

CHAPTER 10**Captive Insurance Act of 2006****SECTIONS**

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Editor's note: Section 2 of PL 14-88 enacted new chapter 10 of this title entitled The Captive Insurance Act of 2006. PL 14-88 was signed into law by President Joseph J. Urusemal on November 2, 2006. The word "The" in the title of this chapter has been omitted to comport with standard code formatting.

PL 14-88 stated its purpose as follows:

Section 1. Purpose. The purpose of the proposed bill is to create a scheme for the introduction and regulation of a captive insurance industry in the Federated States of Micronesia. The captive insurance industry will complement current and future regulations in the Federated States of Micronesia, such as insurance and income tax for corporations. The captive insurance industry in the Federated States of Micronesia will be regulated by the Insurance Commissioner pursuant to policies established by the Insurance Board.

§ 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 subtitle.
- (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 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.
- (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 five percent (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.

Source: PL 14-88 § 3; PL 15-34 § 1; PL 16-17 § 1.

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

Source: PL 14-88 § 4; PL 15-34 § 2; PL 16-17 § 2.

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

The Commissioner or Insurance Board may issue two types of licenses with respect to the captive insurance industry: one for the captive insurance companies pursuant to subsections (1)-(5) of this section; the other for business entities which engage in the business of managing captive insurance companies pursuant to subsections (6)-(9) of this section.

(1) Captive insurance companies shall be licensed in accordance with chapter 3 of this subtitle.

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

(a) Principal office and principal representative;

(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) Each captive insurance company shall pay to the Insurance Board 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. In addition each captive insurance company shall pay a license fee for the year of registration and a renewal fee each year thereafter of \$500.

(4) If the Insurance Board is satisfied that the documents filed by the captive insurance company comply with this subtitle, the Commissioner may grant a license authorizing it to transact insurance business in the Federated States of Micronesia until March 31, of the year of application at which time the license may be renewed.

(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 or Insurance Board is authorized to issue a captive insurance manager's license, which may be signed by the Insurance Commissioner's or Insurance Board'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 or the Insurance Board 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.

Source: PL 14-88 § 5; PL 15-34 § 3; PL 16-17 § 3.

§ 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.

Source: PL 14-88 § 6.

Cross-reference: The statutory provisions on the FSM Supreme Court are found in title 4 of this code.

§ 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.

Source: PL 14-88 § 7.

§ 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.

Source: PL 14-88 § 8.

Cross-reference: The statutory provisions on the President and the Executive are found in title 2 of this code. Title 36 of this code is on Corporations and Business Associations.

§ 1007. Minimum Capital and Surplus Requirements.

(1) No captive insurance company shall be registered and issued a license unless it has initial paid-in capital of \$1,000,000 and thereafter maintains a minimum capital and surplus of \$100,000; provided however with respect to multiple corporate captive insurance companies the core member captive insurance company shall maintain a minimum paid in capital and surplus of \$1,000,000 and each member corporate captive insurance company shall maintain a minimum paid in capital and surplus of \$100,000.

(2) The Commissioner may prescribe additional capital and surplus based upon the type, volume, and nature of insurance business transacted.

(3) 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 appropriated by the Commissioner.

Source: PL 14-88 § 9; PL 15-34 § 4; PL 16-17 § 4.

§ 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 and Insurance Board. A captive insurance company may submit to the Commissioner and Insurance Board 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 and Insurance Board.

Source: PL 14-88 § 10.

§ 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.

Source: PL 14-88 § 11.

Cross-reference: Title 36 of this code is on Corporations and Business Associations.

§ 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.

Source: PL 14-88 § 13.

Cross-reference: The statutory provisions on the President and the Executive are found in title 2 of this code. Title 36 of this code is on Corporations and Business Associations.

§ 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.

Source: PL 14-88 § 14.

Cross-reference: Title 36 of this code is on Corporations and Business Associations. Title 17 of this code is on Administrative Procedure.

§ 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 Insurance Board;

(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 Insurance Board. Any such loan or investment must be evidenced by documentation approved by the Insurance Board. Loans of minimum capital and surplus funds required by section 1007 of this chapter are prohibited.

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

Source: PL 14-88 § 15; PL 16-73 § 1.

§ 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.

Source: PL 14-88 § 17.

§ 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.

Source: PL 14-88 § 18.

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