

Effective 5/3/2023

31A-37-102 Definitions.

As used in this chapter:

- (1)
 - (a) "Affiliated company" means a business entity that because of common ownership, control, operation, or management is in the same corporate or limited liability company system as:
 - (i) a parent;
 - (ii) an industrial insured; or
 - (iii) a member organization.
 - (b) "Affiliated company" does not include a business entity for which the commissioner issues an order finding that the business entity is not an affiliated company.
- (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 or foreign jurisdiction that imposes statutory or regulatory standards:
 - (i) on a business entity transacting the business of insurance in the alien or foreign jurisdiction; and
 - (ii) in a form acceptable to the commissioner.
- (3) "Applicant captive insurance company" means an entity that has submitted an application for a certificate of authority for a captive insurance company, unless the application has been denied or withdrawn.
- (4) "Association" means a legal association of two or more persons that meets the following requirements:
 - (a) the persons are exposed to similar or related liability because of related, similar, or common business trade, products, services, premises, or operations; and
 - (b)
 - (i) the association or the association's member organizations:
 - (A) 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;
 - (B) have complete voting control over an association captive insurance company incorporated as a mutual insurer; or
 - (C) have complete voting control over an association captive insurance company formed as a limited liability company; or
 - (ii) the association's member organizations collectively constitute all of the subscribers of an association captive insurance company formed as a reciprocal insurer.
- (5) "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.
- (6) "Branch business" means an insurance business transacted by a branch captive insurance company in this state.
- (7) "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 captive insurance company that is domiciled outside of this state.
- (8) "Branch operation" means a business operation of a branch captive insurance company in this state.
- (9)
 - (a) "Captive insurance company" means the same as that term is defined in Section 31A-1-301.

- (b) "Captive insurance company" includes any of the following formed or holding a certificate of authority under this chapter:
 - (i) a branch captive insurance company;
 - (ii) a pure captive insurance company;
 - (iii) an association captive insurance company;
 - (iv) a sponsored captive insurance company;
 - (v) an industrial insured captive insurance company, including an industrial insured captive insurance company formed as a risk retention group captive in this state pursuant to the provisions of the Federal Liability Risk Retention Act of 1986;
 - (vi) a special purpose captive insurance company; or
 - (vii) a special purpose financial captive insurance company.
- (10) "Commissioner" means Utah's Insurance Commissioner or the commissioner's designee.
- (11) "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.
- (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' or members' 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 or limited liability company 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 or limited liability company 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 that are or will be insured by a pure captive insurance company, an industrial insured captive insurance company, or both, are managed in accordance with Subsection 31A-37-106(1)(j) by:
 - (i)
 - (A) a pure captive insurance company; or
 - (B) an industrial insured captive insurance company; or
 - (ii) a parent or affiliate of:
 - (A) a pure captive insurance company; or
 - (B) an industrial insured captive insurance company.
- (15) "Criminal act" means an act for which a person receives a verdict or finding of guilt after a criminal trial or a plea of guilty or nolo contendere to a criminal charge.
- (16) "Establisher" means a person who establishes a business entity or a trust.
- (17) "Governing body" means the persons who hold the ultimate authority to direct and manage the affairs of an entity.
- (18) "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.
- (19) "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.
- (20) "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 or organized as a limited liability company as a stock insurer; or
 - (ii) have complete voting control over an industrial insured captive insurance company incorporated or organized as a limited liability company as a mutual insurer;
 - (b) a group that is:
 - (i) created under the Product Liability Risk Retention Act of 1981, 15 U.S.C. Sec. 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.
- (21) "Member organization" means a person that belongs to an association.
- (22) "Parent" means a person that directly or indirectly owns, controls, or holds with power to vote more than 50% of the outstanding securities of an organization.
- (23) "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.
- (24) "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.
- (25) "Protected cell" means a separate account established and maintained by a sponsored captive insurance company for one participant.
- (26) "Pure captive insurance company" means a business entity that insures risks of a parent or affiliate of the business entity.
- (27) "Special purpose financial captive insurance company" means the same as that term is defined in Section 31A-37a-102.
- (28) "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 in an amount of not less than \$350,000, which amount the commissioner may increase by order if the commissioner considers it necessary; and
 - (ii) organize and operate a sponsored captive insurance company.
- (29) "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.
- (30) "Treasury rates" means the United States Treasury strip asked yield as published in the Wall Street Journal as of a balance sheet date.

Amended by Chapter 194, 2023 General Session