

CHAPTER 23  
CAPTIVE INSURANCE COMPANIES

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**§ 23101. Definitions.**

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

(1) '*Captive insurance company*':

(a) Means a limited purpose insurance subsidiary of a company with the specific objective of financing risks of its parent and affiliated companies; and

(b) Is a pure captive insurance company, group captive insurance company, or industrial insured captive company formed or licensed under the provisions of this Chapter.

(2) '*Affiliated company*' means any company in the same corporate system as a parent or a member organization by virtue of common

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ownership, control, operation or management, or, in the case of a pure captive insurance company, that maintains a working relationship with, and whose business risks insured by the pure captive insurance company are similar or related to the business risks of, the parent insured by the pure captive insurance company.

(3) *Commissioner* means the Commissioner of Banking and Insurance.

(4) *'Director'* means the Director of the Department of Revenue and Taxation.

(5) *'Domestic Insurer'* means an insurer domiciled in the island of Guam.

(6) *'Excess workers compensation insurance'* means in the case of an employer that has insured or self-insured the workers compensation risks in accordance with applicable state or Federal law, insurance in excess of a specified per-incident or aggregate limit established by the Commissioner.

(7) *'Fair value'* of an asset (or liability) means the amount at which that asset (or liability) could be bought (or incurred) or sold (or settled) in a current transaction between willing parties, that is, other than in a forced or liquidation sale. Quoted market prices in active markets are the best evidence of fair value and shall be used as the basis for the measurement, if available. If a quoted market price is available, the fair value is the product of the number of trading units times market price. If quoted market prices are not available, the estimate of fair value shall be based on the best information available. The estimate of fair value shall consider prices for similar assets and liabilities and the results of valuation techniques to the extent available in the circumstances. Examples of valuation techniques include the present value of estimated expected future cash flows using a discount rate commensurate with the risks involved, option-pricing models, matrix pricing, option-adjusted spread models and fundamental analysis. Valuation techniques for measuring financial assets and liabilities and servicing assets and liabilities shall be consistent with the objective of measuring fair value. Those techniques shall incorporate assumptions that market participants would use in their estimates of values, future revenues, and future expenses, including assumptions about interest rates, default, prepayment, and volatility. In measuring financial liabilities and servicing liabilities at fair value by discounting estimated future cash flows, an objective is to use discount rates at which those liabilities could be settled in an arm's-length transaction. Estimates of expected future cash flows, if

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used to estimate fair value, shall be the best estimate based on reasonable and supportable assumptions and projections. All available evidence shall be considered in developing estimates of expected future cash flows. The weight given to the evidence shall be commensurate with the extent to which the evidence can be verified objectively. If a range is estimated for either the amount or timing of possible cash flows, the likelihood of possible outcomes shall be considered in determining the best estimate of future cash flows.

(8) '*Fully funded*' means that, with respect to any exposure attributed to a protected cell, the fair value of the protected cell assets, on the date on which the insurance securitization is effected, equals or exceeds the maximum possible exposure attributable to the protected cell with respect to such exposures.

(9) '*General account*' means the assets and liabilities of a protected cell company other than protected cell assets and protected cell liabilities.

(10) '*Group*' means any legal association of individuals, corporations, partnerships, limited liability companies or associations, the member organizations of which collectively:

(a) own, control or hold with power to vote all of the outstanding voting securities of a group captive insurance company incorporated as a stock insurer; or

(b) having complete voting control over a group captive insurance company incorporated as a mutual insurer.

(11) '*Group captive insurance company*' means any company that insures risks of the member organizations of that group, and their affiliated companies.

(12) '*Indemnity trigger*' means a transaction term by which relief of the issuer's obligation to repay investors is triggered by its incurring a specified level of losses under its insurance or reinsurance contracts.

(13) '*Industrial insured*' means an insured:

(a) who procures the insurance of any risk or risks by use of the services of an employee acting as an insurance manager or buyer;

(b) whose aggregate annual premiums for insurance on all risks total at least Fifteen Thousand Dollars (\$15,000.00); and

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(c) who has at least ten (10) full-time employees.

(14) *'Industrial insured captive insurance company'* means any company that insures risks of the industrial insured group, and their affiliated companies.

(15) *'Industrial insured group'* means any group that meets either of the following criteria:

(a) any group of industrial insured that collectively:

(i) own, control or hold with power to vote all of the outstanding voting securities of an industrial insured captive insurance company incorporated as a stock insurer, or

(ii) have corporate voting control over an industrial insured captive insurance company incorporated as a mutual insurer; or

(b) any group which is created under the Product Liability Risk Retention Act of 1981, 15 U.S.C. §3901 et seq., as amended, as a corporation or other limited liability company taxable as a stock insurance company or a mutual insurer under the laws of Guam.

