



CARL T.C. GUTIERREZ  
GOVERNOR OF GUAM

OCT 24 1997

Refer to  
Legislative Secretary

The Honorable Antonio R. Unpingco  
Speaker  
Twenty-Fourth Guam Legislature  
Guam Legislature Temporary Building  
155 Hesler Street  
Agana, Guam 96910

Dear Speaker Unpingco:


Enclosed please find a copy of Substitute Bill No. 386 (COR), AN ACT TO AMEND §§23101, 23102, 23104, 23105, 23106, 23110, 23111 AND 23112 OF TITLE 22 OF THE GUAM CODE ANNOTATED, AND TO ADD §§23116, 23117 and 23118 TO THE SAME TITLE, RELATIVE TO MAKING TECHNICAL AMENDMENTS TO THE CAPTIVE INSURANCE LAW AND TO APPROVE THE AMENDED RULES AND REGULATIONS, RELATIVE TO THE ISSUANCE OF QUALIFYING CERTIFICATES BY GUAM ECONOMIC DEVELOPMENT AUTHORITY, AND TO APPROVE THE DEPARTMENT OF REVENUE AND TAXATION'S AMENDED RULES AND REGULATIONS OF THE INSURANCE COMMISSIONER OF GUAM RELATIVE TO CAPTIVE INSURANCE COMPANIES.", which I have signed into law today as Public Law No. 24-104.

This legislation provides the mechanism to implement the provisions of Public Law No. 23-109. Certain amendments to the Guam Economic Development Authority (GEDA) law are included, as well as rules and regulations of the GEDA and the Department of Revenue and Taxation.

The Guam Economic Development Authority has worked hard to bring this project to this point, and will aggressively market the attractiveness of Guam as a home for the captive insurance industry.

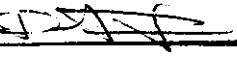
This new industry promises to provide a local business activity which will not require enormous infrastructure or other investment on the part of Guam, while at the same time will provide opportunities for Guam residents.

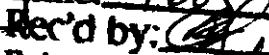
Very truly yours,

  
Carl T. C. Gutierrez  
Governor of Guam

Attachment

cc: The Honorable Joanne M. S. Brown  
Legislative Secretary

OFFICE OF THE LEGISLATIVE SECRETARY	
ACKNOWLEDGMENT RECEIPT	
Received By	
Time	5:28pm
Date	10-24-97

Office of the Speaker  
ANTONIO R. UNPINGCO  
Date: 10/24/97  
Time: 1:05  
Rec'd by:   
Print Name: Charlene Duena

00508

TWENTY-FOURTH GUAM LEGISLATURE  
1997 (FIRST) Regular Session

**Bill No. 386 (COR)**

As substituted jointly by the Committees on  
Finance and Taxation and Tourism, Economic  
Development and Cultural Affairs and further  
substituted on the Floor and amended.

Introduced by:

A. C. Lamorena, V  
A. C. Blaz  
A. R. Unpingco  
Felix P. Camacho  
Mark Forbes  
T. C. Ada  
F. B. Aguon, Jr.  
E. Barrett-Anderson  
J. M.S. Brown  
Felix P. Camacho  
Francisco P. Camacho  
M. C. Charfauros  
E. J. Cruz  
W. B.S.M. Flores  
L. F. Kasperbauer  
C. A. Leon Guerrero  
L. Leon Guerrero  
V. C. Pangelinan  
J. C. Salas  
A. L.G. Santos  
F. E. Santos  
J. Won Pat-Borja

AN ACT TO AMEND §§23101, 23102, 23104, 23105,  
23106, 23110, 23111 AND 23112 OF TITLE 22 OF THE  
GUAM CODE ANNOTATED, AND TO ADD  
§§23116, 23117 AND 23118 TO THE SAME TITLE,  
RELATIVE TO MAKING TECHNICAL

AMENDMENTS TO THE CAPTIVE INSURANCE  
LAW AND TO APPROVE THE AMENDED RULES  
AND REGULATIONS, RELATIVE TO THE  
ISSUANCE OF QUALIFYING CERTIFICATES BY  
THE GUAM ECONOMIC DEVELOPMENT  
AUTHORITY, AND TO APPROVE THE  
DEPARTMENT OF REVENUE AND TAXATION'S  
AMENDED RULES AND REGULATIONS OF THE  
INSURANCE COMMISSIONER OF GUAM  
RELATIVE TO CAPTIVE INSURANCE  
COMPANIES.

1 BE IT ENACTED BY THE PEOPLE OF GUAM:

2 Section 1. Amendment of Definitions for Captive Insurance  
3 Companies. Section 23101 of Title 22 of the Guam Code Annotated is hereby  
4 amended to read as follows:

5 "Section 23101. Definitions. As used in this Chapter, unless the  
6 context requires otherwise:

7 (1) 'Captive insurance company':

8 (a) Means a limited purpose insurance subsidiary of a  
9 company with the specific objective of financing risks of its parent  
10 and affiliated companies; and

11 (b) Is a pure captive insurance company group captive  
12 insurance company, or industrial insured captive company  
13 formed or licensed under the provisions of this Chapter.

14 (2) 'Affiliated company' means any company in the same  
15 corporate system as a parent or a member organization by virtue of  
16 common ownership, control, operation or management, or, in the case  
17 of a pure captive insurance company, that maintains a working

1 relationship with, and whose business risks insured by the pure captive  
2 insurance company are similar or related to the business risks of, the  
3 parent insured by the pure captive insurance company.

4 (3) **'Group'** means any legal association of individuals,  
5 corporations, partnerships, limited liability companies or associations,  
6 the member organizations of which collectively:

7 (a) own, control or hold with power to vote all of the  
8 outstanding voting securities of a group captive insurance  
9 company incorporated as a stock insurer, or

10 (b) having complete voting control over a group captive  
11 insurance company incorporated as a mutual insurer.

12 (4) **'Group captive insurance company'** means any company  
13 that insures risks of the member organizations of that group, and their  
14 affiliated companies.

15 (5) **'Commissioner'** means the Insurance Commissioner.

16 (6) **'Director'** means the Director of Revenue and Taxation.

17 (7) **'Excess workers' compensation insurance'** means in the  
18 case of an employer that has insured or self-insured the workers'  
19 compensation risks in accordance with applicable state or Federal law,  
20 insurance in excess of a specified per-incident or aggregate limit  
21 established by the Commissioner.

22 (8) **'Industrial insured'** means an insured:

23 (a) who procures the insurance of any risk or risks by use  
24 of the services of an employee acting as an insurance manager or  
25 buyer;

1 (b) whose aggregate annual premiums for insurance on all  
2 risks total at least Fifteen Thousand Dollars (\$15,000.00); and

3 (c) who has at least ten (10) full-time employees.

4 (9) **'Industrial insured captive insurance company'** means any  
5 company that insures risks of the industrial insured group, and their  
6 affiliated companies.

7 (10) **'Industrial insured group'** means any group that meets  
8 either of the following criteria:

9 (a) any group of industrial insured that collectively:

10 (i) own, control or hold with power to vote all of the  
11 outstanding voting securities of an industrial insured captive  
12 insurance company incorporated as a stock insurer, or

13 (ii) have corporate voting control over an industrial  
14 insured captive insurance company incorporated as a  
15 mutual insurer, or

16 (b) any group which is created under the Product Liability  
17 Risk Retention Act of 1981, 15 U.S.C. §3901 *et seq.*, as amended, as  
18 a corporation or other limited liability company taxable as a stock  
19 insurance company or a mutual insurer under the laws of Guam.

20 (11) **'Member organization'** means a corporation, partnership or  
21 association that belongs to a group.

22 (12) **'Parent'** means a corporation, partnership, limited liability  
23 company or individual that directly or indirectly owns, controls or holds  
24 the power to vote more than fifty percent (50%) of the outstanding  
25 voting securities of a pure captive insurance company.

