

**Superseded 5/12/2015**

**31A-37-102 Definitions.**

As used in this chapter:

- (1) "Affiliated company" means a business entity that because of common ownership, control, operation, or management is in the same corporate system as:
  - (a) a parent;
  - (b) an industrial insured; or
  - (c) a member organization.
- (2) "Alien captive insurance company" means an insurer:
  - (a) formed to write insurance business for a parent or affiliate of the insurer; and
  - (b) licensed pursuant to the laws of an alien jurisdiction that imposes statutory or regulatory standards:
    - (i) on a business entity transacting the business of insurance in the alien jurisdiction; and
    - (ii) in a form acceptable to the commissioner.
- (3) "Association" means a legal association of two or more persons that has been in continuous existence for at least one year if:
  - (a) the association or its member organizations:
    - (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;
  - (b) the association's member organizations collectively constitute all of the subscribers of an association captive insurance company formed as a reciprocal insurer; or
  - (c) the association or its member organizations have complete voting control over an association captive insurance company formed as a limited liability company.
- (4) "Association captive insurance company" means a business entity that insures risks of:
  - (a) a member organization of the association;
  - (b) an affiliate of a member organization of the association; and
  - (c) the association.
- (5) "Branch business" means an insurance business transacted by a branch captive insurance company in this state.
- (6) "Branch captive insurance company" means an alien captive insurance company that has a certificate of authority from the commissioner to transact the business of insurance in this state through a business unit with a principal place of business in this state.
- (7) "Branch operation" means a business operation of a branch captive insurance company in this state.
- (8) "Captive insurance company" means any of the following formed or holding a certificate of authority under this chapter:
  - (a) a branch captive insurance company;
  - (b) a pure captive insurance company;
  - (c) an association captive insurance company;
  - (d) a sponsored captive insurance company;
  - (e) an industrial insured captive insurance company;
  - (f) a captive reinsurance company;
  - (g) a special purpose captive insurance company; or
  - (h) a special purpose financial captive insurance company.
- (9) "Captive reinsurance company" means a reinsurer that is:
  - (a) formed or has a certificate of authority pursuant to this chapter;

- (b) wholly owned by a qualifying reinsurer parent company; and
  - (c) a stock corporation.
- (10) "Common ownership and control" means that two or more captive insurance companies are owned or controlled by the same person or group of persons as follows:
- (a) in the case of a captive insurance company that is a stock corporation, the direct or indirect ownership of 80% or more of the outstanding voting stock of the stock corporation;
  - (b) in the case of a captive insurance company that is a mutual corporation, the direct or indirect ownership of 80% or more of the surplus and the voting power of the mutual corporation;
  - (c) in the case of a captive insurance company that is a limited liability company, the direct or indirect ownership by the same member or members of 80% or more of the membership interests in the limited liability company; or
  - (d) in the case of a sponsored captive insurance company, a protected cell is a separate captive insurance company owned and controlled by the protected cell's participant, only if:
    - (i) the participant is the only participant with respect to the protected cell; and
    - (ii) the participant is the sponsor or is affiliated with the sponsor of the sponsored captive insurance company through common ownership and control.
- (11) "Commissioner" means the Insurance Commissioner or the commissioner's designee.
- (12) "Consolidated debt to total capital ratio" means the ratio of Subsection (12)(a) to (b).
- (a) This Subsection (12)(a) is an amount equal to the sum of all debts and hybrid capital instruments including:
    - (i) all borrowings from depository institutions;
    - (ii) all senior debt;
    - (iii) all subordinated debts;
    - (iv) all trust preferred shares; and
    - (v) all other hybrid capital instruments that are not included in the determination of consolidated GAAP net worth issued and outstanding.
  - (b) This Subsection (12)(b) is an amount equal to the sum of:
    - (i) total capital consisting of all debts and hybrid capital instruments as described in Subsection (12)(a); and
    - (ii) shareholders' equity determined in accordance with generally accepted accounting principles for reporting to the United States Securities and Exchange Commission.
- (13) "Consolidated GAAP net worth" means the consolidated shareholders' equity determined in accordance with generally accepted accounting principles for reporting to the United States Securities and Exchange Commission.
- (14) "Controlled unaffiliated business" means a business entity:
- (a)
    - (i) in the case of a pure captive insurance company, that is not in the corporate system of a parent or the parent's affiliate; or
    - (ii) in the case of an industrial insured captive insurance company, that is not in the corporate system of an industrial insured or an affiliated company of the industrial insured;
  - (b)
    - (i) in the case of a pure captive insurance company, that has a contractual relationship with a parent or affiliate; or
    - (ii) in the case of an industrial insured captive insurance company, that has a contractual relationship with an industrial insured or an affiliated company of the industrial insured; and
  - (c) whose risks are managed by one of the following in accordance with Subsection 31A-37-106(1)(k):
    - (i) a pure captive insurance company; or

