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Insurance CodeTITLE 23 -- PUBLIC UTILITIES AND REGULATED INDUSTRIES...Subtitle 3. Insurance...Chapter 63 -- INSURANCE COMPANIES
GENERALLY...Subchapter 16. Licensing and Regulation of Captive Insurers**23-63-1601****Definitions**

As used in this subchapter:

- (1) "Affiliated company" means a company in the same corporate system as a parent, an industrial insured, or a member organization by virtue of common ownership, control, operation, or management;
- (2) "Alien captive insurance company" means an insurance company formed to write insurance business for its parents and affiliates and licensed under the laws of an alien jurisdiction that imposes statutory or regulatory standards in a form acceptable to the Insurance Commissioner on companies transacting the business of insurance in the alien jurisdiction;
- (3) "Association" means a legal association of individuals, corporations, partnerships, or associations that has been in continuous existence for at least one (1) year:
 - (A) The member organizations of which collectively, or which does itself:
 - (i) Own, control, or hold with power to vote all of the outstanding voting securities of an association captive insurance company incorporated as a stock insurer; or
 - (ii) Have complete voting control over an association captive insurance company incorporated as a mutual insurer; or
 - (B) The member organizations of which collectively constitute all of the subscribers of an association captive insurance company formed as a reciprocal insurer;
- (4) "Association captive insurance company" means a company that insures risks of the member organizations of the association and their affiliated companies;
- (5) "Branch business" means any insurance business transacted by a branch captive insurance company in this state;
- (6)(A) "Branch captive insurance company" means an alien captive insurance company licensed by the commissioner to transact the business of insurance in this state through a business unit with a principal place of business in this state.
 - (B) A branch captive insurance company must be a pure captive insurance company with respect to operations in this state unless permitted by the commissioner;
- (7) "Branch operations" means any business operations of a branch captive insurance company in this state;
- (8) "Captive insurance company" means a producer reinsurance captive insurance company, pure captive insurance company, association captive insurance company, sponsored captive insurance company, special purpose captive insurance company, or industrial insured captive insurance company formed or licensed under this subchapter;
- (9) "Commissioner" means the Insurance Commissioner;
- (10) "Controlled unaffiliated business" means a 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 captive insurance company;
- (11) "Department" means the State Insurance Department;
- (12)(A) "Industrial insured" means an insured:
- (i) Which procures insurance by use of the services of a full-time employee acting as a risk manager or insurance manager or utilizing the services of a regularly and continuously qualified insurance consultant;
 - (ii) Whose aggregate annual premiums for insurance on all risks total at least twenty-five thousand dollars (\$25,000); and
 - (iii) Which has at least twenty-five (25) full-time employees.
- (B) "Industrial insured" does not mean "industrial life insurance" as used in § 23-82-101 et seq.;
- (13)(A) "Industrial insured captive insurance company" means a company that insures risks of the industrial insureds that compose the industrial insured group and their affiliated companies.
- (B) "Industrial insured captive insurance company" does not encompass "industrial life insurance" as used in § 23-82-101 et seq.;
- (14)(A) "Industrial insured group" means a group that meets either of the following criteria:
- (i) A group of industrial insureds that collectively:
 - (a) 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
 - (b) Have complete voting control over an industrial insured captive insurance company incorporated as a mutual insurer; or
 - (ii) A group which is created under the Product Liability Risk Retention Act of 1981, 15 U.S.C. § 3901 et seq., as it existed January 1, 2001, or the Risk Retention and Purchasing Groups Act, § 23-94-201 et seq., or as a corporation or other limited liability association taxable as a stock insurance company or a mutual insurer under the Arkansas Insurance Code.
- (B) "Industrial insured group" does not encompass "industrial life insurance" as used in § 23-82-101 et seq.;
- (15) "Member organization" means an individual, corporation, partnership, or association that belongs to an association;
- (16) "Parent" means a corporation, partnership, or individual that directly or indirectly owns, controls, or holds with power to vote more than fifty percent (50%) of the outstanding voting securities of a pure captive insurance company;
- (17) "Participant" means an entity as defined in § 23-63-1621 and any affiliates of that entity that are insured by a sponsored captive insurance company when the losses of the participant are limited through a participant contract to the assets of a protected cell;
- (18) "Participant contract" means a contract by which a sponsored captive insurance company insures the risks of a participant and limits the losses of the participant to the assets of a protected cell;
- (19) "Producer reinsurance captive insurance company" means a company that is wholly owned by a resident licensed insurance producer and that acts only as a reinsurer for risks written by or placed through its parent or an affiliate of its parent;

- (20) "Protected cell" means a separate account established and maintained by a sponsored captive insurance company for one (1) participant or by a producer reinsurance captive insurance company;
- (21) "Pure captive insurance company" means a company that insures risks of its parent and affiliated companies or controlled unaffiliated business;
- (22) "Special purpose captive insurance company" means a captive insurance company that is formed or licensed under this chapter and does not meet the definition of any other type of captive insurance company defined in this section;
- (23) "Sponsor" means an entity that meets the requirements of § 23-63-1620 and is approved by the commissioner to provide all or part of the capital and surplus required by applicable law and to organize and operate a sponsored captive insurance company; and
- (24) "Sponsored captive insurance company" means a captive insurance company:
- (A) In which the minimum capital and surplus required is provided by one (1) or more sponsors;
 - (B) That is formed or licensed under this subchapter;
 - (C) That insures the risks of separate participants through the contract; and
 - (D) That segregates each participant's liability through one (1) or more protected cells.