1                   (13) 'Pure captive insurance company' means any  
2                   company that insures risks of its parent and affiliated companies  
3       Section 2. Section 23102 of Title 22 of the Guam Code Annotated, is  
4 hereby amended to read as follows:

5                   "Section 23102. 'Licensing Authority.' (a) Any captive insurance  
6                   company, when permitted by its articles of association or charter, may  
7                   apply to the Commissioner for a license to do any and all insurance  
8                   comprised in Article 1 of Chapter 18, Title 22, Guam Code Annotated;  
9                   provided, however, that:

10                   (1) no pure captive insurance company may insure any  
11                   risks other than those of its parent and affiliated companies;

12                   (2) no group captive insurance company may insure any  
13                   risks other than those of the member organization of its group,  
14                   and their affiliated companies;

15                   (3) no industrial insured captive insurance company may  
16                   insure any risks other than those of the industrial insured that  
17                   comprise the industrial insured group, and their affiliated  
18                   companies;

19                   (4) no captive insurance company may accept or cede  
20                   reinsurance except as provided in §23111 of this Chapter;

21                   (5) any captive insurance company may provide excess  
22                   workers' compensation insurance to its parent and affiliated  
23                   companies, unless prohibited by the laws of the state having  
24                   jurisdiction over the transaction. Any captive insurance company

1 may reinsure workers' compensation of a qualified self-insured  
2 plan of its parent and affiliated companies; and

3 (6) no captive insurance company may directly insure any  
4 risks arising in Guam.

5 (b) No captive insurance company shall do any insurance  
6 business on Guam unless:

7 (1) It first obtains from the Commissioner a license  
8 authorizing it to do business on Guam;

9 (2) It maintains its principal place of business on Guam;

10 (3) It appoints a resident registered agent to accept service  
11 of process and to otherwise act on its behalf on Guam. Whenever  
12 such registered agent cannot with reasonable diligence be found at  
13 the registered office of the captive insurance company, the  
14 Director shall be an agent of such captive insurance company  
15 upon whom any process, notice or demand may be served; and

16 (4) It is incorporated in Guam, except that a non-domestic  
17 insurance company that has operated as an insurance company on  
18 Guam pursuant to a Guam Certificate of Authority during the five  
19 (5) years immediately preceding enactment of this Chapter shall  
20 be issued a license under this Chapter; provided that it maintains a  
21 place of business on Guam and otherwise qualifies for a license  
22 under this Chapter, except it shall not be required to comply with  
23 §§23102(b)(2) and 23102(b)(3) of this Section and §23106 of this  
24 Chapter.

1 (c)(1) Before receiving a license, a captive insurance company  
2 shall file with the Commissioner a certified copy of its Charter and By-  
3 Laws, a statement under oath of its President and Secretary showing its  
4 financial condition, and any other statements or documents required by  
5 the Commissioner.

6 (2) In addition to the information required by Subdivision (1) of  
7 this Subsection (c), each applicant captive insurance company shall file  
8 with the Commissioner evidence of the following:

9 (A) the amount of liquidity of its assets relative to the risks  
10 to be assumed;

11 (B) the adequacy of the expertise, experience, and  
12 character of the person or persons who will manage it;

13 (C) the overall soundness of its plan of operation;

14 (D) the adequacy of the loss prevention programs of its  
15 parent, group member organizations, or industrial insureds as  
16 applicable; and

17 (E) such other factors deemed relevant by the  
18 Commissioner in ascertaining whether the proposed captive  
19 insurance company will be able to meet its policy obligations.

20 (d) Each captive insurance company shall pay the  
21 Commissioner a non-refundable fee of Two Hundred Dollars (\$200.00)  
22 for examining, investigating and processing its application for license.

23 (e) Any insurance company already chartered and doing  
24 business in Guam that is a captive insurance company in compliance



1 with the provisions of this Chapter shall automatically qualify for  
2 licensure.

3 (f) If the Commissioner is satisfied that the documents and  
4 statements that such captive insurance company has filed comply with  
5 the provisions of this Chapter, he may grant a license authorizing it to  
6 do insurance business on Guam July 1 thereafter, which license may be  
7 renewed."

8 **Section 3.** Section 23104 of Title 22 of the Guam Code Annotated is  
9 hereby amended to read as follows:

10 "Section 23104. **Minimum Capital.** No pure captive insurance  
11 company, group captive insurance company incorporated as a stock  
12 insurer or industrial insured captive insurance company incorporated as  
13 a stock insurer shall be issued a license unless it shall possess and  
14 thereafter maintain unimpaired paid-in capital of:

15 (1) In the case of a pure captive insurance company, not  
16 less than Fifty Thousand Dollars (\$50,000.00);

17 (2) In the case of a group captive insurance company  
18 incorporated as a stock insurer, not less than One Hundred  
19 Thousand Dollars (\$100,000.00); and

20 (3) In the case of an industrial insured captive insurance  
21 company incorporated as a stock insurer not less than One  
22 Hundred Fifty Thousand Dollars (\$150,000.00)."

23 Such capital may be in the form of cash deposited in a member  
24 bank of the Federal Reserve System licensed to do business in Guam  
25 and approved by the Commissioner.

1           Section 4. Section 23105 of Title 22 of the Guam Code Annotated is  
2 hereby amended to read as follows:

3           **"Section 23105. Minimum Surplus; Letter of Credit.** No captive  
4 insurance company shall be issued a license unless it shall possess and  
5 thereafter maintain free surplus of:

6                   (1) in the case of a pure captive insurance company, not  
7 less than One Hundred Thousand Dollars (\$100,000.00);

8                   (2) in the case of a group captive insurance company  
9 incorporated as a mutual insurer, not less than One Hundred Fifty  
10 Thousand Dollars (\$150,000.00)

11                   (3) in the case of an industrial insured captive insurance  
12 company incorporated as a stock insurer, not less than Two  
13 Hundred Thousand Dollars (\$200,000.00);

14                   (4) in the case of a group captive insurance incorporated  
15 as a mutual insurer, not less than Two Hundred Thousand Dollars  
16 (\$200,000.00); and

17                   (5) in the case of an industrial insured captive insurance  
18 company incorporated as a mutual insurer, not less than Two  
19 Hundred Thousand Dollars (\$200,000.00).

20           Such surplus may be in the form of (i) cash or an irrevocable letter  
21 of credit issued by a member bank of the Federal Reserve System and  
22 approved by the Commissioner or (ii) any other acceptable to the  
23 Commissioner."

24           Section 5. Section 23106 of Title 22 of the Guam Code Annotated is  
25 hereby amended to read as follows:

1           "Section 23106. Formation of Captive Insurance Companies on  
2 Guam. (a) A pure captive insurance company shall be incorporated  
3 as a stock insurer with its capital divided into shares and held by the  
4 stockholders.

5           (b) A group captive insurance company or an industrial insured  
6 captive insurance company may be incorporated:

7           (1) As a stock insurer with its capital divided into shares  
8 and held by the stockholders, or

9           (2) As a mutual insurer without capital stock, the  
10 governing body of which is elected by the member organizations  
11 of its group.

12           (c) A captive insurance company shall have not less than three  
13 (3) incorporators of whom not less than one (1) shall be a resident of  
14 Guam.

15           (d) Before the Articles of Incorporation are transmitted to the  
16 Director, the incorporators shall petition the Commissioner to issue a  
17 certificate setting forth his findings that the establishment and  
18 maintenance of the proposed corporation will promote the general good  
19 of Guam. In arriving at such finding, the Commissioner shall consider:

20           (1) The character, reputation, financial standing and  
21 purpose of the incorporators;

22           (2) The character, reputation, financial responsibility,  
23 insurance experience and business qualifications of the officers  
24 and directors; and

1           (3) Such other aspects as the Commissioner shall deem  
2           advisable.

3           (e) The Articles of Incorporation, such certificate, and the  
4 organization fee shall be transmitted to the Director, who shall  
5 thereupon record both the articles of incorporation and the certificate.

6           (f) The capital stock of a captive insurance company  
7 incorporated as a stock insurer shall be issued at not less than par value.

8           (g) At least one (1) of the members of the Board of Directors of a  
9 captive insurance company incorporated on Guam shall be a resident of  
10 Guam.