(16) *'Member organization'* means a corporation, partnership or association that belongs to a group.

(17) *'Non-indemnity trigger'* means a transaction term by which relief of the issuer's obligation to repay investors is triggered solely by some event or condition other than the individual protected cell company incurring a specified level of losses under its insurance or reinsurance contracts.

(18) *'Parent'* means a corporation, partnership, limited liability company, or individual that directly or indirectly owns, controls, or holds the power to vote more than fifty percent (50%) of the outstanding voting securities of a pure captive insurance company.

(19) *'Protected cell'* means an identified pool of assets and liabilities of a protected cell company segregated and insulated by means of this Chapter from the remainder of the protected cell company's assets and liabilities.

(20) *'Protected cell account'* means a specifically identified bank or custodial account established by a protected cell company for the purpose of segregating the protected cell assets of one (1) protected cell from the

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protected cell assets of other protected cells and from the assets of the protected cell company's general account.

(21) '*Protected cell assets*' means all assets contract rights and general intangibles, identified with and attributable to a specific protected cell of a protected cell company.

(22) '*Protected cell company*' means a domestic captive insurance company insurer that has one (1) or more protected cells.

(23) '*Protected cell company insurance securitization*' means the issuance of debt instruments, the proceeds from which support the exposures attributed to the protected cell, by a protected cell company where repayment of principal or interest, or both, to investors pursuant to the transaction terms is contingent upon the occurrence or nonoccurrence of an event with respect to which the protected cell company is exposed to loss under insurance or reinsurance contracts it has issued.

(24) '*Protected cell liabilities*' means all liabilities and other obligations identified with and attributable to a specific protected cell of a protected cell company.

(25) '*Pure captive insurance company*' means any company that insures risks of its parent and affiliated companies.

**SOURCE:** GC § 43701; added by P.L. 17-85:1. Amended by P.L. 24-104:1. Amended by P.L. 27-54:2. The purpose of the 27<sup>th</sup> GL amendments is to provide for protected cell captive insurance companies. Further amended by P.L. 27-88:(f) to refer to the new Commissioner of Banking and Insurance.

**NOTE:** P.L. 27-88:7(f) referred to Item "(5)", which under the latest amendments, refers to another definition. The definition amended by P.L. 27-88:7(f) is actually found as Item (3), so this is where the Comiler placed the amendment.

**§ 23102. Licensing Authority.**

(a) Any captive insurance company, when permitted by its articles of association, or charter, may apply to the Commissioner for a license to do any and all insurance comprised in Article 1 of Chapter 18, Title 22, Guam Code Annotated; provided, however, that:

(1) no pure captive insurance company may insure any risks other than those of its parent and affiliated entities;

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(2) no group captive insurance company may insure any risks other than those of the member organization of its group, and their affiliated entities;

(3) no industrial insured captive insurance company may insure any risks other than those of the industrial insured that comprise the industrial insured group, and their affiliated entities, or controlled unaffiliated businesses;

(4) no captive insurance company, except a duly registered and licensed rent-a-captive or protected cell facility, may accept or cede reinsurance except as provided in § 23111 of this Chapter; and

(5) any captive insurance company may provide excess workers compensation insurance to its parent and affiliated companies, unless prohibited by the laws of the state having jurisdiction over the transaction. Any captive insurance company may reinsure workers compensation of a qualified self-insured plan of its parent and affiliated entities.

(b) No captive insurance company shall do any insurance business on Guam unless:

(1) It first obtains from the Commissioner a license authorizing it to do business on Guam;

(2) It maintains its principal place of business on Guam;

(3) It appoints a resident registered agent to accept service of process and to otherwise act on its behalf on Guam. Whenever such registered agent cannot with reasonable diligence be found at the registered office of the captive insurance company, the Director shall be an agent of such captive insurance company upon whom any process, notice or demand may be served; and

(4) It is incorporated in Guam, except that a non-domestic insurance company that has operated as an insurance company on Guam pursuant to a Guam Certificate of Authority during the five (5) years immediately preceding enactment of this Chapter shall be issued a license under this Chapter; provided that it maintains a place of business on Guam and otherwise qualifies for a license under this Chapter, except it shall not be required to comply with §§ 23102(b)(2) and 23102(b)(3) of this Section and § 23106 of this Chapter.