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Insurance Code

TITLE 23 -- PUBLIC UTILITIES AND REGULATED INDUSTRIES...Subtitle 3. Insurance...Chapter 63 -- INSURANCE COMPANIES
GENERALLY...Subchapter 16. Licensing and Regulation of Captive Insurers

23-63-1602

Licensing requirements

- (a) When permitted by its articles of incorporation or charter, a captive insurance company may apply to the Insurance Commissioner for a license to do all insurance, including workers' compensation insurance, authorized by the Arkansas Insurance Code. However:
- (1) A pure captive insurance company may not insure any risks other than those of its parent and affiliated companies or controlled unaffiliated business;
 - (2) An association captive insurance company may not insure any risks other than those of the member organizations of its association and their affiliated companies;
 - (3) An industrial insured captive insurance company may not insure any risks other than those of the industrial insureds that compose the industrial insured group and their affiliated companies;
 - (4) A captive insurance company may not provide personal motor vehicle or homeowner's insurance coverage or any component of these coverages;
 - (5) A captive insurance company may not accept or cede reinsurance except as authorized by § 23-63-1611;

(6) A producer reinsurance captive insurance company may not reinsure any risks other than those written by or placed through its parent or an affiliate of its parent and written by authorized insurers; and

(7) The following statement must appear on the front of every policy or certificate of insurance issued by a captive insurance company:

"THIS CONTRACT IS REGISTERED AND DELIVERED AS A POLICY UNDER ARKANSAS CODE §§ 23-63-1601 THROUGH 23-63-1623. THIS POLICY MAY BE DIFFERENT FROM POLICIES ISSUED IN THE OPEN MARKET. IT MAY BE MORE OR LESS FAVORABLE TO AN INSURED THAN A CONTRACT ISSUED BY AN ADMITTED CARRIER. THE PROTECTION OF THE ARKANSAS PROPERTY AND CASUALTY INSURANCE GUARANTY ACT, ARKANSAS CODE §§ 23-90-101 THROUGH 23-90-123, DOES NOT APPLY TO THIS CONTRACT."

(b) To conduct insurance business in this state, a captive insurance company shall:

(1) Be licensed to conduct insurance business in this state;

(2) Hold at least one (1) board of directors meeting, or in the case of a reciprocal insurer, a subscriber's advisory committee meeting, each year in this state;

(3) Maintain its registered office in this state, or in the case of a branch captive insurance company, maintain the registered office for its branch operations in this state; and

(4)(A) Appoint a resident registered agent to accept service of process and to act on its behalf in this state.

(B) In the case of a captive insurance company formed as a corporation or formed as a reciprocal insurer, the commissioner must be designated as the agent of the captive insurance company upon whom any process, notice, or demand may be served whenever the registered agent cannot, with reasonable diligence, be found at the registered office of the captive insurance company.

(c)(1) Before receiving a license, a captive insurance company:

(A) Formed as a corporation shall file with the commissioner:

(i) A certified copy of its articles of incorporation and bylaws;

(ii) A statement under oath of its president and secretary showing its financial condition; and

(iii) Any other statements or documents required by the commissioner; or

(B) Formed as a reciprocal shall:

(i) File with the commissioner:

(a) A certified copy of the power of attorney of its attorney in fact;

(b) A certified copy of its subscribers' agreement;

(c) A statement under oath of its attorney in fact showing its financial condition; and

(d) Any other statements or documents required by the commissioner; or

(ii)(a) Obtain the commissioner's approval of its coverages, deductibles, coverage limits, and rates.

(b) If there is a subsequent material change in an item in the description, the reciprocal captive insurance company shall submit to the commissioner for approval an appropriate revision and may not offer any additional kinds of insurance until a revision of the description is approved by the commissioner.

(c) The reciprocal captive insurance company shall inform the commissioner of any material change in rates within thirty (30) days of the adoption of the change.

(2) In addition to the information required by subdivision (c)(1) of this section, a captive insurance company applying for a license shall file with the commissioner evidence of:

- (A) The amount and description 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, member organizations, or industrial insureds, as applicable; and
- (E) Other factors considered relevant by the commissioner in ascertaining whether the proposed captive insurance company will be able to meet its policy obligations.

(3) In addition to the information required by subdivisions (c)(1) and (2) of this section, an applicant producer reinsurance captive insurance company or a sponsored captive insurance company shall file with the commissioner:

- (A) A business plan demonstrating how the applicant will account for the loss and expense experience of each protected cell in as much detail as the commissioner may require, and the manner in which it will report the experience to the commissioner;
- (B) A statement acknowledging that all financial records of the captive insurance company, including records pertaining to any protected cells, must be made available for inspection or examination by the commissioner; and
- (C) Evidence that expenses will be allocated to each protected cell in an equitable manner.

(4) In addition to the information required by subdivisions (c)(1) – (3) of this section, a sponsored captive insurance company shall file with the commissioner all contracts between the sponsored captive insurance company and any participants.

(5) Information submitted under this subsection is confidential and may not be made public by the commissioner or an agent or employee of the commissioner without the written consent of the company except that:

(A)(i) Information may be discoverable by a party in a civil action or contested case to which the captive insurance company that submitted the information is a party, upon a showing by the party seeking to discover the information that:

- (a) The information sought is relevant to and necessary for the furtherance of the action or case;
- (b) The information sought is unavailable from other nonconfidential sources; and
- (c) A subpoena issued by a judicial or administrative officer of competent jurisdiction has been submitted to the commissioner.

(ii) However, subdivision (c)(4) of this section does not apply to an industrial insured captive insurance company insuring the risks of an industrial insured group; and

(B) The commissioner may disclose the information to a public officer having jurisdiction over the regulation of insurance in another state if:

- (i) The public official agrees in writing to maintain the confidentiality of the information; and
- (ii) The laws of the state in which the public official serves require the information to be confidential.

(d)(1) A captive insurance company shall pay to the State Insurance Department Trust Fund a nonrefundable fee in an amount and manner to be prescribed by regulation.

(2) The commissioner may retain legal, financial, and examination services from outside the department, the reasonable cost of which may be charged against the applicant.

(3) Section 23-61-208 applies to examinations, investigations, and processing conducted under the authority of this section.

(4) In addition, a captive insurance company shall pay to the fund a license fee for the year of registration and a renewal fee in an amount and manner to be prescribed by regulation.

(e) If the commissioner is satisfied that the documents and statements filed by the captive insurance company comply with this subchapter, the commissioner may grant a license authorizing the company to do insurance business in this state until March 1, at which time the license may be renewed.

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23-63-1603

Restrictions of business names

A captive insurance company may not adopt a name that is the same as, deceptively similar to, or likely to be confused with or mistaken for, any other existing business name registered in this state.