11           (h) Captive insurance companies formed under the provisions  
12 of this Chapter shall have the privileges and be subject to the provisions  
13 of the General Corporation Law, as well as the applicable provisions  
14 contained in this Chapter. In the event of conflict between the provisions  
15 of said General Corporation Law and the provisions of this Chapter, the  
16 latter shall control.

17           (i) The articles of incorporation or bylaws of a captive insurance  
18 company may authorize a quorum of a board of directors to consist of  
19 no fewer than one-third (1/3) of the fixed number of directors."

20           **Section 6.** Section 23107 of Title 22 of the Guam Code Annotated is  
21 hereby amended to read as follows:

22           **"Section 23107. Reports and Statements.** (a) Captive insurance  
23 companies shall not be required to make any annual report except as  
24 provided in this Chapter.

1 (b) Prior to March 1 of each year, each captive insurance  
2 company shall submit to the Commissioner a report of its financial  
3 condition, in accordance with statutory accounting practices, verified by  
4 oath of two (2) of its Executive Officers. The Commissioner shall by rule  
5 propose the form in which the captive insurance companies shall report.

6 (c) Such annual report shall be accompanied by an unqualified  
7 opinion from the independent auditor of the captive insurance  
8 company, except that the Commissioner may accept qualified opinions  
9 for the first three (3) years following organization of a captive insurance  
10 company.

11 (d) The failure of any captive insurance company to file a report  
12 of financial condition prior to March 1 of each year shall authorize the  
13 Commissioner to impose a civil money penalty of Five Hundred Dollars  
14 (\$500.00) for each week or part of a week during which the captive  
15 insurance company is in violation until the report of financial condition  
16 is filed.

17 (e) In addition, the failure of any captive insurance company to  
18 file a report of financial condition prior to March 1 of each year shall  
19 constitute grounds for suspension, revocation or non-renewal of the  
20 license to transact captive insurance business in Guam.

21 **Section 7.** Section 23110 of Title 22 of the Guam Code Annotated is  
22 hereby amended to read as follows:

23 "Section 23110. Legal Investments. (a) No pure captive  
24 insurance company, group captive insurance company or industrial  
25 insured captive insurance company shall be subject to any restrictions

1 on allowable investments whatever, including those limitations  
2 contained in §15317 of this Title; **provided**, however, that the  
3 Commissioner may prohibit or limit any investment that threatens the  
4 solvency or liquidity of any such company."

5 **Section 8.** Section 23111 of Title 22 of the Guam Code Annotated is  
6 hereby amended to read as follows:

7 **"Section 23111. Reinsurance.** (a) Any captive insurance  
8 company may provide reinsurance, as defined and authorized in Article  
9 8 of Chapter 18 of this Title, on risks ceded by any other insurer.

10 (b) Any captive insurance company may take credit for reserves  
11 on risks ceded to a reinsurer; **provided**, however, that no captive  
12 insurance company shall reinsure a risk or part thereof with reinsurers  
13 not complying with the provisions of §18802 of this Title.

14 (c) A captive insurance company may take credit for reserves  
15 on risks or portions of risks ceded to a pool, exchange or association  
16 acting as a reinsurer which has been authorized by the Commissioner.  
17 The Commissioner may require any other documents, financial  
18 information or other evidence that such a pool, exchange or association  
19 will be able to provide adequate security for its financial obligations.  
20 The Commissioner may deny authorization or impose any limitations  
21 on the activities of a reinsurance pool, exchange or association that, in  
22 his judgement, are necessary and proper to provide adequate security  
23 for the ceding captive insurance company and for the protection and  
24 consequent benefit of the public at large.



1 (d) For all purposes of this Chapter, insurance by a captive  
2 insurance company of any workers' compensation qualified self-insured  
3 plan of its parent and affiliates shall be deemed to be reinsurance."

4 **Section 9.** Section 23112 of Title 22 of the Guam Code Annotated is  
5 hereby amended to read as follows:

6 "Section 23112. **Exemption from Compulsory Associations;**  
7 **Ratings Organizations.** No captive insurance company shall be  
8 required to join a rating organization or to join or contribute financially  
9 to any plan, pool, association, or guaranty or insolvency fund on Guam,  
10 nor shall any captive insurance company, or its insured, or its parent or  
11 any affiliated company, or any member organization of its association,  
12 receive any benefits from any such plan, pool, association, or guaranty  
13 or insolvency fund for claims arising out of the operations of such  
14 captive insurance company."

15 **Section 10.** Section 23116 is hereby added to Title 22 of the Guam Code  
16 Annotated to read as follows:

17 "Section 23116. **Maximum premiums for captive insurance**  
18 **companies.** The maximum amount of premiums which may be charged  
19 by any captive insurance company after deductions of any reinsurance  
20 taking effect simultaneously with the policies covered by the premiums  
21 shall be no more than five (5) times the paid-in capital and surplus of  
22 such captive insurance company. By way of example, if a pure captive  
23 insurance company has the minimum capital and surplus of One  
24 Hundred Fifty Thousand Dollars (\$150,000.00), its maximum premiums  
25 are Seven Hundred Fifty Thousand Dollars (\$750,000.00)."



1           Section 11. Section 23117 is hereby added to Title 22 of the Guam Code  
2 Annotated to read as follows:

3           **"Section 23117. Establishment of the Guam Captive Insurance**  
4 **Advisory Committee; Members:**

5           (a) The Guam Captive Insurance Advisory Committee, the  
6 'Committee,' shall consist of such persons, not fewer than three (3) in  
7 number, to be appointed by the Commissioner. The membership shall,  
8 to the extent possible, consist of one (1) person who is a certified public  
9 accountant, one (1) person who is a banker or officer of a Guam financial  
10 institution, and one (1) person who is actively employed in the  
11 insurance community.

12           (b) Any Committee member shall excuse himself from  
13 reviewing any applicant for licensing if a conflict of interest exists."

14           Section 12. Section 23118 is hereby added to Title 22 of the Guam Code  
15 Annotated to read as follows:

16           **"Section 23118. Duties of the Committee.** The Committee's  
17 duties are as prescribed by the Commissioner, and shall include:

18           (a) The review of each application for a captive insurance  
19 company license, and a recommendation to the Commissioner as to  
20 whether or not the applicant should be granted a license to do an  
21 insurance business under this Chapter and including the reasons for its  
22 recommendation. Recommendations to the Commissioner shall be  
23 made within thirty (30) days of receipt of the financial and other  
24 information provided by the Commissioner.

1 (b) In formulating its recommendations, the Committee shall  
2 employ the following criteria:

3 (i) Whether such applicant meets the financial  
4 requirements of this Chapter;

5 (ii) Whether such applicant's proposal is actuarially sound  
6 and is adequately capitalized to meet the requirements of the risks  
7 it has undertaken or proposed to insure. For the purposes of this  
8 actuarial determination, the Committee shall consider, if  
9 advisable, the formal opinion of a certified property/casualty  
10 actuary who is a member in good standing of an acknowledged  
11 academy or society of actuaries;

12 (iii) Whether or not the parent's officers, directors, and  
13 administrative and managerial personnel are of good moral  
14 character; and

15 (iv) Such other criteria as the Committee, with the consent  
16 of the Commissioner, deems appropriate.

17 (c) Meetings of the Committee may be conducted by telephone  
18 except that at least one (1) meeting per year shall be held in Guam, and  
19 shall be attended personally by Committee members.

20 (d) Recommendations made by the Committee to the  
21 Commissioner shall be advisory in nature. A Committee member, or  
22 the Committee as a whole, shall not be held liable in any claim or suit  
23 for damages arising solely from a recommendation to the  
24 Commissioner, or for the results of any action taken and/or

1 implemented by the Commissioner pursuant to any such Committee  
2 recommendation.

3 (e) The Commissioner shall supply the Committee with the  
4 financial and other information required by the Committee to conduct  
5 its investigation under this Section.

6 (f) The Commissioner shall receive the recommendations of the  
7 Committee with respect to the financial, actuarial, and managerial  
8 soundness of each applicant, and shall give appropriate consideration to  
9 all such recommendations in conjunction with his duties under this  
10 Chapter."

