.00).

**Application for licence by small captive insurance company.**

**9.** A small captive insurance company may apply for a licence in a prescribed simplified form. In its application, the small captive insurance company shall—

- (a) submit financial and business information regarding the affiliated persons who will be insured;
- (b) provide information about the proposed management of the small captive insurance company;
- (c) pro-forma financial statements for the start-up period and first full year of operations;
- (d) provide evidence of the minimum unimpaired capital and surplus as specified in section 15; and
- (e) a non-refundable application fee of five hundred and forty dollars (EC\$540.00).

**Fit and Proper Test.**

**\*10.** (1) Every person who is, or is likely to be a director, officer or manager of a captive insurance company must be a fit and proper person to hold the particular position which he holds or is likely to hold and a completed questionnaire in this regard shall be submitted with the application referred to in section 8 or 9 as the case may be.

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\* Inserted as section 9A by Act 36 of 2011 and renumbered as section 10 and all subsequent sections renumbered accordingly

(2) In determining whether a person is a fit and proper person to hold any particular position, regard shall be given to—

- (a) that person's probity, competence and soundness of judgement for fulfilling the responsibilities of that position;
- (b) the diligence with which that person is fulfilling or is likely to fulfill the responsibilities of that position; and
- (c) whether the interests of persons insured are, or are likely to be, in any way threatened by that person holding that position.

(3) Without prejudice to the generality of subsections (1) and (2), regard may be given to the previous conduct and activities in business or financial matters of that person in question and, in particular, to any evidence that he or she has—

- (a) committed an offence involving fraud or other dishonesty or violence;
- (b) contravened any provision made by or under an enactment designed for protecting members of the public against financial loss due to dishonesty, incompetence or malpractice by persons concerned in the provision of banking, insurance, investment or other financial services or the management of companies or against financial loss due to the conduct of a discharged or undischarged bankrupt;
- (c) engaged in any business practices appearing to the Registrar to be deceitful or oppressive or otherwise improper whether unlawful or not, or which otherwise reflect discredit on that person's method of conducting business;
- (d) an employment record which leads the Registrar to believe that the person carried out an act of impropriety in the handling of his or her employer's business; or
- (e) engaged in or been associated with any other business practices or otherwise conducted himself or herself in such a way as to cast doubt on his or her competence, soundness of judgement or professional integrity.

(4) The Minister may prescribe the form for a personal questionnaire for a fit and proper test which should accompany the application.

*(Inserted by Act 36 of 2011)*

#### **Material change of information.**

**11.** (1) In the event of any subsequent material change in any of the items listed in sections 8(2) or 9, the captive insurance company shall submit to the Registrar for approval an appropriate revision and shall not offer any additional kinds of insurance until the Registrar approves a revision of such description.

(2) The captive insurance company shall inform the Registrar of any material change in its business plan within thirty (30) days of the adoption of such change.

#### **Information to be confidential.**

**12.** Information submitted pursuant to sections 8 and 9 shall be confidential and may not be made public by the Registrar or an officer of the Registrar or an agent of the Registrar without the written consent of the captive insurance company to which it pertains, except that—

- (a) such information may be discoverable by a party in a civil action to which the captive insurance company is a party, upon a showing by the party seeking discovery of the information that—
  - (i) the information is relevant to and necessary for the furtherance of such action or case;
  - (ii) the information is unavailable from other non-confidential sources; and
  - (iii) a subpoena issued by a judicial or administrative officer of a competent jurisdiction has been submitted to the Registrar; and
- (b) the Registrar may, in the Registrar's discretion, disclose such information to a public officer having jurisdiction over the regulation of insurance in another country or state, provided that—
  - (i) such public official shall agree in writing to maintain the confidentiality of such information; and
  - (ii) the laws of the country or state in which such public official serves, require such information to be and to remain confidential.

**Grant of licence.**

13. (1) Where the Registrar is satisfied that the documents and statements that the captive insurance company has filed comply with the provisions of this Act, the Registrar may grant a licence authorising it to conduct insurance business in the State.