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23-63-1604

Capital requirements

(a)(1) The Insurance Commissioner may not issue a license to a producer reinsurance captive insurance company, pure captive insurance company, sponsored captive insurance company, association captive insurance company incorporated as a stock insurer, or industrial insured captive insurance company incorporated as a stock insurer unless the company possesses and maintains unimpaired paid-in capital of:

(A) In the case of a producer reinsurance captive insurance company, not less than three hundred thousand dollars (\$300,000);

(B) In the case of a pure captive insurance company, not less than one hundred thousand dollars (\$100,000);

(C) In the case of an association captive insurance company incorporated as a stock insurer, not less than four hundred thousand dollars (\$400,000);

(D) In the case of an industrial insured captive insurance company incorporated as a stock insurer, not less than two hundred thousand dollars (\$200,000);

(E) In the case of a sponsored captive insurance company, not less than five hundred thousand dollars (\$500,000); or

(F) In the case of a special purpose captive insurance company, an amount determined by the commissioner after giving due consideration to the company's business plan, feasibility study, and pro formas, including the nature of the risks to be insured, but in no event less than three hundred thousand dollars (\$300,000).

(2) The capital may be in the form of:

(A) Cash;

(B) Other assets acceptable to the commissioner; or

(C) An irrevocable letter of credit issued by a bank chartered by this state or a member bank of the Federal Reserve System and approved by the commissioner.

(b)(1) The commissioner may prescribe additional capital based upon the type, volume, and nature of insurance business transacted.

(2) This capital may be in the form of:

(A) Cash;

(B) Other assets acceptable to the commissioner; or

(C) An irrevocable letter of credit issued by a bank chartered by this state or a member bank of the Federal Reserve System.

(c)(1) In the case of a branch captive insurance company, as security for the payment of liabilities attributable to branch operations, the commissioner shall require that a trust fund, funded by an irrevocable letter of credit or other acceptable asset, be established and maintained in the United States for the benefit of United States policyholders and United States ceding insurers under insurance policies issued or reinsurance contracts issued or assumed by the branch captive insurance company through its branch operations.

(2)(A) The amount of the security may be no less than the capital and surplus required by this subchapter and the reserves on these insurance policies or reinsurance contracts, including reserves for losses, allocated loss adjustment expenses, incurred but not reported losses, and unearned premiums with regard to business written through branch operations.

(B)(i) The commissioner may permit a branch captive insurance company that is required to post security for loss reserves on branch business by its reinsurer to reduce the funds in the trust account required by this section by the same amount so long as the security remains posted with the reinsurer.

(ii) If the form of security selected is a letter of credit, the letter of credit must be issued by a bank chartered in this state or a member bank of the Federal Reserve System.

(d)(1) A captive insurance company may not pay a dividend out of, or other distribution with respect to, capital or surplus, in excess of the limitations set forth in § 23-63-515, without the prior approval of the commissioner.

(2) Approval of an ongoing plan for the payment of dividends or other distributions must 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 commissioner.

(3) Subsection (d) of this section shall not apply to producer reinsurance captive insurance companies.

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23-63-1605

Surplus requirements

(a)(1) The Insurance Commissioner may not issue a license to a captive insurance company unless the company possesses and maintains unimpaired surplus of:

(A) In the case of a producer reinsurance captive insurance company, not less than three hundred thousand dollars (\$300,000);

(B) In the case of a pure captive insurance company, not less than one hundred fifty thousand dollars (\$150,000);

(C) In the case of an association captive insurance company incorporated as a stock insurer, not less than three hundred fifty thousand dollars (\$350,000);

(D) In the case of an industrial insured captive insurance company incorporated as a stock insurer, not less than three hundred thousand dollars (\$300,000);

(E) In the case of an association captive insurance company incorporated as a mutual insurer, not less than seven hundred fifty thousand dollars (\$750,000);

(F) In the case of an industrial insured captive insurance company incorporated as a mutual insurer, not less than five hundred thousand dollars (\$500,000);

(G) In the case of a sponsored captive insurance company, not less than five hundred thousand dollars (\$500,000); and

(H) In the case of a special purpose captive insurance company, an amount determined by the commissioner after giving due consideration to the company's business plan, feasibility study, and pro formas, including the nature of the risks to be insured, but in no event less than three hundred thousand dollars (\$300,000).

(2) The surplus may be in the form of:

(A) Cash;

(B) Other assets acceptable to the commissioner; or

(C) An irrevocable letter of credit issued by a bank chartered by this state or a member bank of the Federal Reserve System and approved by the commissioner.

(b) Notwithstanding the requirements of subsection (a) of this section, a captive insurance company organized as a reciprocal insurer under this subchapter may not be issued a license, unless it possesses and maintains a free surplus of one million dollars (\$1,000,000).

(c)(1) The commissioner may prescribe additional surplus based upon the type, volume, and nature of insurance business transacted.

(2) This capital may be in the form of:

- (A) Cash;
- (B) Other assets acceptable to the commissioner; or
- (C) An irrevocable letter of credit issued by a bank chartered by this state or a member bank of the Federal Reserve System.
- (d)(1) A captive insurance company may not pay a dividend out of, or other distribution with respect to, capital or surplus in excess of the limitations set forth in § 23-63-515, without the prior approval of the commissioner.
- (2) Approval of an ongoing plan for the payment of dividends or other distribution must 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 commissioner.
- (3) Subsection (d) of this section shall not apply to a producer reinsurance captive insurance company.

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23-63-1606

Incorporation

- (a) A producer reinsurance captive insurance company, pure captive insurance company, or a sponsored captive insurance company must be incorporated as a domestic stock insurer under § 23-69-206 with its capital divided into shares and held by the stockholders.
- (b) An association captive insurance company or an industrial insured captive insurance company may be:
 - (1) Incorporated as a stock insurer with its capital divided into shares and held by the stockholders;
 - (2) Incorporated as a mutual insurer without capital stock, the governing body of which is elected by the member organizations of its association; or
 - (3) Organized as a reciprocal insurer under § 23-70-101 et seq.
- (c) A captive insurance company shall have at least one (1) incorporator.
- (d) The alien captive insurance company may register to do business in this state after the commissioner's certificate has been issued.
- (e) The capital stock of a captive insurance company incorporated as a stock insurer must be issued at not less than par value.
- (f) At least one (1) of the members of the board of directors of a captive insurance company formed as a corporation in this state must be a resident of the United States or a United States territory.
- (g) At least one (1) of the members of the subscribers' advisory committee of a captive insurance company formed as a reciprocal insurer must be a resident of the United States or a United States territory.

(h)(1) A captive insurance company formed as a corporation under this subchapter has the privileges of and is subject to the general corporation law of this state and applicable provisions of this subchapter.