11 **Section 13.** Section 23119 is hereby added to Title 22 of the Guam Code  
12 Annotated to read as follows:

13 "Section 23119. Insolvency Proceedings. In the event a captive  
14 insurance company is declared insolvent by its board of directors or by  
15 the Commissioner or is placed in receivership for rehabilitation or  
16 liquidation any reinsurance due or becoming due and payable by the  
17 reinsurer shall be paid without diminution directly to the ceding  
18 company, or to the Commissioner or to the court-appointed receiver or  
19 liquidator. This provision shall be deemed to be incorporated in any  
20 contract of reinsurance for any risks insured in Guam."

21 **Section 14.** Section 23120 is hereby added to Title 22 of the Guam Code  
22 Annotated to read as follows:

23 "Section 23120. Confidentiality Treatment of Captive  
24 Information. All information pertaining to Guam Captive Insurance  
25 Companies shall be deemed proprietary and confidential unless:

1 (a) The Insurance Commissioner deems it in the public  
2 interest to make such information available for public inspection,  
3 or

4 (b) The Parent authorizes the Insurance Commissioner to  
5 make available such information for public inspection.

6 **Section 15. Approval of "RULES AND REGULATIONS OF THE**  
7 **GUAM ECONOMIC DEVELOPMENT AUTHORITY ON THE ISSUANCE**  
8 **OF QUALIFYING CERTIFICATES RELATIVE TO THE CAPTIVE**  
9 **INSURANCE PROGRAM."** Rules and Regulations of the Guam Economic  
10 Development Authority on the Issuance of Qualifying Certificates Relative to  
11 the Captive Insurance Program as originally adopted on September 5, 1997 are  
12 hereby approved as contained in the attachment marked Exhibit "A."

13 **Section 16. Fletcher Pacific dba Terrace Guam, Inc., Exempted from**  
14 **§23102 (6).** Fletcher Pacific dba Terrace Guam, Inc., is hereby exempted from  
15 §23102 for related risks only.

16 **Section 17. Amendment to §30003(a), Review of Application and**  
17 **Issuance of Licenses, to the Captive Insurance Company Rules and**  
18 **Regulations of the Insurance Commissioner of Guam:**

19 "Section 30003. Review of Application and Issuance of License.

20 (a) The Commissioner shall review whether the company meets  
21 the requirements of the Act. Within twenty-eight (28) calendar days  
22 after the date of the submission of a complete application, the  
23 Commissioner shall notify each applicant in writing of his approval or  
24 disapproval of the application. Within thirty (30) days after the  
25 Commissioner notifies the applicant of the approval of the application,

1 the company shall pay the Two Thousand Five Hundred Dollar  
2 (\$2,500.00) fee ..."

3 **Section 18. Approval of the Amendments to the "CAPTIVE**  
4 **INSURANCE COMPANY RULES AND REGULATIONS OF THE**  
5 **INSURANCE COMMISSIONER OF GUAM".** Captive Insurance Company  
6 Rules and Regulations of the Insurance Commissioner of Guam, as amended  
7 and approved by the Department of Revenue and Taxation and the Office of  
8 the Attorney General on September 29, 1997, and further amended by the  
9 passage of this Act, are hereby approved as contained in the attachment  
10 marked **Exhibit "B."**

11 **Section 19.** Notwithstanding any other provision of law or this Act, in  
12 the event that a captive insurance company with a Qualifying Certificate is  
13 granted a tax rebate or abatement for income derived from underwriting  
14 Guam risks and policy holders, the same rebate or abatement benefit shall  
15 apply to all domestic insurance companies without the necessity that the  
16 underwriting of Guam risks and policy holders be written through a captive  
17 insurance company chartered by the local domestic insurance company. For  
18 record purposes only, any domestic insurance company eligible for rebate or  
19 rebatement under this Section shall file an application with the Department of  
20 Revenue and Taxation and the Guam Economic Development Authority.

P.L. 24-104



TWENTY-FOURTH GUAM LEGISLATURE

# Office of the Vice-Speaker

ANTHONY C. BLAZ

**LEGISLATIVE  
COMMITTEE  
MEMBERSHIP**

Chairman  
Finance & Taxation

Vice-Chairman  
Rules,  
Government Reform  
& Federal Affairs

Education

Natural Resources

Health &  
Human Services

Tourism, Economic  
Development & Cultural  
Affairs

Judiciary,  
Public Safety &  
Consumer Protection

Transportation,  
Telecommunications, &  
Micronesian Affairs

**MEMBERSHIP**

Guam Finance  
Commission

Commission on Self  
Determination

September 30, 1997

The Honorable Speaker Antonio R. Unpingco  
24th Guam Legislature  
155 Hesler Street  
Agana, Guam 96910

Dear Mr. Speaker:

The Committee on Finance and Taxation, to which was referred Bill No. 386, "AN ACT TO AMEND §23101, 23102, 23105, 23106, 23107 23110, 23111, 23112 AND 23113 OF TITLE 22, GCA, AND TO ADD §23116, 23117, 23118 AND 23119 TO SAID TITLE, MAKING TECHNICAL AMENDMENTS TO THE CAPTIVE INSURANCE LAW," which was substituted by the Committee and herein reports back with the recommendation **TO DO PASS.**

Votes of the committee members are as follows:

10 To Pass

\_\_\_ Not To Pass

\_\_\_ To Place in Inactive File

\_\_\_ Abstained

\_\_\_ Off-Island

\_\_\_ Not Available

Sincerely,

Anthony C. Blaz

Attachments

# Committee on Finance and Taxation

## Voting Sheet on Substitute Bill No. 386

"AN ACT TO AMEND §23101, 23102, 23104, 23105, 23106, 23107 23110, 23111, 23112 AND 23113 OF TITLE 22, GCA, AND TO ADD §23116, 23117, 23118 AND 23119 TO SAID TITLE, MAKING TECHNICAL AMENDMENTS TO THE CAPTIVE INSURANCE LAW."

COMMITTEE MEMBER	TO PASS	NOT	ABSTAIN TO PASS	INACTIVE FILE
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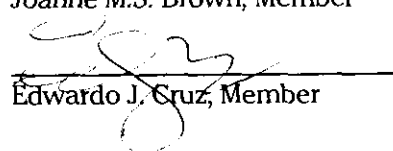
  
Anthony C. Blaz, Chairperson

  
Mark Forbes, Vice Chairperson

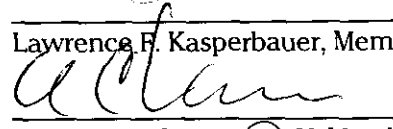
Antonio R. Unpingco, Ex-Officio

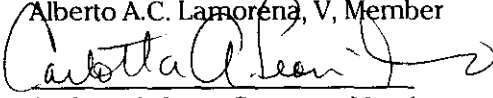
  
Elizabeth Barrett-Anderson, Member

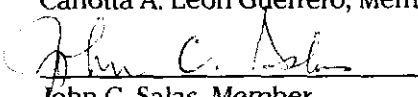
Joanne M.S. Brown, Member

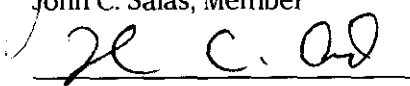
  
Edwardo J. Cruz, Member

Lawrence F. Kasperbauer, Member

  
Alberto A.C. Lamorena, V, Member

  
Carlotta A. Leon Guerrero, Member

  
John C. Salas, Member

  
Thomas C. Ada, Member

Mark C. Charfauros, Member

  
William B.S.M. Flores, Member

Francis E. Santos, Member

**Committee on Finance and Taxation  
Report on Substitute Bill No. 386**

"AN ACT TO AMEND §23101, 23102, 23104, 23105, 23106, 23107 23110, 23111, 23112 AND 23113 OF TITLE 22, GCA, AND TO ADD §23116, 23117, 23118 AND 23119 TO SAID TITLE, MAKING TECHNICAL AMENDMENTS TO THE CAPTIVE INSURANCE LAW."

