

## **Part 3 Formation and Assets**

### **31A-37a-301 Formation.**

- (1) A special purpose financial captive insurance company may be:
  - (a) incorporated as a stock insurer with its capital divided into shares and held by its stockholders; or
  - (b) organized as a manager-managed limited liability company.
- (2) A special purpose financial captive insurance company's organizational documents shall limit the special purpose financial captive insurance company's authority to transact the business of insurance or reinsurance to those activities that the special purpose financial captive insurance company conducts to accomplish its purposes as expressed in this chapter.

Enacted by Chapter 302, 2008 General Session

### **31A-37a-302 Minimum capital and surplus.**

- (1) The commissioner may not issue a special purpose financial captive insurance company a certificate of authority under this chapter unless it possesses unimpaired paid-in capital and surplus of not less than \$250,000 on the day on which the certificate of authority is issued.
- (2) A special purpose financial captive insurance company shall maintain unimpaired paid-in capital and surplus of not less than \$250,000 at all times when having a certificate of authority under this chapter.

Enacted by Chapter 302, 2008 General Session

### **31A-37a-303 Disposition of assets -- Investments.**

- (1) A special purpose financial captive insurance company or a person on its behalf shall preserve and administer an asset of the special purpose financial captive insurance company to satisfy the liabilities and obligations of the special purpose financial captive insurance company incident to:
  - (a) the reinsurance contract;
  - (b) an insurance securitization; and
  - (c) an agreement related to Subsection (1)(a) or (b).
- (2) In a special purpose financial captive insurance company insurance securitization, a security offering memorandum or other document issued to a prospective investor regarding the offer and sale of a surplus note or other security shall include a disclosure that all or part of the proceeds of the insurance securitization will be used to fund the special purpose financial captive insurance company's obligations to the ceding insurer.
- (3) A special purpose financial captive insurance company is not subject to a restriction on investments other than the following:
  - (a) A special purpose financial captive insurance company may not make a loan to a person other than:
    - (i) as permitted under its plan of operation; or
    - (ii) as otherwise approved in advance of the loan by the commissioner.
  - (b) The commissioner may prohibit or limit an investment that threatens the solvency or liquidity of a special purpose financial captive insurance company unless the investment is otherwise approved in:

- (i) the special purpose financial captive insurance company's plan of operation; or
- (ii) an order issued to the special purpose financial captive insurance company pursuant to Section 31A-37a-201.

Enacted by Chapter 302, 2008 General Session

**31A-37a-304 Securities.**

- (1)
  - (a) A special purpose financial captive insurance company may:
    - (i) subject to the prior approval of the commissioner, account for the proceeds of a surplus note issued by the special purpose financial captive insurance company as surplus; and
    - (ii) except as provided in Subsection (1)(b), submit for prior approval of the commissioner a periodic written request for authorization to make a payment of interest on or a repayment of principal of a surplus note or other debt obligation issued by the special purpose financial captive insurance company.
  - (b)
    - (i) The commissioner may not approve a payment described in Subsection (1)(a)(i) if the commissioner determines that the payment would jeopardize the ability of the special purpose financial captive insurance company or another person to fulfill its respective obligations pursuant to a special purpose financial captive insurance company insurance securitization agreement, reinsurance contract, or a related transaction.
    - (ii) In lieu of approval of a periodic written request for authorization to make a payment of interest on or repayment of principal of a surplus note or other debt obligation issued by the special purpose financial captive insurance company, the commissioner may approve a formula or plan for payment of interest, principal, or both with respect to the surplus note or debt obligation.
    - (iii) A special purpose financial captive insurance company shall include a formula or plan approved under Subsection (1)(b)(ii) in the special purpose financial captive insurance company's plan of operation.
- (2) In addition to Section 31A-37-302, a special purpose financial captive insurance company may not declare or pay a dividend or distribution if the dividend or distribution jeopardizes the ability of the special purpose financial captive insurance company or another person to fulfill the special purpose financial captive insurance company's or other person's respective obligations pursuant to a special purpose financial captive insurance company insurance securitization agreement, a reinsurance contract, or a related transaction.
- (3)
  - (a) A special purpose financial captive insurance company security is not subject to regulation as an insurance or reinsurance contract.
  - (b) An investor in a special purpose financial captive insurance company security or a holder of a special purpose financial captive insurance company security may not be considered to be transacting the business of insurance in this state solely by reason of having an interest in the security.
  - (c) The following people involved in an insurance securitization by a special purpose financial captive insurance company may not be considered to be an insurance producer or broker, or to be conducting business as an insurer, reinsurer, insurance agency, brokerage, intermediary, advisory, or consulting business solely by virtue of the person's underwriting activities in connection with the insurance securitization:
    - (i) an underwriter's placement;

- (ii) a selling agent; or
- (iii) a partner, commissioner, officer, member, manager, employee, agent, representative, or advisor of a person listed in Subsection (3)(c)(i) or (ii).

Enacted by Chapter 302, 2008 General Session