(2) If a conflict occurs between general corporation law and this subchapter, the latter controls.

(3)(A) The Arkansas Insurance Code concerning mergers, consolidations, conversions, mutualizations, and redomestications applies in determining the procedures to be followed by a captive insurance company in carrying out any of those transactions.

(B) The commissioner may waive or modify the requirements for public notice and hearing in accordance with regulations that the commissioner may promulgate addressing categories of transactions.

(C) If a notice of public hearing is required but no one requests a hearing, the commissioner may cancel the hearing.

(i)(1)(A) A captive insurance company formed as a reciprocal insurer under this subchapter is subject to § 23-70-101 et seq. and applicable provisions of this subchapter.

(B) If a conflict occurs between § 23-70-101 et seq. and this subchapter, the latter controls.

(C) To the extent a reciprocal insurer is made subject to the Arkansas Insurance Code under § 23-70-101 et seq., the Arkansas Insurance Code is not applicable to a reciprocal insurer formed under this subchapter unless expressly made applicable to a captive insurance company by this subchapter.

(2) In addition to subdivision (i)(1) of this section, a captive insurance company organized as a reciprocal insurer that is an industrial insured group is subject to § 23-70-101 et seq. and applicable provisions of the Arkansas Insurance Code.

(j) The articles of incorporation or bylaws of a captive insurance company may authorize a quorum of a board of directors to consist of no fewer than one-third (1/3) of the fixed or prescribed number of directors under § 4-27-824(b).

(k) The subscribers' agreement or other organizing document of a captive insurance company formed as a reciprocal insurer may authorize a quorum of a subscribers' advisory committee to consist of no fewer than one-third (1/3) of the number of its members.

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23-63-1607

Annual report of financial condition

(a) A captive insurance company shall not be required to make an annual report, except as provided under this subchapter.

(b)(1) Before March 1 of each year, a captive insurance company shall submit to the Insurance Commissioner a report of its financial condition, verified by oath of two (2) of its executive officers.

(2)(A) Except as provided in §§ 23-63-1604 and 23-63-1605, a captive insurance company shall report using generally accepted accounting principles unless the commissioner approves the use of statutory accounting principles.

(B) The commissioner may require, approve, or accept appropriate modifications or adaptations for the type of insurance and kinds of insurers to be reported upon, supplemented by additional information.

(3)(A) Unless provided otherwise:

(i) An association captive insurance company shall file its report in the form required by Section 23-63-216(a); and

(ii) An industrial insured group shall:

(a) File its report in the form required by Section 23-63-216(a); and

(b) Section 23-63-216(b)(1).

(B) The commissioner shall prescribe by regulation the forms in which producer reinsurance captive insurance companies, pure captive insurance companies, and industrial insured captive insurance companies shall report.

(c) A producer reinsurance captive insurance company or a pure captive insurance company may apply to file the required report on a fiscal year-end that is consistent with the parent company's fiscal year. If an alternative reporting date is granted:

(1) The annual report is due no later than sixty (60) days after the fiscal year-end; and

(2) In order to provide sufficient detail to support the premium tax return, the pure captive insurance company shall file before March 1 of each year for each calendar year-end pages one (1), two (2), three (3), and five (5) of the "Captive Annual Statement: Pure or Industrial Insured," verified by oath of two (2) of its executive officers.

(d)(1) Sixty (60) days after the fiscal year-end, a branch captive insurance company shall file with the commissioner a copy of all reports and statements required to be filed under the laws of the jurisdiction in which the alien captive insurance company is formed, verified by oath by two (2) of its executive officers.

(2)(A) If the commissioner is satisfied that the annual report filed by the alien captive insurance company in its domiciliary jurisdiction provides adequate information concerning the financial condition of the alien captive insurance company, the commissioner may waive the requirement for completion of the captive annual statement for business written in the alien jurisdiction.

(B) The waiver must be in writing and subject to public inspection.

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23-63-1608

Examinations

(a)(1) At least one (1) time every three (3) years, or whenever the Insurance Commissioner determines it to be prudent, the commissioner or a person appointed by the commissioner shall 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 this subchapter.

(2) Upon application, the commissioner may enlarge the three-year period to a five-year period, if a captive insurance company is subject during that period to a comprehensive annual audit by independent auditors approved by the commissioner of a scope satisfactory to the commissioner.

(3) The expenses and charges of the examination must be paid to the state by the company or companies examined, in accordance with the Arkansas Insurance Code.

(b)(1) All examination reports, preliminary examination reports or results, working papers, recorded information, and documents and copies of documents produced by, obtained by, or disclosed to the commissioner 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 an employee or agent of the commissioner without the written consent of the company, except to the extent provided in this subsection.

(2) Nothing in this subsection prevents the commissioner from using this information in furtherance of the commissioner's regulatory authority under the Arkansas Insurance Code.

(3) The commissioner may grant access to this information under § 23-61-107 or to public officers having jurisdiction over the regulation of insurance in any other state or country or to law enforcement officers of this state or any other state or agency of the federal government at any time, so long as the officers receiving the information agree in writing to hold it in a manner consistent with this section.

(c)(1)(A) This section applies to all business written by a captive insurance company.

(B) The examination for a branch captive insurance company must be of branch business and branch operations only, as long as the branch captive insurance company:

(i) Provides annually to the commissioner a certificate of compliance or its equivalent issued by or filed with the licensing authority of the jurisdiction in which the branch captive insurance company is formed; and

(ii) Demonstrates to the commissioner's satisfaction that it is operating in sound financial condition in accordance with all applicable laws and regulations of that jurisdiction.

(2) As a condition of licensure, the alien captive insurance company shall grant authority to the commissioner for examination of the affairs of the alien captive insurance company in the jurisdiction in which the alien captive insurance company is formed.

(d) To the extent that § 23-61-201 et seq. does not contradict this section, § 23-61-201 et seq. applies to captive insurance companies licensed under this subchapter.