- (ii) an industrial insured captive insurance company.
- (15) "Department" means the Insurance Department.
- (16) "Industrial insured" means an insured:
  - (a) that produces insurance:
    - (i) by the services of a full-time employee acting as a risk manager or insurance manager; or
    - (ii) using the services of a regularly and continuously qualified insurance consultant;
  - (b) whose aggregate annual premiums for insurance on all risks total at least \$25,000; and
  - (c) that has at least 25 full-time employees.
- (17) "Industrial insured captive insurance company" means a business entity that:
  - (a) insures risks of the industrial insureds that comprise the industrial insured group; and
  - (b) may insure the risks of:
    - (i) an affiliated company of an industrial insured; or
    - (ii) a controlled unaffiliated business of:
      - (A) an industrial insured; or
      - (B) an affiliated company of an industrial insured.
- (18) "Industrial insured group" means:
  - (a) a group of industrial insureds 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 complete voting control over an industrial insured captive insurance company incorporated as a mutual insurer;
  - (b) a group that is:
    - (i) created under the Product Liability Risk Retention Act of 1981, 15 U.S.C. Section 3901 et seq., as amended, as a corporation or other limited liability association; and
    - (ii) taxable under this title as a:
      - (A) stock corporation; or
      - (B) mutual insurer; or
  - (c) a group that has complete voting control over an industrial captive insurance company formed as a limited liability company.
- (19) "Member organization" means a person that belongs to an association.
- (20) "Parent" means a person that directly or indirectly owns, controls, or holds with power to vote more than 50% of:
  - (a) the outstanding voting securities of a pure captive insurance company; or
  - (b) the pure captive insurance company, if the pure captive insurance company is formed as a limited liability company.
- (21) "Participant" means an entity that is insured by a sponsored captive insurance company:
  - (a) if the losses of the participant are limited through a participant contract to the assets of a protected cell; and
  - (b)
    - (i) the entity is permitted to be a participant under Section 31A-37-403; or
    - (ii) the entity is an affiliate of an entity permitted to be a participant under Section 31A-37-403.
- (22) "Participant contract" means a contract by which a sponsored captive insurance company:
  - (a) insures the risks of a participant; and
  - (b) limits the losses of the participant to the assets of a protected cell.
- (23) "Protected cell" means a separate account established and maintained by a sponsored captive insurance company for one participant.
- (24) "Pure captive insurance company" means a business entity that insures risks of a parent or affiliate of the business entity.

- (25) "Qualifying reinsurer parent company" means a reinsurer:
  - (a) authorized to write reinsurance by this state; and
  - (b) that has:
    - (i) a consolidated GAAP net worth of not less than \$500,000,000; and
    - (ii) a consolidated debt to total capital ratio not greater than .50.
- (26) "Special purpose financial captive insurance company" is as defined in Section 31A-37a-102.
- (27) "Sponsor" means an entity that:
  - (a) meets the requirements of Section 31A-37-402; and
  - (b) is approved by the commissioner to:
    - (i) provide all or part of the capital and surplus required by applicable law; and
    - (ii) organize and operate a sponsored captive insurance company.
- (28) "Sponsored captive insurance company" means a captive insurance company:
  - (a) in which the minimum capital and surplus required by applicable law is provided by one or more sponsors;
  - (b) that is formed or holding a certificate of authority under this chapter;
  - (c) that insures the risks of a separate participant through the contract; and
  - (d) that segregates each participant's liability through one or more protected cells.
- (29) "Treasury rates" means the United States Treasury strip asked yield as published in the Wall Street Journal as of a balance sheet date.