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(c)(1) Before receiving a license, a captive insurance company shall file with the Commissioner a certified copy of its Charter and By-Laws, a statement under oath of its President and Secretary showing its financial condition, and any other statements or documents required by the Commissioner.

(2) In addition to the information required by Subdivision (1) of this Subsection (c), each applicant captive insurance company shall file with the Commissioner evidence of the following:

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

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

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

(D) the adequacy of the loss prevention programs of its parent, group member organizations, or industrial insureds as applicable; and

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

(d) Each captive insurance company shall pay the Commissioner a non-refundable fee of Two Hundred Dollars (\$200.00) for examining, investigating and processing its application for license.

(e) Any insurance company already chartered and doing business in Guam that is a captive insurance company in compliance with the provisions of this Chapter shall automatically qualify for Licensure.

(f) If the Commissioner is satisfied that the documents and statements that such captive insurance company has filed comply with the provisions of this Chapter, he may grant a license authorizing it to do insurance business on Guam July 1 thereafter, which license may be renewed.

**SOURCE:** GC § 43702; added by P.L. 17-85:1. Amended by P.L. 24-104:2. subsection (a) amended by P.L. 27-54:3.

**§ 23103. Names of Companies.**

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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 on Guam.

**SOURCE:** GC § 43703; added by P.L. 17-85:1.

**§ 23104. Minimum Capital.**

No pure captive insurance company, group captive insurance company incorporated as a stock insurer or industrial insured captive insurance company incorporated as a stock insurer, a rent-a-captive or a protected cell captive insurance company shall be issued a license unless it shall possess and thereafter maintain unimpaired paid-in capital of:

(1) in the case of a pure captive insurance company, not less than Fifty Thousand Dollars (\$50,000.00);

(2) in the case of a group captive insurance company incorporated as a stock insurer, not less than One Hundred Thousand Dollars (\$100,000.00);

(3) in the case of an industrial insured captive insurance company incorporated as a stock insurer not less than One Hundred Fifty Thousand Dollars (\$150,000.00); and

(4) in the case of a rent-a-captive or a protected cell captive, not less than One Hundred Fifty Thousand Dollars (\$150,000.00) for the first client or cell, increasing by One Hundred Fifty Thousand Dollars (\$150,000.00) for each additional client or cell up to a maximum of Seven Hundred Fifty Thousand Dollars (\$750,000.00).

Such capital may be in the form of cash deposited in a member bank of the Federal Reserve System licensed to do business in Guam and approved by the Commissioner.

**SOURCE:** GC § 43704; added by P.L. 17-85:1. Amended by P.L. 24-104:3. Amended by P.L. 27-54:4.

**§ 23105. Minimum Surplus; Letter of Credit.**

No captive insurance company shall be issued a license unless it shall possess and thereafter maintain free surplus of:

(1) in the case of a pure captive insurance company, not less than One Hundred Thousand Dollars (\$100,000.00);

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(2) in the case of a group captive insurance company incorporated as a mutual insurer, not less than One Hundred Fifty Thousand Dollars (\$150,000.00);

(3) in the case of an industrial insured captive insurance company incorporated as a stock insurer, not less than Two Hundred Thousand Dollars (\$200,000.00);

(4) in the case of a group captive insurance incorporated as a mutual insurer, not less than Two Hundred Thousand Dollars (\$200,000.00);

(5) in the case of an industrial insured captive insurance company incorporated as a mutual insurer, not less than Two Hundred Thousand Dollars (\$200,000.00); and

(6) in the case of a rent-a-captive or a protected cell company, not less than Two Hundred Fifty Thousand Dollars (\$250,000.00).

Such surplus may be in the form of (i) cash or an irrevocable letter of credit issued by a member bank of the Federal Reserve System and approved by the Commissioner; or (ii) any other acceptable to the Commissioner.

**SOURCE:** GC § 43705; added by P.L. 17-85:1. Amended by P.L. 24-104:4. Amended by P.L. 27-54:5.

**§ 23106. Formation of Captive Insurance Companies on Guam.**

(a) A pure captive insurance company shall be incorporated as a stock insurer with its capital divided into shares and held by the stockholders.

(b) A group captive insurance company or an industrial insured captive insurance company may be incorporated:

(1) as a stock insurer with its capital divided into shares and held by the stockholders; or

(2) as a mutual insurer without capital stock, the governing body of which is elected by the member organizations of its group.