**PUBLIC NOTICE:**

Pursuant to the requirements of the Standing Rules, notice of the Public Hearing on Bill No. 386 was published in the Pacific Daily News on September 29, 1997.

**PUBLIC HEARING:**

The Committee on Finance and Taxation conducted a public hearing on Tuesday, September 30, 1997 in the Legislature's Public Hearing Room to hear testimonies on Bill No. 386.

**MEMBERS PRESENT:**

The hearing was called to order by the Chairperson of the Committee on Finance and Taxation, Vice Speaker Anthony C. Blaz. Committee members present were:

Senator Alberto Lamorena, V

Other Senators present were:

Senator Ben Pangelinan

**Providing Public Testimony on the Bill:**

Ed Untalan, GEDA Administrator (oral/written)

Joseph T. Duenas, Director, Department of Revenue & Taxation  
(written)

**BACKGROUND ON BILL 386:**

**Ed Untalan in his written testimony, supported the intent of Bill 386. He confirmed that GEDA has been working with its consultants in developing the insurance industry in making Guam an attractive domicile for captive insurance companies. He added that the passage of this legislation is critical in order to diversify Guam's economic independence on tourism and may lead to an improvement in Guam credit rating once the deficit has been eliminated.**



**RULES & REGULATIONS BY THE GUAM ECONOMIC DEVELOPMENT  
AUTHORITY ON THE ISSUANCE OF QUALIFYING CERTIFICATES RELATIVE  
TO THE CAPTIVE INSURANCE PROGRAM.**

- Public Hearing conducted by GEDA, August 22, 1997
- Rules & Regulations Approved by GEDA.
- Public Hearing conducted by The Committee on Finance & Taxation and The Committee on Tourism, Economic Development & Cultural Affairs, September 30, 1997  
(all pertinent information attached)

Joseph Duenas testified in full support of Bill 386. However, he raised concerns over §30003 review of Applications and Insurance of Licenses, of the rules & regulations. His recommendations were included in Substitute Bill 386.

**CAPTIVE INSURANCE RULES & REGULATIONS OF THE INSURANCE  
COMMISSIONER OF GUAM.**

- Public Hearing conducted by Rev & Tax, September 12, 1997
- Rules & Regulations Approved by the Attorney General of Guam.
- Public Hearing conducted by The Committee on Finance & Taxation and The Committee on Tourism, Economic Development & Cultural Affairs, September 30, 1997  
(all pertinent information attached)

**COMMITTEE RECOMMENDATION:**

The Committee, having conducted a sufficient hearing, does hereby recommend to the Legislature to do pass Substitute Bill 386- "AN ACT TO AMEND §23101, 23102, 23104, 23105, 23106, 23107 23110, 23111, 23112 AND 23113 OF TITLE 22, GCA, AND TO ADD §23116, 23117, 23118 AND 23119 TO SAID TITLE, MAKING TECHNICAL AMENDMENTS TO THE CAPTIVE INSURANCE LAW."



Carl T.C. Gutierrez  
Governor

# GUAM

ECONOMIC DEVELOPMENT AUTHORITY

ATURIDAD INADILANTON IKUNUMIHAN GUAHAN

An Autonomous Agency of the Government of Guam, USA



Madeleine Z. Bordallo  
Lieutenant Governor

OFFICE COPY

SEP 29 1997

The Honorable Antonio R. Unpingco  
Speaker  
Twenty-Fourth Guam Legislature  
Guam Legislature Temporary Building  
155 Hesler Street  
Agana, Guam 96910

Office of the Speaker  
ANTONIO R. UNPINGCO

Date: 9/29/97  
Time: 1:35  
Rec'd by: R  
Print Name: J. H. H.

RE: AMENDMENTS TO RULES AND REGULATIONS BY GUAM ECONOMIC DEVELOPMENT AUTHORITY ON THE ISSUANCE OF QUALIFYING CERTIFICATES RELATIVE TO THE CAPTIVE INSURANCE PROGRAM

Dear Speaker Unpingco:

Enclosed please find the following documents and records in accordance with the provisions of §9303 of Title 5, Guam Code Annotated:

1. rules and regulations entitled: "RULES AND REGULATIONS OF THE GUAM ECONOMIC DEVELOPMENT AUTHORITY ON THE ISSUANCE OF QUALIFYING CERTIFICATES" These rules and regulations were duly noticed and had a public hearing on August 22, 1997.
2. record of the public hearing held August 22, 1997 consisting of a video tape and a transcript.
3. approval of the rules and regulations by the Attorney for the Guam Economic Development Authority, Mr. Andy M. Gayle. Please note that the approval is signed on the last page of the rules and regulations.

Amendments to the GEDA rules and regulations are necessary to implement the Captive Insurance Program.

GUAM, USA  
THE ULTIMATE DESTINATION

EXHIBIT "A"

# GUAM

ECONOMIC DEVELOPMENT AUTHORITY

An Autonomous Agency of the Government of Guam, USA


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Speaker/GEDA  
Captive Insurance Program'  
September, 1997 - Page 2

In conjunction with the attached rules and regulations, amendments to the Guam Economic Development law are being submitted by the Governor, and revised rules and regulations of Captive Insurance Companies are being submitted by the Department of Revenue and Taxation to the Legislature.

The amendments to the GEDA law, the rules and regulations promulgated by GEDA, and the rules and regulations promulgated by the Department of Revenue and Taxation are all needed to implement the program.

Very truly yours,

  
T. Ann Aguon Perez  
Acting Administrator

cc: Edward G. Untalan, Administrator

Attachments



municipality of \_\_\_\_\_, Guam 969\_\_\_\_; telephone #: (671) \_\_\_\_\_;  
fax #: (671) \_\_\_\_\_.

## ARTICLE 2

### TYPE OF INSURANCE BUSINESS

§2.01. *Corporate tax structure:* Indicate whether Applicant is a so-called "Subchapter S" corporation.

§2.02. *Insurance business for which QC is sought:* Mark each form of insurance business which Applicant plans to undertake in Guam:

[ ] Commercial Insurance; [ ] Reinsurance; [ ] Life Insurance; [ ] Captive Insurance.

§2.03. *Licensed Guam broker:* The name(s) and address(es) of the licensed Guam insurance broker(s) through whom Applicant intends to issue insurance policies to Guam policy holders and covering Guam risks: \_\_\_\_\_  
municipality of \_\_\_\_\_, Guam 969\_\_\_\_.

## ARTICLE 3

### SUPPLEMENTAL FORMS AND DOCUMENTS

§3.01. *Certificate or License:* A certified copy of the certificate of authority or license issued by the Insurance Commissioner to Applicant. See Exhibit 1.

§3.02. *Insurance documentation:* A certified copy of Applicant's application to the Insurance Commissioner for a certificate of authority or license, as the case may be, including (i) all exhibits and attachments thereto, and (ii) the Certificate of Compliance set out in paragraph (c) of §2.05 of Part 2 of GEDA's rules and regulations on issuing QCs. See Exhibits 2-1 and 2-2.

§3.03. *Affidavit of compliance:* An affidavit of compliance with the QC Law on or following GEDA Form QC-2L. See Exhibit 3.

## ARTICLE 4

### INSURANCE SERVICES

§4.01. *Brief description of insurance services to be offered:*

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§4.02. *Estimated annual premiums for insurance policies written at projected rate of operations:* \_\_\_\_\_ Dollars  
 (\$ \_\_\_\_\_) (first full year); \_\_\_\_\_ Dollars  
 (\$ \_\_\_\_\_) (fifth year).

ARTICLE 5  
EMPLOYEES

§5.01. *Anticipated total number of Guam employees:* \_\_\_\_\_  
 ( ) full-time employees, \_\_\_\_\_ ( ) part-time.

§5.02. *Annual gross Guam payroll:* \_\_\_\_\_ Dollars  
 (\$ \_\_\_\_\_) (fifth year).

