

Part 1 General Provisions

31A-37a-101 Title.

This chapter is known as the "Special Purpose Financial Captive Insurance Company Act."

Enacted by Chapter 302, 2008 General Session

31A-37a-102 Definitions.

(1) For purposes of this chapter:

(a) "Ceding insurer" means an insurer that:

(i) is approved by the commissioner;

(ii) is licensed or otherwise authorized to transact the business of insurance or reinsurance in the insurer's state or country of domicile; and

(iii) cedes risk to a special purpose financial captive insurance company pursuant to a reinsurance contract.

(b) Notwithstanding Section 31A-27a-102, "insolvency" or "insolvent" for purposes of applying Chapter 27a, Insurer Receivership Act, to a special purpose financial captive insurance company, means that a special purpose financial captive insurance company:

(i) is unable to pay an obligation when the obligation is due, unless the obligation is the subject of a bona fide dispute; or

(ii) fails to meet the criteria and conditions for solvency of the special purpose financial captive insurance company established by the commissioner by rule or order.

(c)

(i) "Insurance securitization" means a transaction or a group of related transactions:

(A) that may include a capital market offering;

(B) that is effected through one or more related risk transfer instruments and facilitating administrative agreements;

(C) where all or part of the result of the transaction or group of related transactions is used to fund the special purpose financial captive insurance company's obligations under a reinsurance contract with a ceding insurer;

(D) by which:

(I) proceeds are obtained by a special purpose financial captive insurance company, directly or indirectly, through the issuance of one or more securities by the special purpose financial captive insurance company or another person; or

(II) a person provides one or more letters of credit or other assets for the benefit of the special purpose financial captive insurance company if the commissioner authorizes the special purpose financial captive insurance company to treat the letter of credit or asset as an admitted asset for purposes of the special purpose financial captive insurance company's annual report; and

(E) if all or a part of the proceeds, a letter of credit, or asset described in this Subsection (1) (c) is used to fund the special purpose financial captive insurance company's obligations under a reinsurance contract with a ceding insurer.

(ii) "Insurance securitization" does not include the issuance of a letter of credit for the benefit of the commissioner to satisfy all or part of the special purpose financial captive insurance company's capital and surplus requirements under Section 31A-37a-302.

(d) "Management" means:

- (i) a board of directors of a special purpose financial captive insurance company;
 - (ii) a managing board of a special purpose financial captive insurance company; or
 - (iii) one or more individuals with the overall responsibility for the management of the affairs of the special purpose financial captive insurance company, including:
 - (A) an officer elected or appointed to act on behalf of the special purpose financial captive insurance company; or
 - (B) an agent elected or appointed to act on behalf of the special purpose financial captive insurance company.
 - (e) "Organizational document" means:
 - (i) in the case of a special purpose financial captive insurance company formed as a stock corporation, the special purpose financial captive insurance company's:
 - (A) articles of incorporation; and
 - (B) bylaws; and
 - (ii) in the case of a special purpose financial captive insurance company formed as a limited liability company, the special purpose financial captive insurance company's:
 - (A) articles of organization or certificate of organization; and
 - (B) operating agreement.
 - (f) "Reinsurance contract" means a contract between a special purpose financial captive insurance company and a ceding insurer pursuant to which the special purpose financial captive insurance company agrees to provide reinsurance to the ceding insurer for risks associated with the ceding insurer's insurance or reinsurance business.
 - (g) "Security" means:
 - (i) a security as defined in Section 31A-1-301; or
 - (ii) one or more of the following that the commissioner designates, by rule or order, as a "security" for purposes of this chapter:
 - (A) a debt obligation;
 - (B) equity;
 - (C) a surplus certificate;
 - (D) a surplus note;
 - (E) a funding agreement;
 - (F) a derivative; or
 - (G) another financial instrument.
 - (h) "Special purpose financial captive insurance company" means a captive insurance company has a certificate of authority under this chapter from the commissioner to operate as a special purpose financial captive insurance company pursuant to this chapter.
 - (i) "Special purpose financial captive insurance company security" means:
 - (i) a security issued by a special purpose financial captive insurance company; or
 - (ii) a security issued by a third party, the proceeds of which are obtained directly or indirectly by a special purpose financial captive insurance company.
 - (j) "Surplus note" means an unsecured subordinated debt obligation that has one or more characteristics that are consistent with paragraph 3 of the National Association of Insurance Commissioners Statement of Statutory Accounting Principles No. 41, as amended from time to time and as modified or supplemented by rule or order of the commissioner.
- (2) The terms defined in Section 31A-37-102 shall have the same meaning for purposes of this chapter.