(c) A captive insurance company shall have not less than three (3) incorporators of whom not less than one (1) shall be a resident of Guam.

(d) Before the Articles of Incorporation are transmitted to the Director, the incorporators shall petition the Commissioner to issue a certificate setting forth his findings that the establishment and maintenance of the

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proposed corporation will promote the general good of Guam. In arriving at such finding, the Commissioner shall consider:

- (1) the character, reputation, financial standing and purpose of the incorporators or attorney-in-fact;
- (2) the character, reputation, financial responsibility, insurance experience and business qualifications of the officers and directors;
- (3) the amount and liquidity of its assets relative to the risks to be assumed;
- (4) the adequacy of the expertise, experience and character of the persons who will manage the captive insurer;
- (5) the overall soundness of its plan of operation;
- (6) the adequacy of the loss prevention programs of its parent or member organizations;
- (7) the establishment of business relationships with banks and services including, but not limited to, accountants, attorneys, investment advisers, broker-dealers and other professionals that are licensed to transact business in Guam; and
- (8) such other aspects as the Commissioner shall deem advisable.

(e) The Articles of Incorporation, such certificate, and the organization fee shall be transmitted to the Director, who shall thereupon record both the Articles of Incorporation and the certificate.

(f) The capital stock of a captive insurance company incorporated as a stock insurer shall be issued at not less than Ten Dollars (\$10.00) par value.

(g) At least one (1) of the members of the Board of Directors of a captive insurance company incorporated on Guam shall be a resident of Guam.

(h) Captive insurance companies formed under the provisions of this Chapter shall have the privileges and be subject to the provisions of the General Corporation Law, as well as the applicable provisions contained in this Chapter. In the event of conflict between the provisions of said General Corporation Law and the provisions of this Chapter, the latter shall control.

(i) The Articles of Incorporation or bylaws of a captive insurance company may authorize a quorum of a board of directors to consist of no

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fewer than the required majority of the board members as specified in the Articles of Incorporation.

(j) Establishment of Protected Cells.

(1) A protected cell company may establish one (1) or more protected cells with the prior written approval of the Commissioner of a plan of operation or amendments thereto submitted by the protected cell company with respect to each protected cell in connection with an insurance securitization. Upon the written approval of the Commissioner of the plan of operation, which shall include, but not be limited to, the specific business objectives and investment guidelines of the protected cell, the protected cell may, in accordance with the approved plan of operation, attribute to the protected cell insurance obligations with respect to its insurance business and obligations relating to the insurance securitization and assets to fund the obligations. A protected cell shall have its own distinct name or designation, which shall include the words 'protected cell'. The protected cell company shall transfer all assets attributable to a protected cell to one (1) or more separately established and identified protected cell accounts bearing the name or designation of that protected cell. Protected cell assets shall be held in the protected cell accounts for the purpose of satisfying the obligations of that protected cell.

(2) All attributions of assets and liabilities between a protected cell and the general account shall be in accordance with the plan of operation approved by the Commissioner. No other attribution of assets or liabilities may be made by a protected cell company between the protected cell company's general account and its protected cells. Any attribution of assets and liabilities between the general account and a protected cell, or from investors in the form of principal on a debt instrument issued by a protected cell company in connection with a protected cell company securitization shall be in cash or in readily marketable securities with established market values.

(3) The creation of a protected cell does not create, in respect of that protected cell, a legal person separate from the protected cell company. Amounts attributed to a protected cell under this Chapter, including assets transferred to a protected cell account, are owned by the protected cell company and the protected cell company may not be,

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nor hold itself out to be, a trustee with respect to those protected cell assets of that protected cell account. Notwithstanding the foregoing, the protected cell company may allow for a security interest to attach to protected cell assets or a protected cell account when in favor of a creditor of the protected cell and otherwise allowed under applicable law.

(4) This Chapter shall not be construed to prohibit the protected cell company from contracting with or arranging for an investment advisor, commodity trading advisor, or other third party to manage the protected cell assets of a protected cell, provided that all remuneration, expenses and other compensation of the third party advisor or manager are payable from the protected cell assets of that protected cell and not from the protected cell assets of other protected cells or the assets of the protected cell company's general account.

(5) (i) A protected cell company shall establish administrative and accounting procedures necessary to properly identify the one (1) or more protected cells of the protected cell company and the protected cell assets and protected cell liabilities attributable to the protected cells. It shall be the duty of the directors of a protected cell company to:

(A) keep protected cell assets and protected cell liabilities separate and separately identifiable from the assets and liabilities of the protected cell company's general account; and

(B) keep protected cell assets and protected cell liabilities attributable to one (1) protected cell separate and separately identifiable from protected cell assets and protected cell liabilities attributable to other protected cells.