§5.03. *Classification of proposed Guam payroll for the first (1st) year of operations:*

<i>Classification:</i>	<i>Number:</i>	<i>Annual gross payroll:</i>
_____ department,	_____	\$ _____
_____ department,	_____	\$ _____
_____ department,	_____	\$ _____
_____ department,	_____	\$ _____
_____ department,	_____	\$ _____
<b>Total:</b>	_____	\$ _____

§5.04. *Analysis of nationality of proposed total number of Guam employees after first (1st) year of operations:*

Citizens or permanent residents of the United States: \_\_\_\_\_.

Aliens: \_\_\_\_\_.

ARTICLE 6

CONCLUSION

§6.01. *Entitlement:* [Brief summary of why Applicant qualifies for a QC as a Domestic Insurer.]

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

§6.02. *Request for QC:* On the basis of the information presented in this application and the accompanying exhibits, Applicant requests the issuance of a QC by the Governor of Guam, upon the recommendation of GEDA, granting to Applicant the tax relief provided by §§2427.5 and 2428.4 of the QC Law, as follows:

<i>Nature of tax:</i>	<i>Periods requested:</i>	<i>Percentages requested:</i>
Corporate income tax,	_____ ( ) years,	_____ percent ( %),
Gross receipts tax,	_____ ( ) years,	_____ percent ( %),
*Income tax on corporate dividends	_____ ( ) years, **	_____ percent ( %).

\* Only if the stockholder receiving the dividend is a Guam taxpayer.  
\*\* Maximum is seventy-five percent (75%).

*Execution*

EXECUTED this \_\_\_ day of \_\_\_\_\_, 199\_\_.

\_\_\_\_\_  
Applicant,

by \_\_\_\_\_  
\_\_\_\_\_ duly  
authorized representative.

TERRITORY OF GUAM,) ( ss.:  
City of Agaña. )

On this \_\_\_\_ day of \_\_\_\_\_, 19\_\_ before me, a notary public in  
and for the territory of Guam, personally appeared \_\_\_\_\_, known to me to  
be the duly authorized representative of \_\_\_\_\_, who executed the  
foregoing application, and he acknowledged to me that such corporation executed the  
same.

WITNESS my hand and official seal.

\_\_\_\_\_

)SEAL(





§5. *Semi-annual employment reports.* Applicant shall furnish GEDA semi-annual reports of the number of its Guam employees and its total gross Guam payroll, broken down into all job titles, with rates of pay, with identification of all employees not citizens or permanent residents of the United States, beginning six (6) months after the date of the issuance of its QC. GEDA agrees that such reports shall be confidential.

§6. *All local insurance issued through Guam brokers.* All insurance policies to be issued to Guam policy holder(s) covering Guam risk(s) shall not be issued by Applicant directly to the Guam policy holder but only through a licensed Guam insurance broker.

DATED this \_\_\_ day of \_\_\_\_\_, 199\_\_.

\_\_\_\_\_  
Applicant,

by \_\_\_\_\_  
\_\_\_\_\_, affiant.

SUBSCRIBED and SWORN to before me, a notary public, this \_\_\_ day  
of \_\_\_\_\_, 199\_\_.

\_\_\_\_\_  
Notary public in and for the territory  
of Guam. My commission expires:  
\_\_\_\_\_.

)SEAL(

RULES AND REGULATIONS OF  
THE GUAM ECONOMIC DEVELOPMENT AUTHORITY  
ON THE ISSUANCE OF QUALIFYING CERTIFICATES

PART 2

QUALIFYING CERTIFICATES FOR DOMESTIC INSURERS

CHAPTER 1  
LICENSURE BY INSURANCE COMMISSIONER

*Introduction*

§2.01. The rules and regulations (the "Rules") set out in this Part describe the procedure, pursuant to the provisions of §58108 of Chapter 58, Division 2, Title 12, Guam Code Annotated (the "QC Law") and Section 6 of Public Law 23-109 (the "Insurance QC Law"), for obtaining a recommendation from the Guam Economic Development Authority for the issuance of a Qualifying Certificate ("QC") to a Domestic Insurer which has obtained a Guam Certificate or License issued by the Insurance Commissioner. These Rules are adopted pursuant to the provisions of §§58108 and 58140 of the QC Law and of Section 6 of the Insurance QC Law, and in the manner prescribed by the Administrative Adjudication Law (the "AAL").

*Purpose*

§2.02. The purpose of these Rules is to provide standard procedures governing the application for, and the issuance of QCs to Domestic Insurers pursuant to and as authorized by the provisions of the QC Law and the Insurance QC Law.

*Definitions*

§2.03. In these Rules, the following terms shall have the following meanings:

- (a) *Board*. "Board" means the board of directors of GEDA.
- (b) *Commissioner*. "Commissioner" means the Insurance

Commissioner established in §12201, Article 2, Chapter 12, Division 2, Title 22, Guam Code Annotated.

(c) *Certificate*. A "Certificate" is a certificate of authority issued by the Commissioner to Domestic Insurers, pursuant to Article 3 (Domestic Insurers), Chapter 15, Division 2, Title 22, Guam Code Annotated.

(d) *Domestic Insurer*. A "Domestic Insurer" is an entity incorporated in Guam under the General Corporation Law and the Insurance Law (§§15301 *et seq.*, Article 3, Chapter 5, Title 22, Guam Code Annotated) which is the holder of a Certificate issued by the Commissioner as a commercial insurer or a reinsurer, or which is the holder of License issued by the Commissioner as a captive insurer.

(e) *GEDA*. "GEDA" means the Guam Economic Development Authority.

(f) *License*. A "License" is an insurance license issued to a captive insurer by the Commissioner pursuant to Chapter 23, Title 22, Guam Code Annotated.

(g) *QC*. A "QC" is a qualifying certificate issued by the Governor of Guam on the recommendation of GEDA pursuant to the QC Law which grants to the beneficiary of such QC an abatement and/or rebate of a portion or all of certain Guam taxes for stated periods of time. A QC issued under this Part is a QC with the benefits authorized by the Insurance QC Law.

#### *QCs for Domestic Insurers*

§2.04. Any Domestic Insurer shall be entitled to a QC granting abatements and rebates of *all* Guam's taxes for periods not to exceed twenty (20) years; *provided*, that the Domestic Insurer at all times during such period holds a valid Certificate or License, and complies with the provisions of the QC Law, the Insurance QC Law, the Insurance

Law, rules and regulations issued under the Insurance Law governing insurance companies and captive insurance companies, these Rules, and its QC.

*Application for a QC*

§2.05. To apply for a QC, a Domestic Insurer shall file the following with GEDA:

- (a) *Certificate or License.* A certified copy of its Certificate or License.
- (b) *Copy of application.* A certified copy of its application to the Commissioner for a Certificate or License, as the case may be, including all exhibits and attachments thereto;
- (c) *Application form.* A completed and verified application on GEDA Form QC-1I.
- (d) *Affidavit of compliance.* A completed and verified affidavit of compliance on GEDA Form QC-2I.
- (e) *Commissioner's certificate of compliance.* A certificate of compliance from the Commissioner that the applicant is in compliance with the Insurance Law, and the rules and regulations issued thereunder, that no adverse administrative or legal action is pending against the applicant, or if such action is pending, or has been taken against the applicant, that the Commissioner nevertheless consents to the issuance of the QC to the applicant.
- (e) *Fee.* A check in the sum of Seven Hundred Fifty Dollars (\$750) as the filing fee for its application.

*Application forms*

§2.06. GEDA Forms QC-1I and 2I are attached to these Rules and are

incorporated herein.

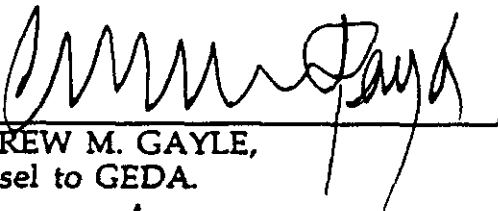
*GEDA's recommendation*

§2.07. Upon ascertaining that the forms, certified copies of its application for a Certificate or License, the Certificate or License, the Commissioner's compliance certificate, and the application fee furnished by the applying Domestic Insurer are complete and in proper order, GEDA shall thereupon promptly hold a public hearing on the application, pursuant to the AAL and thereafter, at its next Board meeting, after reviewing the submissions of the Domestic Insurer and the report on the public hearing, forward to the Governor of Guam its recommendation for issuance of the QC, if the Board approves the application therefor.