(2) Licences granted between January 1 and June 30 shall expire on December 31 of the same year. Licences granted between July 1 and December 31 shall expire on June 30 of the following year. Thereafter, licences may be renewed annually for a twelve month period commencing on the expiration date of the initial licence.

**Fees.**

14. (1) A captive insurance company, other than a small captive insurance company, shall pay to the Registrar, a licence fee of eight thousand and one hundred dollars (EC\$8,100.00) for the year of registration and a renewal fee for each year thereafter of eight thousand and one hundred dollars (EC\$8,100.00).

(2) A small captive insurance company shall pay to the Registrar a licence fee of two thousand, one hundred and sixty dollars (EC\$ 2,160.00) for the year of registration and a renewal fee for each year thereafter of two thousand, one hundred and sixty dollars (EC\$2,160.00).

**Minimum capital and surplus.**

15. (1) A captive insurance company, other than a small captive insurance company, shall not be issued a licence unless it shall possess and thereafter maintain unimpaired paid-in capital and surplus of—

- (a) in the case of a pure captive insurance company, an amount of not less than six hundred and seven thousand dollars (EC\$607,000.00);
- (b) in the case of an association captive insurance company, an amount of not less than eight hundred and ten thousand dollars (EC\$810,000.00);
- (c) in the case of a group captive insurance company, an amount of not less than one million and eighty thousand dollars (EC\$1,080,000.00);

- (d) in the case of a segregated account of a captive insurance company, an amount to be determined by the Registrar.
- (2) A small captive insurance company shall not be issued a licence unless it shall possess and thereafter maintain unimpaired capital and surplus of—
- (a) in the case of a small pure captive insurance company, an amount of not less than fifty four thousand dollars (EC\$54,000.00);
  - (b) in the case of a small association captive insurance company, an amount of not less than sixty seven thousand dollars (EC\$67,000.00);
  - (c) in the case of a small group captive insurance company, an amount of not less than eighty one thousand dollars (EC\$81,000.00).
- (3) The Registrar may prescribe additional capital and surplus based upon the class, volume, and nature of insurance business transacted by the captive insurance company or segregated account.
- (4) The Registrar shall develop guidelines for additional levels of capital and surplus to be determined for small captive insurance companies with annual premium income of more than two hundred and seventy thousand dollars (EC\$270,000.00).
- (5) Capital and surplus may be in any form permitted for allowable assets, as set forth in section 16.
- (6) Earned premium income accrued by a captive insurance company or segregated account within ninety (90) days of the date its insurance licence is issued may be applied to surplus and included in determining satisfaction of requirements under this section except that—
- (a) the company, other than a small captive insurance company, shall have not less than one hundred and thirty five thousand dollars (EC\$135,000.00) in capital and surplus at the date of the issuance of the licence;
  - (b) if the company shall be a small captive insurance company, not less than one-tenth of the amount determined under subsections (2) and (3) of this section,

and until the requirements of this section have been met in full, and satisfactory evidence of same has been submitted to the Registrar, the licence shall be provisional only and shall not permit the company to insure risks of unaffiliated persons (other than controlled unaffiliated businesses) during the provisional period.

(7) In the event that the company shall fail to establish full compliance with the requirements of this section within ninety (90) days of the issuance of its licence hereunder, the licence shall be rescinded by the Registrar.

#### **Legal Investments and margin of solvency.**

**16.** (1) The margin of solvency requirements set forth at section 54 of the Insurance Act, Cap. 21.11, shall apply to captive insurance companies carrying on an insurance business within or from within the State.

*(Amended by Act 1 of 2011)*

(2) Except as otherwise provided in this section, an amount equal to the amount determined to constitute the margin of solvency must be held in the form of allowable assets such as—

- (a) cash or money market funds; government (including local government) funds or securities; or

(b) certificates of deposit issued by a financial institution approved by the Registrar,

in each case with maturity periods of ninety (90) days or less.

(3) A pure captive insurance company or a small captive insurance company shall not be subject to restrictions on allowable assets except that the Registrar may prohibit or limit any investment that threatens the solvency or liquidity of any such company.

(4) In determining the margin of solvency for classes of insurance other than life assurance business and long-term insurance business, a captive insurance company's contingent and prospective liabilities shall not include incurred but not reported losses, or unincurred losses under outstanding contracts of insurance.