(ii) Notwithstanding the foregoing, if this Section is violated, the remedy of tracing shall be applicable to protected cell assets when commingled with protected cell assets of other protected cells or the assets of the protected cell company's general account. The remedy of tracing shall not be construed as an exclusive remedy.

(6) The protected cell company shall, when establishing a protected cell, attribute to the protected cell assets with a value at least equal to the reserves and other insurance liabilities attributed to that protected cell.

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(k) Use and operation of protected cells.

(1) The protected cell assets of a protected cell may not be charged with liabilities arising out of any other business the protected cell company may conduct. All contracts or other documentation reflecting protected cell liabilities shall clearly indicate that only the protected cell assets are available for the satisfaction of those protected cell liabilities.

(2) The income, gains and losses, realized or unrealized, from protected cell assets and protected cell liabilities shall be credited to or charged against the protected cell without regard to other income, gains or losses of the protected cell company, including income, gains or losses of other protected cells. Amounts attributed to any protected cell and accumulations on the attributed amounts may be invested and reinvested and the investments in a protected cell or cells shall not be taken into account in applying the investment limitations otherwise applicable to the investments of the protected cell company.

(3) Assets attributed to a protected cell shall be valued at their fair value on the date of valuation.

(4) A protected cell company shall, in respect of any of its protected cells, engage in fully funded indemnity triggered insurance securitization to support in full the protected cell exposures attributable to that protected cell. A protected cell company insurance securitization that is non-indemnity triggered shall qualify as an insurance securitization under the terms of this Chapter only after the Commissioner, in accordance with the authority granted under Section 23114 of this Chapter, adopts regulations addressing the methods of funding of the portion of the risk that is not indemnity based, account, disclosure, risk based capital treatment, and assessing risks associated with such securitizations. A protected cell company insurance securitization that is not fully funded, whether indemnity triggered or non-indemnity triggered, is prohibited. Protected cell assets may be used to pay interest or other consideration on any outstanding debt or other obligation attributable to that protected cell, and nothing in this Subsection shall be construed or interpreted to prevent a protected cell company from entering into a swap agreement or other transaction for the account of the protected cell that has the effect of guaranteeing interest or other consideration. In all protected cell company

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insurance securitizations, the contracts or other documentation effecting the transaction shall contain provisions identifying the protected cell to which the transaction will be attributed. In addition, the contracts or other documentation shall clearly disclose that the assets of that protected cell, and only those assets, are available to pay the obligations of that protected cell. Notwithstanding the foregoing, and subject to the provisions of this Chapter and any other applicable law or regulation, the failure to include the language in the contracts or other documentation shall not be used as the sole basis by creditors, reinsurers or other claimants to circumvent the provisions of this Chapter.

(5) A protected cell company shall only be authorized to attribute to a protected cell account the insurance obligations relating to the protected cell company's general account. Under no circumstances shall a protected cell be authorized to issue insurance or reinsurance contracts directly to policyholders or reinsureds or have any obligation to the policyholders or reinsureds of the protected cell company's general account.

(6) At the cessation of business of a protected cell in accordance with the plan approved by the Commissioner, the protected cell company shall voluntarily close out the protected cell account.

(l) Reach of creditors and other claimants.

(1)(i) Protected cell assets shall only be available to the creditors of the protected cell company that are creditors in respect to that protected cell and shall thereby be entitled, in conformity with the provisions of this Chapter, to have recourse to the protected cell assets attributable to that protected cell, and shall be absolutely protected from the creditors of the protected cell company that are creditors in respect of that protected cell and who, accordingly, shall not be entitled to have recourse to the protected cell assets attributable to that protected cell. Creditors, with respect to a protected cell, shall not be entitled to have recourse against the protected cell assets of other protected cells or the assets of the protected cell company's general account.

(ii) Protected cell assets shall only be available to creditors of a protected cell company after all protected cell

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liabilities have been extinguished or otherwise provided for in accordance with the plan of operation relating to that protected cell.

(2) When an obligation of a protected cell company to a person arises from a transaction, or is otherwise imposed, in respect of a protected cell:

(i) that obligation of the protected cell company shall extend only to the protected cell assets attributable to that protected cell, and the person shall, with respect to that obligation, be entitled to have recourse only to the protected cell assets attributable to that protected cell; and

(ii) that obligation of the protected cell company shall not extend to the protected cell assets of any other protected cell or the assets of the protected cell company's general account, and that person shall not, with respect to that obligation, be entitled to have recourse to the protected cell assets of any other protected cell or the assets of the protected cell company's general account.