*Interpretation of Rules*

§2.08. These Rules are designed to facilitate the issuance of QCs to Domestic Insurers qualified therefor in order to contribute to the goal of making Guam a financial center of the Pacific. Accordingly, the Board and staff of GEDA are to process QC applications for Domestic Insurers as rapidly as possible, conducting the necessary hearings quickly and taking the appropriate Board action expeditiously, combining where possible the various applications for a single public hearing and consideration by the Board at one meeting so that QCs can be issued to Domestic Insurers quickly and inexpensively so as to attract to Guam as many insurers as possible.

APPROVAL:



ANDREW M. GAYLE,  
Counsel to GEDA.

Date: Sept. 26, 1997

APPROVAL:



CARL T.C. GUTIERREZ,  
Governor of Guam.

Date: \_\_\_\_\_, 1997

REPORT ON THE PUBLIC HEARING  
HELD ON CAPTIVE  
RULES AND REGULATIONS  
August 22, 1997

Ed Untalan, Public Hearing Officer and GEDA Administrator, with Atty. Andrew Gayle, GEDA's Legal Council, and Leigh Graham, GEDA's Industry Development Manager, convened a public hearing, on the GEDA's proposed Rules and Regulations for Captive Insurance, as it pertains to P.L. 23-109. The Proposed rules are identified as Part II of the Rules and Regs for GEDA's Q.C. Program. The public hearing was held at 10:00 a.m., on the 22<sup>nd</sup> day of August, 1997, in accordance with the procedures set out in the Administrative Adjudication Law of Guam.

*Testimony*

Atty. Andrew Gayle summarized the proposed Q.C. rules for Captive Insurers (Part II of the Rules and Regs). Basically, the rules are so that if you are a qualified insurer and you have been issued a certificate of insurance and are a domestic company, then you virtually automatically can obtain a Q.C. from GEDA. The intent is to make Guam an insurance center for captives insurance companies in Asia, with the hope that there will be an influx of such companies that will provide substantial employment. These Rules and Regs no longer have to go to the legislature in the form of a bill and the legislature does not have to hold a hearing. All documents and recordings are submitted to the legislature, which has 90 days to act.

There are several companies waiting for this legislation.

Michael Katsuren, with International Insurance asks if during the 90 days of review, there are changes by the Legislature, does the 90 days start over again. Atty. Gayle replies "no", he further commented that GEDA is trying to persuade the legislature to make the timeline faster. Atty. Gayle continued on to say once the legislature acts on the application, it will shorten the time. Mr. Untalan added that if attendees are in support of this legislation, he encourages them to call the Senators and urge support of bringing forward this issue and addressed it as expeditiously as possible.

Mr. Katsuren stated concerns that most insurance companies will not support this legislation because they will lose premiums. Mr. Untalan replied that the companies which establish themselves on Guam have to write through the local brokers. From a business standpoint, the companies will come for the tax exemption status and be able to funnel in the premiums earned from outside. In addition, local insurance companies can also apply for the benefits, which they currently do not enjoy. At the last hearing, Mr. Untalan noted, there were no objections raised from insurance companies.

Geoff Cutting, of Q.B.E. Insurance, remarked that the law might invite corporations to get out of the regular insurance market. Mr. Untalan replied that that is a concern that has been brought up before and urges those concerned to bring the issue to Senator Lamorena.

Geoff Cutting asked if the Revenue and Taxation Rules have been approved. Atty. Gayle stated the rules have been redrafted and a bill to amend has been submitted to the legislature; there will be one more hearing on the matter.

Mr. Untalan expressed that although currently the law allows for it, GEDA's consultants were concerned with allowing the Captives to write direct. Mr. Untalan recommended relaying public interest to Senator Lamorena, who is concerned with preserving the local industry.

Mr. Untalan called for a show of hands in support of the Rules and Regulations, for the video tape recording. The majority of attendees indicated their support by raising their hand. He restated how anxious GEDA is to see things get in place. Standard and Poors has indicated once this industry develops, it could increase Guam's bond rating. Subsequently, GEDA is taking an aggressive mode to initiate the development of the industry, and asks for public assistance to "push this along, as well". Atty. Gayle noted that the Q.C Law is a rebate not a abatement of the income tax, and figured, with a full 6 month time period to review the return, and with millions on dollars involved, there can be a lot of income raised. Mr. Untalan added, what is abated is the interest on investment income.

A question was raised regarding the minimum capitalization; whether it is cumulative or one time. Geoff Cutting raised a point concerning inner corporate transfers. Atty. Gayle responded that these questions should be brought up at the Revenue and Taxation hearing. Ed includes that GEDA and Rev and Tax are looking to bring on an insurance expert to assist in confronting issues such as these.

#### ***Conclusion***

There being no further testimony, the meeting was adjourned at the hour of 10:43 a.m. of the same day.





Dipåtamenton Kontribusion yan Adu'ána

DEPARTMENT OF

# REVENUE AND TAXATION

GOVERNMENT OF GUAM

Gubetnamenton Guáhan

CARL T.C. GUTIERREZ, Governor Maga'láhi  
MADELI Z. BORDALLO, Lt. Governor / Tiriente Gubetnadora

JOSEPH T. DUENAS, Director / Direktot  
CARL E. TORRES, Deputy Director  
Sigundo Direktot

SEP 29 1997

The Honorable Antonio R. Unpingco  
Speaker  
Twenty-Fourth Guam Legislature  
Guam Legislature Temporary Building  
155 Hesler Street  
Agana, Guam 96910

**Re : AMENDMENTS TO CAPTIVE INSURANCE COMPANY RULES AND REGULATIONS BY DEPARTMENT OF REVENUE AND TAXATION**

Buenas yan Saluda Speaker Unpingco:

Enclosed please find the following documents and records in accordance with the provisions of §9303 of Title 5, Guam Code Annotated:

1. rules and regulations entitled: "CAPTIVE INSURANCE REGULATIONS OF THE INSURANCE COMMISSIONER OF GUAM." These rules and regulations were duly noticed and had a public hearing on September 12, 1997.
2. record of the public hearing held September 12, 1997 consisting of an audio tape and a transcript.
3. approval of the rules and regulations by the Attorney General of Guam.

Amendments to the Department of Revenue and Taxation's rules and regulations are necessary to implement the Captive Insurance Program.

In conjunction with the attached rules and regulations, amendments to the Guam Economic Development law are being submitted by the Governor, and revised rules and regulations of the Guam Economic Development Authority are being submitted by GEDA to the legislature.

The amendments to the GEDA law, the rules and regulations promulgated by GEDA, and the rules and regulations promulgated by the Department of Revenue and Taxation are all needed to implement the program.

Senseramente,

JOSEPH T. DUENAS  
Director

Attachments

60437 (See Clerk of the Legislature Office for copy of the Public Hearing Tape)

Post Office Box 23607, Guam Main Facility, Guam 96921 • Tel. / Telifon: (671) 475-5000 • Fax / Faks: (671) 472-2643

Office of the Speaker  
ANTONIO R. UNPINGCO

Date: 9/29/97

Time: 3:15

Rec'd by: JW

Print Name: JOUANNE

EXHIBIT "B"

DEPARTMENT OF LAW



Carol T.C. Carlucci  
Magafáñi  
Comptroller

Madelaine Z. Bomballo  
Táñanta Gúlpáñadóna  
Lt. Comptroller

Ugáñan Hírínát Abugao  
Tíñtórían Guáñan  
Office of the Attorney General  
Territory of Guam

Charles H. Troutman  
Hírínát Abugao (Acto)  
Attorney General (Acting)

Geo F. Diaz  
Atáñáñ, Sígúñdo Hírínát Abugao  
Chief Deputy Attorney General

September 29, 1997

Memorandum


To : Director, Department of Revenue and Taxation  
From : Attorney General  
Subject: Captive Insurance Regulations of the Insurance Commissioner of Guam

Bucnas yan Hafa Adai!