(5) Notwithstanding the provisions of this section, the Registrar may require a greater margin of solvency, or impose a different formula for determining the same, in a particular case.

(6) A captive insurance company may not make a loan to or an investment in its parent company or affiliated persons without prior written approval of the Registrar, and any such loan or investment shall be evidenced by documentation approved by the Registrar.

(7) Loans of minimum capital and surplus funds required by this Act are prohibited.

#### **Reinsurance.**

17. (1) Subject to this section, a captive insurance company may provide reinsurance on risks ceded by any other insurer.

(2) Only the risks of a parent or other affiliated person, as permitted under section 8 for the applicable type of captive insurance company, shall be reinsured by the captive insurance company, except that a group captive insurance company may reinsure risks of unaffiliated persons within the limit set forth in section 8(1)(c).

(3) A 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 authorised by the Registrar. The Registrar may require any other documents, financial information or other evidence that such a pool, exchange or association shall be able to provide adequate security for its financial obligations.

(4) A captive insurance company licensed hereunder may reinsure its insurance risk or any portion thereof with any reinsurer engaged in business within or outside the State; except that if such reinsurer is not licensed under this Act, the Registrar shall previously approve it.

#### **Dividends.**

18. (1) A captive insurance company or segregated account may not pay a dividend out of, or other distribution with respect to, capital or surplus without the prior approval of the Registrar.

(2) Approval of an ongoing plan for the payment of dividends or other distributions shall be conditioned upon the retention, at the time of each payment, of capital or surplus in excess of amounts specified by, or determined in accordance with, formulas approved by the Registrar.

**Management.**

19. (1) The manager of a captive insurance company shall be a person with qualifications specified in section 2 of the Financial Services (Regulations) Order.

(2) The Registrar may regulate the manager of a captive insurance company.

**Reports and statements.**

20. (1) Prior to March 1 of each year after its first full year of operations, each captive insurance company shall submit to the Registrar a report of its financial condition, verified by oath of two of its executive officers, managers or directors.

(2) Each captive insurance company shall report using generally accepted accounting principles, unless the Registrar approves the use of statutory accounting principles, with any appropriate or necessary modifications or adaptations thereof required or approved by the Registrar for the type of insurance and type of captive insurance company to be reported upon, and as supplemented by additional information required by the Registrar.

(3) The Registrar shall by rule prescribe a simplified form in which small captive insurance companies shall report.

(4) The Registrar may require that the annual financial statements of a captive insurance company be certified by an independent auditor when the Registrar determines that such certification is in the best interests of the policyholders, except that—

- (a) any captive insurance company engaged in life assurance business or long-term insurance business shall submit certified financial statements each year; and
- (b) a small captive insurance company shall not be required to submit certified financial statements.

(5) A pure captive insurance company may make written application to the Registrar for filing the required report on a fiscal year-end basis. If an alternative reporting date is granted, the annual report shall be due sixty (60) days after the fiscal year-end.

(6) Captive insurance companies shall not be required to make any annual report except as provided in this Act.

**Re-domiciliation.**

21. (1) Any captive insurance company which is licensed under the laws of any jurisdiction may become a domestic captive insurance company licensed and domiciled in the State by complying with all of the requirements of this Act relative to the organisation and licensing of a captive insurance company under this Act, whether or not of the same type, and by designating an office at a place within the State. The redomiciled captive insurance company may transact business in or from within the State, in accordance with the terms of its licence hereunder, and shall be subject to the authority and jurisdiction of the State.

(2) All insurance contracts which are in existence at the time any captive insurance company transfers its insurance domicile to the State as provided in subsection (1) shall continue in full force and effect upon the transfer if the terms of the licence hereunder authorise the issuance of such contracts.

(3) Each transferring insurer shall notify the Registrar of the details of the proposed transfer and shall file promptly any resulting amendments to application documents filed or required to be filed with the Registrar.