(3) When an obligation of a protected cell company relates solely to the general account, the obligation of the protected cell company shall extend only to, and that creditor shall, with respect to that obligation, be entitled to have recourse only to, the assets of that protected cell company's general account.

(4) The activities, assets, and obligation relating to a protected cell are not subject to the provisions of any guaranty fund, and neither a protected cell nor a protected cell company shall be assessed by or otherwise be required to contribute to any guaranty fund or guaranty association in Guam with respect to the activities, assets, or obligations of a protected cell. Nothing in this Subsection shall affect the activities or obligations of an insurer's general account.

(5) In no event shall the establishment of one (1) or more protected cells alone constitute or be deemed to be a fraudulent conveyance, an intent by the protected cell company to defraud creditors, or the carrying out of business by the protected cell company for any other fraudulent purpose.

(m) Conservation, rehabilitation or liquidation of protected cell companies.

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(1) Notwithstanding any contrary provision in the insurance code of Guam, the regulations promulgated under the insurance code of Guam, or any other applicable law or regulation, upon any order of conservation, rehabilitation or liquidation of a protected cell company, the receiver shall be bound to deal with the protected cell company's assets and liabilities, including protected cell assets and protected cell liabilities, in accordance with the requirements set forth in this Chapter.

(2) With respect to amounts recoverable under a protected cell company insurance securitization, the amount recoverable by the receiver shall not be reduced or diminished as a result of the entry of an order of conservation, rehabilitation or liquidation with respect to the protected cell company notwithstanding any provisions to the contrary in the contracts or other documentation governing the protected cell company insurance securitization."

**SOURCE:** GC § 43706; added by P.L. 17-85:1. Amended by P.L. 24-104:5. Amended by P.L. 27-54:6.

**§ 23107. Financial Statements and Reports.**

(a) Each pure captive insurance company shall submit to the Commissioner a statement of financial condition written according to generally accepted accounting principles and audited by an independent certified public accountant on or before the last day of the sixth (6th) month following the end of the company's fiscal year.

(b) Each captive insurance company that is not a pure captive insurance company shall annually file with the Commissioner the following:

(1) Annual statement and audit:

(a) On or before March 1, or such day subsequent thereto as the Commissioner upon request and for cause may specify, an annual statement using the National Association of Insurance Commissioners' annual statement form plus any additional information required by the Commissioner, which shall be a true statement of its financial condition, transactions, and affairs as of the immediately preceding December 31. The reported information shall be verified by oaths of at least two (2) of the captive's principal officers;

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(b) On or before June 1, or such day subsequent thereto as the Commissioner upon request and for cause may specify, an audit by a designated independent certified public accountant or accounting firm of the financial statements reporting the financial condition and results of the operation of the captive;

(c) The annual statement and audit shall be prepared in accordance with the National Association of Insurance Commissioners' annual statement instructions and Accounting Practices and Procedures Manual; and

(2) On or before each March 1, or such day subsequent thereto as the Commissioner upon request and for cause may specify, a risk-based capital report; provided that the RAC insurance companies shall not be required to file their risk-based capital reports with the National Association of Insurance Commissioners.

(c) The statements required to be filed in Subsections (a) and (b) shall include, but not be limited to, actuarially appropriate reserves for:

(1) known claims and expenses associated therewith;

(2) claims incurred but not reported and expenses associated therewith;

(3) unearned premiums; and

(4) bad debts, reserves for which shall be shown as liabilities.

An actuarial opinion regarding reserves for known claims and expenses associated therewith and claims incurred but not reported and expenses associated therewith shall be included in the audited statements, except that the actuarial opinion for captive insurance companies other than pure captive insurance companies shall be filed with the annual statement required under Subsection (b), on or before March 1 each year. The actuarial opinion shall be given by a member of the American Academy of Actuaries or other qualified loss reserve specialist as defined in the annual statement adopted by the National Association of Insurance Commissioners.

(d) The Commissioner may prescribe the format and frequency of other reports which may include, but shall not be limited to, summary loss reports and quarterly financial statements.

(e) The Commissioner may suspend or revoke the certificate of authority or fine any captive insurer that fails to file any of the documents

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required by Subsections (a) and (b). The fine shall not be more than Five Hundred Dollars (\$500) per day past the due date.