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23-63-1609

Suspension or revocation of license

(a) The license of a captive insurance company to conduct an insurance business in this state may be penalized, suspended, or revoked by the Insurance Commissioner for:

- (1) Insolvency or impairment of capital or surplus;
- (2) Failure to meet the requirements of §§ 23-63-1604 and 23-63-1605;
- (3) Refusal or failure to submit an annual report, as required by § 23-63-1607, or any other report or statement required by law or by lawful order of the commissioner;
- (4) Failure to comply with its own charter, bylaws, or other organizational document;
- (5) Failure to submit to examination or any legal obligation relative to an examination, as required by § 23-63-1608;
- (6) Refusal or failure to pay the cost of examination as required by § 23-63-1608;
- (7) Use of methods that, although not specifically prohibited by law, render its operation detrimental or its condition unsound with respect to the public or to its policyholders; or
- (8) Failure to comply with the laws of this state.

(b) If upon examination, hearing, or other evidence the commissioner finds that a captive insurance company has committed any of the acts specified in subsection (a) of this section, the commissioner may penalize, suspend, or revoke the license if the commissioner considers it in the best interest of the public and the policyholders of the captive insurance company.

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23-63-1610

Investments; loans

- (a)(1) Except as provided in § 23-63-1614, an association captive insurance company, a producer reinsurance captive insurance company, a sponsored captive insurance company, and an industrial insured group shall comply with the investment requirements contained in the Arkansas Insurance Code.
- (2) The Insurance Commissioner may approve the use of alternative reliable methods of valuation and rating.
- (b)(1) A pure captive insurance company or industrial insured captive insurance company is not subject to any restrictions on allowable investments contained in the Arkansas Insurance Code.
- (2) The commissioner may prohibit or limit an investment that threatens the solvency or liquidity of the company.

(c)(1) Only a pure captive insurance company may make loans to its parent company or affiliates, with the prior written approval of the commissioner and evidenced by a note in a form approved by the commissioner.

(2) Loans of minimum capital and surplus funds required by §§ 23-63-1604(a) and 23-63-1605(a) are prohibited.

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23-63-1611

Reinsurance

(a) A captive insurance company may provide reinsurance under the Arkansas Insurance Code, on risks ceded by any other insurer.

(b) A captive insurance company may take credit for reserves on risks or portions of risks ceded to reinsurers that are:

(1) Complying with § 23-62-305(a)-(f); or

(2) Not complying with § 23-62-305(a)-(f) upon approval of the captive insurance company's business plan by the Insurance Commissioner.

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23-63-1612

Rating organization membership

A captive insurance company may not be required to join a rating organization.

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23-63-1613

Membership exemptions

(a) A captive insurance company, including a captive insurance company organized as a reciprocal insurer under this subchapter, shall not join or contribute financially to a plan, pool, association, or guaranty or insolvency fund in this state.

(b) A captive insurance company, its insured, its parent, any affiliated company, any member organization of its association or, in the case of a captive insurance company organized as a reciprocal insurer, a subscriber of the company shall not receive a benefit from a plan, pool, association, or guaranty or insolvency fund for claims arising out of the operations of the captive insurance company.

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23-63-1614

Premium tax

(a) Except as provided in this section, a captive insurance company shall pay to the Insurance Commissioner by March 1 of each year, a tax at the rate of:

- (1) Two hundred fifty thousandths of one percent (0.250%) on the first twenty million dollars (\$20,000,000);
- (2) One hundred fifty thousandths of one percent (0.150%) on the next twenty million dollars (\$20,000,000); and
- (3) Fifty thousandths of one percent (0.050%) on each dollar thereafter,

on the direct premiums collected or contracted for on policies or contracts of insurance written by the captive insurance company during the year ending December 31 next preceding, after deducting from the direct premiums subject to the tax the amounts paid to policyholders as return premiums, which shall include dividends on unabsorbed premiums or premium deposits returned or credited to policyholders.

(b)(1) Except as provided in this section, a captive insurance company shall pay to the commissioner by March 1 of each year, a tax at the rate of:

(A) Two hundred and twenty-five thousandths of one percent (.225%) on the first twenty million dollars (\$20,000,000) of assumed reinsurance premium;

(B) One hundred fifty thousandths of one percent (.150%) on the next twenty million dollars (\$20,000,000);

(C) Fifty thousandths of one percent (.050%) on the next twenty million dollars (\$20,000,000); and

(D) Twenty-five thousandths of one percent (.025%) of each dollar thereafter.

(2) No reinsurance tax applies to premiums for risks or portions of risks that are subject to taxation on a direct basis under subsection (a) of this section.

(3) A premium tax is not payable in connection with the receipt of assets in exchange for the assumption of loss reserves and other liabilities of another insurer under common ownership and control, if the transaction is part of a plan to discontinue the operations of the other insurer and if the intent of the parties to the transaction is to renew or maintain business with the captive insurance company.

(c) If the aggregate taxes to be paid by a captive insurance company calculated under subsections (a) and (b) of this section amount to less than five thousand dollars (\$5,000) in any year, the captive insurance company shall pay a tax of five thousand dollars (\$5,000) for that year.

(d) The total tax paid by a captive insurance company shall not exceed one hundred thousand dollars (\$100,000) in any year.

(e) A captive insurance company failing to make returns or to pay all taxes required by this section is subject to relevant sanctions under the Arkansas Insurance Code.

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

(g) As used in this section, "common ownership and control" means:

(1) In the case of stock corporations, the direct or indirect ownership of eighty percent (80%) or more of the outstanding voting stock of two (2) or more corporations by the same shareholder or shareholders; and

(2) In the case of mutual corporations, the direct or indirect ownership of eighty percent (80%) or more of the surplus and the voting power of two (2) or more corporations by the same member or members.

(h) In the case of a branch captive insurance company, the tax under this section applies only to the branch business of the company.

(i)(1) The tax under this section constitutes all taxes collectible under the laws of this state from a captive insurance company.

(2) No other tax may be levied or collected from a captive insurance company by this state or a county, city, or municipality of this state, except ad valorem taxes on real and personal property used in the production of income.