(4) A captive insurance company licensed in accordance with this section, upon the approval of the Registrar, may transfer its domicile to any jurisdiction in which it is licensed to transact business as a captive insurance company and, upon the transfer, shall cease to be an insurer licensed hereunder. The Registrar shall approve any proposed transfer unless he or she determines the transfer is not in the best interest of the policyholders.

#### **Grounds and procedures for suspension or revocation of licence.**

**22.** (1) Where the Registrar finds, upon examination, hearing, or other evidence, that any captive insurance company has violated any provision of subsection (2) of this section, the Registrar may suspend or revoke such captive insurance company's licence if the Registrar deems it in the best interest of the public and the policyholders of such captive insurance company, notwithstanding any other provision of this Act.

(2) The licence of a captive insurance company may be suspended or revoked by the Registrar for any of the following reasons—

- (a) insolvency or impairment of capital or surplus;
- (b) refusal or failure to submit an annual report, as required by this Act, or any other report or statement required by law or by lawful order of the Registrar;
- (c) failure to comply with the provisions of its own charter, by-laws or other organizational document;
- (d) failure to submit or pay the cost of examination or any legal obligation relative thereto, as required by this Act;
- (e) 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 its policyholders; or
- (f) failure to comply with the laws of St. Christopher and Nevis.

#### **Liquidation.**

**23.** (1) The priority of distribution claims from the liquidating captive insurance company, whether or not insolvent, bankrupt or in receivership, shall be in accordance with the order in which each class of claims is set forth in this section, subject to the provisions of Part IV relating to claims against and liabilities of segregated accounts.

(2) A segregated account may be liquidated separately from the captive insurance company of which it forms a part, pursuant to the provisions in this section. Every claim in each class shall be paid in full or adequate funds retained for such payment before the members of the next class receive any payment. No subclass shall be established within any class.

(3) The order of distribution of claims shall be as follows—

- (a) Class 1 which shall consist of the costs and expenses of administration, including but not limited to the following—
  - (i) the actual and necessary costs of preserving or recovering the assets of the insurer;

- (ii) compensation for all services rendered in the liquidation;
  - (iii) any necessary filing fees;
  - (iv) reasonable attorney's fees;
- (b) Class 2, which shall consist of all claims under policies or participant contracts for losses incurred, including third party claims and all claims under life insurance and annuity policies, whether for death proceeds, annuity proceeds, or investment values, shall be treated as loss claim, except that—
- (i) that portion of any loss, indemnification for which is provided by other benefits or advantages recovered by the claimant, shall not be included in this class, other than benefits or advantages recovered or recoverable in discharge of familial obligations of support or by way of succession at death or as proceeds of life insurance; and
  - (ii) claims under non-assessable policies or participant contracts for unearned premium or other premium refunds shall be treated as loss claims;
- (c) Class 3 which shall consist of claims of a national or federal government, or agency thereof;
- (d) Class 4 which shall consist of debts due to employees for services performed to the extent that they do not exceed EC\$27,000.00 and represent payment for services performed within one year before the filing of the complaint for liquidation. Officers and directors shall not be entitled to the benefit of this priority. Such priority shall be in lieu of any other similar priority that may be authorised by law as to wages or compensation of employees;
- (e) Class 5 which shall consist of claims of general creditors;
- (f) Class 6 which shall consist of claims of any local government, including a state of a federation. Claims, including those of any local governmental body for a penalty or forfeiture, shall be allowed in this class only to the extent of the pecuniary loss sustained from the act, transaction, or proceeding out of which the penalty or forfeiture arose, with reasonable and actual costs occasioned thereby. The remainder of such claims shall be postponed to the class of claims under subsection (i) of this section;
- (g) Class 7 which shall consist of claims filed late or any other claims other than claims under subsections (h) and (i) of this section;
- (h) Class 8 which shall consist of surplus or contribution notes, or similar obligations, and premium refunds on assessable policies or participant contracts;
- (i) Class 9 which shall consist of the claims of shareholders or other owners.
- (4) Where any provision of this section or the application of any provision of this section to any person or circumstances is held invalid, the invalidity shall not affect other provisions or applications of this section, and to this end the provisions shall be severable.



## PART IV

### SEGREGATED ACCOUNTS

#### **Formation of segregated accounts.**

**24.** (1) A captive insurance company may form one or more segregated accounts to insure the risks of one or more participants.