(f) The failure of any captive insurance company to file a report of financial condition prior to the due date of each year shall constitute grounds for suspension, revocation or non-renewal of the license to transact captive insurance business in Guam.

**SOURCE:** GC § 43707; added by P.L. 17-85:1. Amended by P.L. 24-104:6. Amended by P.L. 27-54:7.

**§ 23108. Examinations and Investigations.**

At least once in three (3) years, and whenever the Commissioner determines it to be prudent, he shall personally, or by some competent person appointed by him, 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 upon application, in his discretion, may enlarge the aforesaid three (3) year period to five (5) years, provided said captive insurance company is subject to a comprehensive annual audit during such period of a scope satisfactory to the Commissioner by independent auditors approved by him. The Commissioner may use independent contractor examiners to conduct examinations pursuant to this Section. The expenses and charges of the examination shall be paid to the government of Guam by the company or companies examined and the Commissioner shall issue his warrants for the proper charges incurred in all examinations.

**SOURCE:** GC § 43708; added by P.L. 17-85:1. Amended by P.L. 27-54:8.

**§ 23109. Grounds and Procedures for Suspension or Revocation of License.**

(a) The license of a captive insurance company to do an insurance business on Guam may be suspended or revoked by the Commissioner for any of the following reasons:

- (1) Insolvency or impairment of capital or surplus;
- (2) Failure to meet the requirements of §§ 23104 or 23105 of this Chapter;

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(3) Refusal or failure to submit an annual report, as required by § 23107 of this Chapter, or any other report or statement required by law or by lawful order of the Commissioner;

(4) Failure to comply with the provisions of its own Charter or By-Laws;

(5) Failure to submit to examinations or any legal obligation relative thereto, as required by § 23108 of this Chapter.

(6) Refusal or failure to pay the cost of examination as required by § 23108 of this Chapter.

(7) 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;

(8) Failure otherwise to comply with the laws of Guam.

(b) If the Commissioner finds, upon examination, hearing, any of the acts specified in Subsection (a), he may suspend or revoke such license if he deems it in the best interest of the public and the policyholders of such captive insurance company, notwithstanding any other provision of this Title.

**SOURCE:** GC § 43709; added by P.L. 17-85:1.

**§ 23110. Legal Investments.**

(a) No pure captive insurance company, group captive insurance company or industrial insured captive insurance company shall be subject to any restrictions on allowable investments whatever, including those limitations contained in §15317 of this Title; provided, however, that the Commissioner may prohibit or limit any investment that threatens the solvency or liquidity of any such company.

**SOURCE:** GC § 43710; added by P.L. 17-85:1 Amended by P.L. 24-104:7.

**§ 23111. Reinsurance.**

(a) Any captive insurance company may provide reinsurance, as defined and authorized in Article 8 of Chapter 18 of this Title, on risks ceded by any other insurer.

(b) Any captive insurance company may take credit for reserves on risks ceded to a reinsurer; provided, however, that no captive insurance

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company shall reinsure a risk or part thereof with reinsurers not complying with the provisions of §18802 of this Title.

(c) A captive insurance company may take credit for reserves on risks or portions of risks ceded to a pool, exchange or association acting as a reinsurer which has been authorized by the Commissioner. The Commissioner 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 Commissioner may deny authorization or impose any limitations on the activities of a reinsurance pool, exchange or association that, in his judgement, 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.

(d) For all purposes of this Chapter, insurance by a captive insurance company of any workers' compensation qualified self-insured plan of its parent and affiliates shall be deemed to be reinsurance.

**SOURCE:** GC § 43711; added by P.L. 17-85:1. Amended by P.L. 24-104:8.

**§ 23112. Exemption from Compulsory Associations; Ratings Organizations.**

No captive insurance company shall be required to join a rating organization or to join or contribute financially to any plan, pool, association, or guaranty or insolvency fund on Guam, nor shall any captive insurance company, or its insured, or its parent or any affiliated company, or any member organization of its association, receive any benefits from any such plan, pool, association, or guaranty or insolvency fund for claims arising out of the operations of such captive insurance company.

**SOURCE:** GC § 43712; added by P.L. 17-85:1. Amended by P.L. 24-104:9.

**§ 23113. Tax on Premiums Collected.**

No taxes on qualified captive insurers. Each captive insurance company to which is issued a Special Qualifying Certificate pursuant to the provisions of Chapter 58, Title 12, Guam Code Annotated, shall pay no taxes to the government of Guam on its premium or other insurance income except ad valorem taxes on real and personal property used in the production of income, and to the extent that it is first required to pay its Guam income tax liability thereon before the same is rebated in full, pursuant to its Special Qualifying Certificate.