Amended by Chapter 412, 2013 General Session

31A-37a-103 Applicable law.

- (1)
 - (a) A special purpose financial captive insurance company is subject to:
 - (i) this chapter; and
 - (ii) Chapter 37, Captive Insurance Companies Act.
 - (b) If there is a conflict between this chapter and Chapter 37, Captive Insurance Companies Act, this chapter controls.
- (2) A special purpose financial captive insurance company is subject to a rule made under Section 31A-37-106 that is in effect on or after May 5, 2008.
- (3) The commissioner may, by order, exempt a special purpose financial captive insurance company from a provision of Chapter 37, Captive Insurance Companies Act, or a rule made under Section 31A-37-106 if the commissioner determines that the application of the provision or rule is inappropriate on the basis of the special purpose financial captive insurance company's plan of operation.

Enacted by Chapter 302, 2008 General Session

31A-37a-104 Reporting -- Books and records.

- (1) For purposes of Section 31A-37-501:
 - (a) the commissioner shall, by rule or order, establish the form and content of the annual report to be filed by a special purpose financial captive insurance company; and
 - (b) a special purpose financial captive insurance company shall report:
 - (i) using statutory accounting principles, unless the commissioner requires, approves, or accepts the use of a generally accepted accounting principle; and
 - (ii) with an appropriate or necessary modification or adaptation of the statutory or generally accepted accounting principle:
 - (A) required, approved, or accepted by the commissioner; and
 - (B) as supplemented by additional information required by the commissioner.
- (2)
 - (a) A special purpose financial captive insurance company may make written application to file its annual report on a fiscal-year basis.
 - (b) If an alternative reporting date is granted, the commissioner shall establish the due date and content of the filing required by the special purpose financial captive insurance company in addition to its annual report.
- (3)
 - (a) Unless the commissioner approves a variance before the special purpose financial captive insurance company implements the variance, a special purpose financial captive insurance company shall maintain in the state the following of the special purpose financial captive insurance company:
 - (i) a book;
 - (ii) record;
 - (iii) a document;
 - (iv) an account;
 - (v) a voucher; or
 - (vi) an agreement.
 - (b) A special purpose financial captive insurance company shall make an item listed in Subsection (3)(a) available for inspection by the commissioner at any time.

- (c) A special purpose financial captive insurance company shall keep an item listed in Subsection (3)(a) in a manner so that:
 - (i) the special purpose financial captive insurance company's financial condition, affairs, and operations can be readily ascertained; and
 - (ii) the commissioner may readily:
 - (A) verify a financial statement of the special purpose financial captive insurance company; and
 - (B) determine the special purpose financial captive insurance company's compliance with this chapter and Chapter 37, Captive Insurance Companies Act.
- (4)
 - (a) Unless the commissioner approves a variance before the special purpose financial captive insurance company implements the variance, a special purpose financial captive insurance company shall preserve and keep an item listed in Subsection (3)(a) available in this state:
 - (i) for the purpose of examination and inspection; and
 - (ii) until the commissioner approves the destruction or other disposition.
 - (b) If the commissioner approves the keeping of an item listed in Subsection (3)(a) outside this state, the special purpose financial captive insurance company shall maintain a complete copy of the original in the state.
 - (c) An item listed in Subsection (3)(a) may be photographed, reproduced on film, or stored and reproduced electronically.

Enacted by Chapter 302, 2008 General Session

31A-37a-105 Transition.

- (1)
 - (a) Except as otherwise determined by the commissioner, a captive insurance company that on May 5, 2008 has a certificate of authority from the commissioner pursuant to Chapter 37, Captive Insurance Companies Act, and engages in insurance securitization:
 - (i) is subject to this chapter as a special purpose financial captive insurance company; and
 - (ii) is considered to have a certificate of authority issued under this chapter.
 - (b) The commissioner may require a captive insurance company described in Subsection (1)
 - (a) to take an action that the commissioner determines is reasonably necessary to bring the captive insurance company into compliance with this chapter.
- (2) The commissioner may issue an order described in Section 31A-37a-201 with respect to a captive insurance company described in Subsection (1)(a) if the captive insurance company is not in compliance with this chapter.

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