(2) A captive insurance company that maintains a segregated account shall, at the time of paying the annual fee, pay an additional annual fee in an amount to be established by the Registrar for each segregated account.

(3) A captive insurance company may create one or more segregated accounts to segregate its general assets and liabilities from the assets and liabilities of its segregated accounts. The assets and liabilities of each segregated account shall be held separately from the assets and liabilities of all other segregated accounts.

(4) A captive insurance company shall be a single legal entity and each segregated account of or within a captive insurance company shall not be established as a separate legal entity. Each segregated account shall be separately identified or designated as being a part of the captive insurance company.

#### **Shares and securities in segregated accounts.**

**25.** (1) A captive insurance company may create and issue shares, membership interests or other securities in one or more classes or series for one or more segregated accounts. The proceeds of the issue shall be included in the assets of the segregated account that issued the shares or securities.

(2) The proceeds of the issue of shares or securities, other than segregated account shares or securities, shall be included in the captive insurance company's general assets.

(3) A captive insurance company may pay a dividend on segregated account shares or securities of any class or series whether or not a dividend is declared on any other class or series of segregated account shares or securities, or any other shares.

(4) Segregated account dividends may be paid on the segregated account shares or securities from the segregated account assets. The dividends shall only be paid to the shareholders or owners of the segregated account from which the segregated account shares or securities were issued and otherwise in accordance with the rights of the shares or securities.

#### **Contracts, agreements, etc. in segregated accounts.**

**26.** Any act, matter, deed, agreement, contract, instrument under seal, or other instrument or arrangement which is to be binding on or to inure to the benefit of a segregated account or accounts shall—

- (a) be executed by the captive insurance company for and on behalf of such segregated account or accounts;
- (b) shall be so identified; and
- (c) if in writing, shall indicate that the execution is in the name of, or by or for the account of, the segregated account or accounts.

#### **Liabilities of directors.**

**27.** (1) Where a captive insurance company is in breach of section 26—

- (a) the directors of the captive insurance company shall, notwithstanding any provisions to the contrary in the captive insurance company's organizational documents or in any contract with the company or otherwise, incur personal liability for the liabilities of the captive insurance company and the segregated account under the act, matter, deed, agreement, contract, instrument, or arrangement that was executed; and
  - (b) unless they were fraudulent, reckless, negligent, or acted in bad faith, the directors of the captive insurance company shall have a right of indemnity—
    - (i) in the case of a matter on behalf of or attributable to a segregated account or accounts, against the assets of that account or accounts; or
    - (ii) in the case of a matter not on behalf of or attributable to any segregated account or accounts, against the general assets of the captive insurance company.
- (2) Notwithstanding the provisions of subsection (1)(a), the Court may wholly or partially relieve a director of personal liability thereunder if he or she satisfies the Court that he or she should be relieved because—
- (a) the director was not aware of the circumstances giving rise to the liability and, in being not so aware, the director was not fraudulent, reckless, or negligent, and did not act in bad faith; or
  - (b) the director expressly objected, and exercised his or her rights as a director, whether by way of voting power or otherwise, so as to try to prevent the circumstances giving rise to the liability.
- (3) If, pursuant to the provisions of subsection (2) the Court relieves a director of all or part of his or her personal liability under subsection (1)(a), the Court may order that the liability in question shall instead be met from such of the segregated account or general assets of the account of the captive insurance company as may be specified in the order.
- (4) Any provision in the organisation documents of a captive insurance company, or any other contractual provision under which the captive insurance company may be liable, which purports to indemnify directors in respect of conduct which would otherwise disentitle them to an indemnity by virtue of subsection (1)(b), shall be void.

#### **Assets.**

- 28.** (1) The assets of a captive insurance company shall be either segregated account assets or general assets.
- (2) The segregated account assets shall consist of the assets of the captive insurance company held within or on behalf of the segregated accounts of the captive insurance company.
- (3) The general assets of a captive insurance company shall consist of the assets of the captive insurance company which are not segregated account assets.
- (4) The assets of a segregated account consist of assets representing the reserves attributable to the segregated account and all other assets attributable to or held within the segregated account. For the purposes of this subsection, "reserves" include retained earnings, capital surplus, and paid-in capital.