(j) This section shall not apply to any producer reinsurance captive insurance company that invests and continuously maintains not less than fifty percent (50%) of its assets in certificates of deposit of any bank organized under the laws of the United States with a banking facility in the State of Arkansas or any federally insured bank or savings institution organized under the laws of the State of Arkansas, or in bonds, notes, warrants, or other securities, not in default, that are direct obligations of:

(1) This state;

(2) Any county, incorporated city or town, or duly organized school district or other taxing district of this state:

(A) If no default on the part of the obligor in payment of principal or interest on any of its obligations has occurred within five (5) years prior to the date of the proposed investment; or

(B) If the obligations were issued less than five (5) years prior to the date of investment, no default in payment of principal or interest has occurred on the obligations to be purchased or on any other public obligation of the obligor within five (5) years of the investment; or

(3) Any local improvement district in this state to finance local improvements authorized by law, if the principal and interest of the obligations are payable from assessments on real property within the local improvement district, and:

(A) No default on the part of the obligor in payment of principal or interest on any of its obligations has occurred within five (5) years prior to the date of the proposed investment; or

(B) If the obligations were issued less than five (5) years prior to the date of investment, no default in payment of principal or interest has occurred on the obligations to be purchased or on any other public obligation of the obligor within five (5) years of the investment.

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23-63-1615

Regulatory authority

(a) The Insurance Commissioner may promulgate regulations relating to captive insurance companies as are necessary to carry out this subchapter.

(b)(1) The commissioner may promulgate regulations establishing standards to ensure 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 the pure captive insurance company.

(2) Prior to these regulations being promulgated, the commissioner may grant, by temporary order, authority to a pure captive insurance company to insure risks.

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23-63-1616

Applicability of provisions

(a) The Arkansas Insurance Code does not apply to captive insurance companies except for those provisions contained in or specifically referenced in this subchapter that are to be incorporated into the Arkansas Insurance Code.

(b) The Insurance Commissioner may exempt by rule, regulation, or other order special purpose captive insurance companies on a case-by-case basis from the provisions of this chapter that he or she determines to be inappropriate, given the nature of the risks to be insured.

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23-63-1617

Applicability of terms and conditions

Except as provided in this subchapter, the terms and conditions in the Arkansas Insurance Code pertaining to insurance reorganizations, receiverships, and injunctions apply to captive insurance companies formed or licensed under this subchapter.

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23-63-1618

Financial management of captives

In the case of a producer reinsurance captive insurance company or a sponsored captive insurance company:

- (1) The assets of the protected cell may not be used to pay any expenses or claims other than those attributable to the protected cell; and
- (2) Its capital and surplus must be available to pay any expenses of or claims against the captive insurance company at all times.

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23-63-1619

Plan of conversion or merger

- (a) An association captive insurance company or industrial insured group formed as a stock or mutual corporation may be converted to or merged with and into a reciprocal insurer in accordance with a plan and this section.
- (b) A plan for conversion or merger:
- (1) Must be fair and equitable to the shareholders, in the case of a stock insurer, or the policyholders, in the case of a mutual insurer; and
 - (2) Shall provide for the purchase of the shares of any nonconsenting shareholder of a stock insurer or the policyholder interest of any nonconsenting policyholder of a mutual insurer in substantially the same manner and subject to the same rights and conditions as are accorded a dissenting shareholder or a dissenting policyholder under Section 4-26-1011.
- (c) In the case of a conversion authorized under subsection (a) of this section:
- (1) The conversion must be accomplished under a reasonable plan and procedure as may be approved by the Insurance Commissioner;
 - (2) The commissioner may not approve the plan of conversion, unless the plan:
 - (A) Satisfies subsection (b) of this section;
 - (B)(i) Provides for a hearing, of which notice has been given to the insurer, its directors, officers, and stockholders, in the case of a stock insurer, or policyholders, in the case of a mutual insurer, all of whom have the right to appear at the hearing.
 - (ii)(a) The commissioner may waive or modify the requirements for the hearing.
 - (b) If a notice of hearing is required but no hearing is requested, the commissioner may cancel the hearing;
 - (C) Provides for the conversion of existing stockholder or policyholder interests into subscriber interests in the resulting reciprocal insurer proportionate to stockholder or policyholder interests in the stock or mutual insurer; and
 - (D) Is approved:
 - (i) In the case of a stock insurer, by a majority of the shares entitled to vote represented in person or by proxy at a duly called regular or special meeting at which a quorum is present; or
 - (ii) In the case of a mutual insurer, by a majority of the voting interests of policyholders represented in person or by proxy at a duly called regular or special meeting at which a quorum is present;
 - (3) The commissioner shall approve the plan of conversion, if the commissioner finds that the conversion will promote the general good of the state in conformity with those standards set forth in § 23-63-1606(f);

- (4) If the commissioner approves the plan, the commissioner shall amend the converting insurer's certificate of authority to reflect conversion to a reciprocal insurer and issue the amended certificate of authority to the company's attorney in fact;
- (5) Upon issuance of an amended certificate of authority of a reciprocal insurer by the commissioner, the conversion is effective; and
- (6) Upon the effectiveness of the conversion, the corporate existence of the converting insurer shall cease.
- (d) A merger authorized under subsection (a) of this section must be accomplished substantially in accordance with the Arkansas Insurance Code. For purposes of the merger:
- (1) The plan or merger shall satisfy subsection (b) of this section;
- (2) The subscribers' advisory committee of a reciprocal insurer must be equivalent to the board of directors of a stock or mutual insurance company;
- (3) The subscribers of a reciprocal insurer must be the equivalent to the policyholders of a mutual insurance company;
- (4) If a subscribers' advisory committee does not have a president or secretary, the officers of the committee having substantially equivalent duties are deemed to be the president and secretary of the committee;
- (5)(A) The commissioner shall approve the articles of merger if the commissioner finds that the merger will promote the general good of the state in conformity with those standards set forth in § 23-63-1606(f).
- (B) If the commissioner approves the articles of merger, the commissioner shall endorse the articles;
- (6)(A) Notwithstanding § 23-63-1604, the commissioner may permit the formation without surplus of a captive insurance company organized as a reciprocal insurer into which an existing captive insurance company may be merged for the purpose of facilitating a transaction under this section.
- (B) There may be no more than one (1) authorized insurance company surviving the merger; and
- (7)(A) An alien insurer may be a party to a merger authorized under subsection (a) of this section, if the requirements for the merger between a domestic and a foreign insurer under the Insurance Holding Company Regulatory Act, § 23-63-501 et seq., apply to a merger between a domestic and an alien insurer under this subsection.
- (B) The alien insurer must be treated as a foreign insurer under the Insurance Holding Company Regulatory Act, § 23-63-501 et seq., and other jurisdictions must be the equivalent of a state for purposes of the Insurance Holding Company Regulatory Act, § 23-63-501 et seq.
- (e) A conversion or merger under this section has all the effects of a conversion or merger under the Arkansas Insurance Code, to the extent these effects are not inconsistent with this subchapter.