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**SOURCE:** GC § 43713; added by P.L. 17-85:1. Amended by P.L. 23-109:4. Amended by P.L. 27-54:9.

**§ 23114. Rules and Regulations.**

The Commissioner may establish and from time to time amend such rules relating to captive insurance companies as are necessary to enable him to carry out the provisions of this Chapter.

**SOURCE:** GC § 43714; added by P.L. 17-85:1.

**§ 23115. Laws Applicable.**

No provisions of this Title, other than those contained in this Chapter or contained in specific references contained in this Chapter, shall apply to captive insurance companies.

**SOURCE:** GC § 43715; added by P.L. 17-85:1.

**§ 23116. Maximum Premiums for Captive Insurance Companies.**

**[Repealed]**

**SOURCE:** Added by P.L. 24-104:10. Repealed by P.L. 27-54:10.

**§ 23117. Establishment of the Guam Captive Insurance Advisory Committee; Members:**

(a) The Guam Captive Insurance Advisory Committee, the 'Committee,' shall consist of such persons, not fewer than three (3) in number, to be appointed by the Commissioner. The membership shall, to the extent possible, consist of one (1) person who is a certified public accountant, one (1) person who is a banker or officer of a Guam financial institution, and one (1) person who is actively employed in the insurance community.

(b) Any Committee member shall excuse himself from reviewing any applicant for licensing if a conflict of interest exists.

**SOURCE:** Added by P.L. 24-104:11.

**§ 23118. Duties of the Committee.**

The Committee's duties are as prescribed by the Commissioner, and shall include:

(a) The review of each application for a captive insurance company license, and a recommendation to the Commissioner as to whether or not the applicant should be granted a license to do an

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insurance business under this Chapter and including the reasons for its recommendation. Recommendations to the Commissioner shall be made within thirty (30) days of receipt of the financial and other information provided by the Commissioner.

(b) In formulating its recommendations, the Committee shall employ the following criteria:

(i) Whether such applicant meets the financial requirements of this Chapter;

(ii) Whether such applicant's proposal is actuarially sound and is adequately capitalized to meet the requirements of the risks it has undertaken or proposed to insure. For the purposes of this actuarial determination, the Committee shall consider, if advisable, the formal opinion of a certified property/casualty actuary who is a member in good standing of an acknowledged academy or society of actuaries;

(iii) Whether or not the parent's officers, directors, and administrative and managerial personnel are of good moral character; and

(iv) Such other criteria as the Committee, with the consent of the Commissioner, deems appropriate.

(c) Meetings of the Committee may be conducted by telephone except that at least one (1) meeting per year shall be held in Guam, and shall be attended personally by Committee members.

(d) Recommendations made by the Committee to the Commissioner shall be advisory in nature. A Committee member, or the Committee as a whole, shall not be held liable in any claim or suit for damages arising solely from a recommendation to the Commissioner, or for the results of any action taken and/or implemented by the Commissioner pursuant to any such Committee recommendation.

(e) The Commissioner shall supply the Committee with the financial and other information required by the Committee to conduct its investigation under this Section.

(f) The Commissioner shall receive the recommendations of the Committee with respect to the financial, actuarial, and managerial

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soundness of each applicant, and shall give appropriate consideration to all such recommendations in conjunction with his duties under this Chapter.

**SOURCE:** Added by P.L. 24-104:12.

**§ 23119. Insolvency Proceedings.**

In the event a captive insurance company is declared insolvent by its board of directors or by the Commissioner or is placed in receivership for rehabilitation or liquidation any reinsurance due or becoming due and payable by the reinsurer shall be paid without diminution directly to the ceding company, or to the Commissioner or to the court-appointed receiver or liquidator. This provision shall be deemed to be incorporated in any contract of reinsurance for any risks insured in Guam.

**SOURCE:** Added by P.L. 24-104:13.

**§ 23120. Confidential Treatment of Captive Information.**

All information pertaining to Guam Captive Insurance Companies shall be deemed proprietarily and confidential unless:

(a) The Commissioner of Banking and Insurance deems it in the public interest to make such information available for public inspection; or

(b) The Parent authorizes the Commissioner of Banking and Insurance to make available such information for public inspection.

**SOURCE:** Added by P.L. 24-104:14. Amended by P.L. 27-88:7(g).

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