- (5) The directors of a captive insurance company shall establish and maintain, or cause to be established and maintained, procedures—
- (a) to segregate, and keep segregated, segregated account assets separate and separately identifiable from general assets;
  - (b) to segregate, and keep segregated, account assets of each segregated account separate and separately identifiable from segregated account assets of any other segregated account; and
  - (c) if relevant, to apportion or transfer assets and liabilities between segregated accounts, or between segregated accounts and general assets, of the captive insurance company.
- (6) Segregated account assets—
- (a) shall only be available and used to meet only the liabilities of the creditors with respect to that segregated account, and those creditors shall thereby be entitled to have recourse to the segregated account assets attributable to that segregated account; and
  - (b) shall not be available or used to meet liabilities to the creditors of the captive insurance company who are not creditors with respect to that particular segregated account, and such creditors shall not be entitled to have recourse to the protected segregated account assets which shall be protected from them.

**Liability of captive insurance company.**

- 29.** (1) If a liability of a captive insurance company to a person arises from a matter, or is otherwise imposed, with respect to a particular segregated account, the liability shall extend only to, and that person shall, with respect to that liability, be entitled to have recourse only to—
- (a) first, the segregated account assets attributable to the segregated account; and
  - (b) second, the captive insurance company's general assets, to the extent that the segregated account assets attributable to the segregated account are insufficient to satisfy the liability, and to the extent that the captive insurance company's general assets exceed any minimum capital and surplus amounts required by this Act.
- (2) If a liability of a captive insurance company to a person arises otherwise than from a matter in respect of a particular segregated account or accounts, or is imposed otherwise than in respect of a particular segregated account or accounts, the liability shall extend only to, and that person shall, with respect to that liability, be entitled to have recourse only to the captive insurance company's general assets.
- (3) The liabilities of a captive insurance company which are not attributable to any of its segregated accounts shall be discharged from the captive insurance company's general assets, and the income, receipts, and other property or rights of or acquired by a captive insurance company not otherwise attributable to any segregated account shall be attributed to the captive insurance company's general assets to the extent that the captive insurance company's general assets exceed any minimum capital and surplus amounts required by this Act.

**Books and records of captive insurance company.**

**30.** (1) Each segregated account shall be accounted for separately on the books and records of the captive insurance company to reflect the financial condition and results of operations of the segregated account, including net income or loss, dividends, or other distributions to participants, and such other factors as may be provided by the participant contract or required by the Registrar.

(2) A sale, exchange, or other transfer of assets shall not be made by the captive insurance company between or among any of its segregated accounts without the written consent of the segregated accounts and the Registrar.

(3) A sale, exchange, transfer of assets, dividend, or distribution shall not be made from a segregated account to any person without the Registrar's prior written approval and the approval shall not be given if the sale, exchange, transfer, dividend, or distribution would result in the insolvency or impairment with respect to the segregated account.

(4) Each captive insurance company with segregated accounts shall annually file with the Registrar such financial reports as the Registrar shall require, which shall include financial statements detailing the financial experience of each segregated account.

(5) Each captive insurance company shall notify the Registrar within ten (10) business days of any segregated account that is insolvent or otherwise unable to meet its claims or expense obligations.

(6) No participant contract shall take effect without the Registrar's prior written approval. The addition of each new segregated account or the withdrawal of any participant from any existing segregated account shall constitute a change in the strategic business plan of that segregated account requiring the Registrar's prior written approval.

**Participant in a captive insurance company.**

**31.** (1) Any person or legal entity may be a participant in a segregated account formed or licensed under this Act.

(2) Except as otherwise provided in this Act, a participant in a segregated account shall be deemed to be an insured of the captive insurance company.