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23-63-1620**Sponsored captives: organization; protected cells**

(a) One (1) or more sponsors may form a sponsored captive insurance company under this subchapter.

(b) A sponsor of a sponsored captive insurance company must be:

(1) An insurer licensed under the laws of any state;

(2) A reinsurer authorized or approved under the laws of any state;

(3) A captive insurance company formed or licensed under this subchapter; or

(4) Any other corporation, if approved by the Insurance Commissioner, in a manner to be prescribed by regulation.

(c) The business written by a sponsored captive insurance company must be fronted by an insurance company licensed under the laws of any state.

(d) A risk retention group may not be either a sponsor or a participant of a sponsored captive insurance company.

(e) A sponsored captive insurance company formed or licensed under this subchapter may establish and maintain one (1) or more protected cells to insure risks of one (1) or more participants, subject to the following conditions:

(1) The shareholders of a sponsored captive insurance company must be limited to its participants and sponsors;

(2) Each protected cell must be accounted for separately on the books and records of the sponsored captive insurance company to reflect the financial condition, results of operations of the protected cell, net income or loss, dividends or other distributions to participants, and other factors provided for in the participant contract or required by the commissioner;

(3) The assets of a protected cell must not be chargeable with liabilities arising out of any other insurance business the sponsored captive insurance company may conduct;

(4) No sale, exchange, or other transfer of assets may be made by the sponsored captive insurance company between or among any of its protected cells without the consent of the protected cells;

(5)(A) No sale, exchange, transfer of assets, dividend, or distribution may be made from a protected cell to a sponsor or participant without the commissioner's approval.

(B) In no event may the commissioner's approval be given if the sale, exchange, transfer, dividend, or distribution would result in insolvency or impairment with respect to a protected cell;

(6) A sponsored captive insurance company shall file annually all the financial reports the commissioner requires, which shall include, but are not limited to, accounting statements detailing the financial experience of each protected cell;

(7) A sponsored captive insurance company shall notify the commissioner in writing within ten (10) business days of a protected cell that is insolvent or unable to meet its claim or expense obligations; and

(8)(A) No participant contract shall take effect without the commissioner's prior written approval.

(B) The addition of each new protected cell and the withdrawal of any participant of any existing protected cell constitute a change in the business plan requiring the commissioner's prior written approval.

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23-63-1621

Participants in sponsored captives

- (a) An association, corporation, limited liability company, partnership, trust, or other business entity may be a participant in a sponsored captive insurance company formed or licensed under this subchapter.
- (b) A sponsor may be a participant in a sponsored captive insurance company.
- (c) A participant need not be a shareholder of the sponsored captive insurance company or an affiliate of the company.
- (d) A participant shall insure only its own risks through a sponsored captive insurance company.

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23-63-1622

Reinsurance captives: protected cells

A producer reinsurance captive insurance company formed or licensed under this subchapter may establish and maintain one (1) or more protected cells to insure risks, subject to the following conditions:

- (1) Each protected cell must be accounted for separately on the books and records of the producer reinsurance captive insurance company to reflect the financial condition, results of operations of the protected cell, net income or loss, dividends or other distributions, and other factors as may be required by the commissioner;
- (2) The assets of a protected cell must not be chargeable with liabilities arising out of any other insurance business the producer reinsurance captive insurance company may conduct;
- (3) No sale, exchange, or other transfer of assets may be made by the producer reinsurance captive insurance company between or among any of its protected cells without the consent of the protected cells;

(4) A producer reinsurance captive insurance company shall file annually the financial reports the Insurance Commissioner requires, which shall include, but are not limited to, accounting statements detailing the financial experience of each protected cell; and

(5) A producer reinsurance captive insurance company shall notify the commissioner in writing within ten (10) business days of a protected cell that is insolvent or unable to meet its claim or expense obligations.

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23-63-1623

Issuance of certificate of authority

A licensed captive insurance company that meets the necessary requirements of the Arkansas Insurance Code, imposed upon an insurer may be considered for issuance of a certificate of authority to act as an insurer in this state.

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23-63-1701

"Protected Cell Company Act"

This subchapter may be cited as the "Protected Cell Company Act."

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23-63-1702

Purpose of provisions

This subchapter provides:

- (1) A basis for the creation of protected cells by a domestic insurer as one means of accessing alternative sources of capital and achieving the benefits of insurance securitization;
- (2) Funds to investors in fully funded insurance securitization transactions that are available to pay the insurer's insurance obligations or to repay the investors, or both; and
- (3) A means to achieve more efficiencies in conducting insurance securitizations.

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23-63-1703

Definitions

For the purposes of this subchapter:

- (1) "Domestic insurer" means an insurer domiciled in the State of Arkansas;
- (2) "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;
- (3) "General account" means the assets and liabilities of a protected cell company other than protected cell assets and protected cell liabilities;
- (4) "Indemnity trigger" means a transaction term by which relief of the issuer's obligation to repay investors is triggered by incurring a specified level of losses under its insurance or reinsurance contracts;
- (5)(A) "Fair value" of an asset or liability means the amount at which that asset or liability could be bought, incurred, sold, or settled in a current transaction between willing parties that is not a forced or liquidation sale.
 - (B)(i) 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.
 - (ii) If a quoted market price is available, the fair value is the product of the number of trading units multiplied by the market price.
 - (iii) If quoted market prices are not available, the estimate of fair value shall be based on the best information available.

(iv)(a) 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.

(b) 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.

(c) Valuation techniques for measuring financial assets and liabilities and for 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.

(d) 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.

(e)(1) Estimates of expected future cash flows, if used to estimate fair value, shall be the best estimate based on reasonable and supportable assumptions and projections.

(2) All available evidence shall be considered in developing estimates of expected future cash flows.

(3) The weight given to the evidence shall be commensurate with the extent to which the evidence can be verified objectively.