## PART V

## MISCELLANEOUS PROVISIONS

**Policyholder Protection.**

**32.** (1) A creditor of a policyholder or participant of a captive insurance company or segregated account, and a creditor of an affiliated person of any such insurance company or segregated account, may not set aside a transfer of funds by a policyholder or participant to the insurance company in payment of one or more premiums charged on a contract of insurance or participant contract issued by such company or segregated account, unless—

- (a) it is determined, in a final order of the Court, that the payment of the premium or premiums constitutes a fraudulent transfer with respect to such creditor under the laws of the State; and

- (b) except in cases in which actual fraudulent intent is shown in a hearing before the Court, only to the extent, if any, the amount of such payment is determined by the Court to exceed the market value of the insurance protection afforded to the policyholder or participant under such contract, as at the time of its issuance.
- (2) A policy of insurance or participant contract issued by a captive insurance company or segregated account, which policy or contract is expressly stated to be non-assignable—
- (a) shall be void in the event of an attempted assignment; and
  - (b) shall be unenforceable by any person other than the original policyholder or contract participant and his, her or its transferees by operation of the law of the State and legal representatives.
- (3) For the purposes of this section, transferees by operation of the law of the State and legal representatives shall not include successors by merger or consolidation, successors to a policyholder or participant following a change in control of the policyholder or participant, or trustees in bankruptcy, receivers, liquidators, creditors or committees of creditors.
- (4) For purposes of this section, creditor means a person to whom an obligation is owed and includes any person who alleges or pursues a claim or cause of action on behalf of or in the name of a creditor.
- (5) Where a captive insurance company has purchased reinsurance on any of its obligations under a contract of insurance, the proceeds of the reinsurance shall be held or applied to provide the benefits to the insured as specified in the policy issued by the captive insurance company.

**Exempt insurers.**

**33.** (1) A captive insurance company licensed under the Act and underwriting solely insurance risks outside the State shall be eligible for exemption from income tax on profits or income derived therefrom, pursuant to the Exempt Insurance Companies Act, Cap. 21.08.

(2) The application of such captive insurance company for licensing under this Act, setting forth its business plan to underwrite solely insurance risks outside the State, shall be deemed to be an application for exemption from income tax under the Exempt Insurance Companies Act, and no separate application thereunder shall be required.

**Rules for controlled unaffiliated business.**

**34.** The Registrar may, where he or she is satisfied that a parent or affiliated company is able to exercise control of the risk management function of any controlled unaffiliated business to be insured by a pure or group captive insurance company, approve the coverage of such risks by a pure or group captive insurance company.

**Examinations and investigations.**

**35.** The examinations and investigations of captive insurance companies shall be governed by the provisions of section 206 of the Insurance Act, Cap. 21.11.

*(Amended by Act 1 of 2011)*

**Rules and Regulations.**

36. (1) The Minister may generally make regulations to give effect to the provisions of this Act, and, without prejudice to the generality of the foregoing, the Minister may make regulations prescribing any matter which is to be prescribed under the Act.

(2) The Registrar may adopt and from time to time formulate and amend such rules relating to captive insurance companies as are necessary to enable the Registrar to carry out the provisions of this Act.

**Applicable laws.**

37. In the case of any inconsistency between the provisions of this Act and the provisions of other laws, regulations and orders of the State, the provisions of this Act shall apply to captive insurance companies.

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**FIRST SCHEDULE**

*(Section 4(1))*

**APPOINTMENT OF REGISTRAR OF CAPTIVE INSURANCE ORDER****Citation.**

1. This Order may be cited as the Appointment of Registrar of Captive Insurance Order.

**Appointment of Registrar of Captive Insurance.**

2. **KENNETH BALLANTYNE** is hereby appointed as the Registrar of Captive Insurance for the purposes of the Captive Insurance Act, Cap. 21.20.

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**SECOND SCHEDULE**

*(Section 4(1))*

**APPOINTMENT OF REGISTRAR OF CAPTIVE INSURANCE COMPANIES ORDER****Citation.**

1. This Order may be cited as the Appointment of Registrar of Captive Insurance Companies Order.

**Appointment of Registrar of Captive Insurance Companies.**

2. The following person is hereby appointed Registrar of Captive Insurance Companies for the purposes of the Captive Insurance Companies Act, Cap. 21.20:

Miss Tevince Coker.

*(Inserted by S.R.O. 24/2013)*

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