(4) 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;

(6) "Nonindemnity 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's incurring a specified level of losses under its insurance or reinsurance contracts;

(7) "Protected cell" means an identified pool of assets and liabilities of a protected cell company segregated and insulated by means of this subchapter from the remainder of the protected cell company's assets and liabilities;

(8) "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 protected cell from the protected cell assets of other protected cells and from the assets of the protected cell company's general account;

(9) "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;

(10) "Protected cell company" means a domestic insurer that has one (1) or more protected cells;

(11) "Protected cell company insurance securitization" means:

(A) The issuance of debt instruments by a protected cell company from which the proceeds support the exposures attributed to the protected cell; and

(B) The repayment of principal or interest, or both, to investors under the transaction terms is contingent upon the occurrence or nonoccurrence of an event which exposes the protected cell company to loss under insurance or reinsurance contracts it has issued; and

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

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23-63-1704

Establishment of protected cells

- (a)(1) A protected cell company may establish one (1) or more protected cells by submitting a plan of operation, or amendments to a plan, with respect to each protected cell in connection with an insurance securitization to the Insurance Commissioner for prior written approval.
- (2) The plan shall include, but not be limited to:
- (A) The specific business objectives of the protected cell; and
- (B) The investment guidelines of the protected cell.
- (3) Upon receiving written approval, the protected cell company, in accordance with the approved plan of operation, may 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.
- (4) A protected cell shall have its own distinct name or designation, which shall include the words "protected cell."
- (5) 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.
- (6) Protected cell assets shall be held in the protected cell accounts for the purpose of satisfying the obligations of that protected cell.
- (b)(1) 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.
- (2) 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.
- (3) 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.
- (c)(1) The creation of a protected cell does not create, in respect to that protected cell, a legal person separate from the protected cell company.
- (2)(A) Amounts attributed to a protected cell under this subchapter, including assets transferred to a protected cell account, are owned by the protected cell company.
- (B) The protected cell company may not be, nor hold itself out to be, a trustee with respect to those protected cell assets of that protected cell account.

(3) The protected cell company, however, 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 if allowed by applicable law.

(d)(1) This subchapter does not 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.

(2) 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.

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

(2)(A) If this subsection 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.

(B) The remedy of tracing shall not be an exclusive remedy.

(f) When establishing a protected cell, the protected cell company shall 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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23-63-1705

Assets; liabilities; insurance securitization

(a)(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.

(2) 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.

(b)(1) The income, gains, and losses, realized or unrealized, from protected cell assets and 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.

(2)(A) Amounts attributed to any protected cell and accumulations on the attributed amounts may be invested and reinvested without regard to any requirements or limitations of § 23-63-801 et seq.

(B) The investments in a protected cell or cells shall not be taken into account in applying the investment limitations applicable to the investments of the protected cell company.

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

(d)(1) A protected cell company, in respect to its protected cells, shall engage in fully funded indemnity triggered insurance securitization to support in full the protected cell exposures attributable to that protected cell.

(2) A protected cell company insurance securitization that is nonindemnity triggered shall qualify as an insurance securitization after the Insurance Commissioner adopts regulations addressing the methods of funding the portion of the risk that is not indemnity based, accounting, disclosure, risk-based capital treatment, and assessing risks associated with such securitizations.

(3) A protected cell company insurance securitization that is not fully funded, whether indemnity triggered or nonindemnity triggered, is prohibited.

(4)(A) Protected cell assets may be used to pay interest or other consideration on any outstanding debt or other obligation attributable to that protected cell.

(B) Nothing in this subsection shall 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.

(e)(1) In all protected cell company insurance securitizations, the contracts or other documentation effecting the transaction shall contain provisions identifying the protected cell to which the transaction will be attributed.

(2) 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.

(3) Failure to include the language required by this subsection 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 subchapter.

(f)(1) A protected cell company shall be authorized to attribute to a protected cell account only the insurance obligations relating to the protected cell company's general account.

(2) A protected cell shall not be authorized to issue insurance or reinsurance contracts directly to policyholders or reinsureds or to have any obligation to the policyholders or reinsureds of the protected cell company's general account.

(g) At the cessation of business of a protected cell, the protected cell company shall voluntarily close out the protected cell account.

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Arkansas
Insurance Code

TITLE 23 -- PUBLIC UTILITIES AND REGULATED INDUSTRIES...Subtitle 3. Insurance...Chapter 63 -- INSURANCE COMPANIES
GENERALLY...Subchapter 17. Protected Cell Company Act

23-63-1706

Rights of creditors

(a)(1)(A) Protected cell assets shall be available only to the creditors of the protected cell company that are creditors to that protected cell.

(B) Those creditors shall be entitled 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 not creditors in respect to that protected cell.

(C) Creditors of 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.

(2) Protected cell assets shall be available only to creditors of a protected cell company after all protected cell liabilities have been extinguished or as provided for in the plan of operation relating to that protected cell.

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

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

(2) 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, with respect to that obligation, that person shall not 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.

(c) 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 be entitled, with respect to that obligation, to have recourse only to the assets of the protected cell company's general account.

(d)(1) The activities, assets, and obligations relating to a protected cell are not subject to the laws of this state governing life and health and property and casualty guaranty or insolvency funds.

(2) A protected cell or a protected cell company shall not be assessed by or otherwise be required to contribute to any guaranty fund or guaranty association in this state with respect to the activities, assets, or obligations of a protected cell.

(3) This subsection shall not affect the activities or obligations of an insurer's general account.

(e) The establishment of one (1) or more protected cells alone shall not 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.

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GENERALLY...Subchapter 17. Protected Cell Company Act

23-63-1707**Company rehabilitation and liquidation**

(a) Notwithstanding any provision of the Arkansas Insurance Code or any regulation promulgated under the Arkansas Insurance Code 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 conformance with this subchapter.

(b) 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 provision in the contracts or other documentation governing the protected cell company insurance securitization.

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GENERALLY...Subchapter 17. Protected Cell Company Act

23-63-1708**Transaction of insurance business**

(a) A protected cell company insurance securitization shall not be deemed to be an insurance or reinsurance contract.

(b) An investor in a protected cell company insurance securitization shall not be deemed, by sole means of this investment, to be transacting insurance business in this state.

(c) The underwriters or selling agents and their partners, directors, officers, members, managers, employees, agents, representatives, and advisors involved in a protected cell company insurance securitization shall not be deemed to be conducting an insurance or reinsurance agency, brokerage, intermediary, advisory, or consulting business by virtue of their activities in connection with the protected cell company insurance securitization.

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23-63-1709

Regulatory authority

The Insurance Commissioner may promulgate regulations necessary to carry out the purpose and intent of this subchapter.

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