The attached rules and regulations, entitled as shown above, are approved as to form.

Please call me if there are any questions.

Dangkulo Na Agradesimiento - Thank you very much!

  
CHARLES H. TROUTMAN  
Attorney General (Acting)

Attachment

ENCLOSURE



Commonwealth of Guam



SEPTEMBER 23, 1997  
PUBLIC HEARING ON  
CAPTIVE INSURANCE REGULATIONS

This is a public hearing conducted by the Insurance Commissioner for the Territory of Guam pursuant to adopting new proposed rules and regulations regarding Captive Insurance Companies.

For the record my name is Joseph T. Duenas. I am the Insurance Commissioner. To my right is Mr. John Camacho who is the Administrator for Regulatory Divisions for The Department of Revenue and Taxation. My staff. And also with us is John Carlos from the Insurance, Securities and Banking Branch.

Duenas : Okay. Was there a sign up sheet John?

Carlos : There is.

Duenas : By the way, that's signing up for testimony. You're just here just to observe. You don't need to sign in. The sign up sheet is only for testimony. So, this is to give the public a chance to say something if they want to. Okay. Is there anybody from the public? This is called a General Announcement. Is there anybody from the public who's here today pursuant to the public notice placed in the newspaper on September 12? Who wishes to give us any testimony in regards to the proposed amendments to the Captive Insurance rules and regulations? If not? If you just want to ask us a question you can ask us the questions afterwards unless you want to, if there's been a change. Okay. The question can be a change. But we can deal with that later.

Camacho : Or if you want to come up and identify yourself for the record.

Duenas : We'll give people five more minutes, two more minutes. Two more minutes. Is the public who wishes to testify here? If not this public hearing is adjourned. Thank you.

JOSEPH T. DUENAS  
Insurance Commissioner

CAPTIVE INSURANCE COMPANY  
REGULATIONS FOR THE GOVERNMENT OF GUAM

Captive Insurance Regulations  
of the Insurance Commissioner of Guam

§30001 DEFINITIONS

In these regulations, unless the context requires otherwise,

(a) "The Act" means Chapter 23 of Title 22 of the Guam Code Annotated.

(b) "Affiliated company" or "affiliate" means any company in the same corporate system as a parent, an industrial insured or member organization by virtue of common ownership, control, operation or management.

(c) "The Commissioner" means the Insurance Commissioner of the Government of Guam.

(d) "Company" or "captive insurance company" means any pure captive insurance company or group captive insurance company or industrial insured captive insurance company formed or licensed under the provisions of the Act.

(e) "Control" means:

(1) ownership of more than fifty percent (50%) of the voting stock of a corporation,

(2) ownership of stock of a corporation constituting more than 50% of the fair market value of all of said corporation's issued and outstanding shares,

(3) a contractual or other right to vote shares constituting more than 50% of the voting shares of a corporation,

(4) the right under a management agreement or other contract to make over 50% of the decisions governing the business and financial affairs of a corporation or to select all of its officers or directors, or

(5) any other right or arrangement that separately or in conjunction with other rights creates the practical ability to determine over 50% of the business and financial affairs of a corporation or to select its officers or directors.

(f) "Corporate system" means one or more chains of corporations connected through stock ownership or other means of control comprising a common parent corporation and one or more subsidiary corporations in which:

(1) the common parent directly controls at least one of the subsidiary corporations and

(2) each of the subsidiary corporations is directly controlled by the common parent, by one or more subsidiary corporations or by the common parent and one or more subsidiary corporations.

(g) "Group" means any legal association of individuals, corporations, partnerships, limited liability companies or legal legal entities, the member organizations of which collectively:

(1) own, control, or hold with power to vote all of the outstanding voting securities of a group captive insurance company incorporated as a stock insurer, or

(2) have complete voting control over a group captive insurance company incorporated as a mutual insurer.

(h) "Group captive insurance company" means any company that insures risks of the member organizations of that group, and their affiliates.

(j) "Industrial insured" means an insured:

(i) who procures the insurance of any risk or risks by use of the services an employee acting as an insurance manager or buyer; and

(ii) whose aggregate annual premiums on all risks total at least \$15,000.00; and

(iii) who has at least ten (10) full-time employees.

(k) "Industrial insured captive insurance company" means any company that insures risks of the industrial insured group, and their affiliated companies.

(l) "Industrial insured group" means any group that meets either of the following criteria:

(a) Any group of industrial insured 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 corporate voting control over an industrial insured captive insurance company incorporated as a mutual insurer.

(b) Any group which is 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 company taxable as a stock insurance company or a mutual insurer under the laws of Guam.

(m) "License" means a license to carry on the business of a captive insurance company which the Commissioner is authorized to grant in accordance with the criteria set forth in the Act.

(n) "Loss reserve specialist" means a person approved by the Commissioner under Section 30002(1)(f) and Section 30007(e) of these regulations as a person qualified to assess the sufficiency of insurance loss reserves and loss expense reserves for captive insurance companies under the Act.

(o) "Member organization" means a corporation, partnership, limited liability company, or other legal entity that belongs to a group.

(p) "Pure captive insurance company" means any company that insures risks of its parent and affiliated companies.

(q) "Regulation" means any regulation promulgated under the Act.

§30002 APPLICATION PROCEDURE FOR CAPTIVE INSURANCE LICENSE

1. Contents of Application

Every applicant for a captive insurance license shall pay the \$200.00 statutory application fee and file the following documents with the Commissioner:

a. A certified copy of the articles of incorporation or association of the company, but if the company is not yet incorporated, a copy of the proposed articles of incorporation or association of the company.

b. A certified copy of the by-laws of the company, but if the company is not yet incorporated, a copy of the proposed by-laws of the company.

c. Copies of the blank forms of all policies of insurance or reinsurance that the company proposes to use.

d. A consent of an agent for service of process, in form approved by the Commissioner, duly executed by a person qualified to be a registered agent for service of process, as provided in Section 23102(b)(4) of the Act and in Section 30013 of these regulations.

e. An application for approval of the company's designated Independent Auditor as required under Section 23108 of the Act, submitted on Form C attached as Appendix 3 to these regulations.

f. An application for approval of the company's designated Loss Reserve Specialist as required under Section 30007 (e) of these regulations, submitted on Form D attached as Appendix 4 to these regulations.

g. A license application in the following attached form.

GOVERNMENT OF GUAM

CAPTIVE INSURANCE LICENSE APPLICATION

1. Name of Proposed Captive: \_\_\_\_\_
2. Type of Captive: Pure \_\_\_\_\_  
Group (Stock) \_\_\_\_\_  
Group (Mutual) \_\_\_\_\_  
  
Industrial insured group (stock) \_\_\_\_\_  
Industrial insured group (mutual) \_\_\_\_\_
3. Type of Insurance: Life \_\_\_\_\_  
Casualty \_\_\_\_\_  
Professional Liability \_\_\_\_\_  
Workers Compensation \_\_\_\_\_
4. Place of Incorporation: \_\_\_\_\_
5. Address of Guam Office: \_\_\_\_\_
6. Name and Address of Guam Resident Incorporator: \_\_\_\_\_  
\_\_\_\_\_
7. Name and Address of Guam Resident Director: \_\_\_\_\_  
\_\_\_\_\_
8. Amount of Paid In Capital: \$ \_\_\_\_\_
9. Contributed Surplus: \$ \_\_\_\_\_
10. Name and Addresses of the Shareholders or Organizers:  
(1) \_\_\_\_\_  
(2) \_\_\_\_\_  
(3) \_\_\_\_\_

FORM B, ATTACHED AS APPENDIX 2 TO THESE REGULATIONS, MUST BE SUBMITTED WITH THIS APPLICATION FOR EACH SHAREHOLDER OR ORGANIZER OF THE COMPANY.

11. Enclose Financial Statements and Three Bank References for Each Shareholder, or Member, or Organization.

12. Name and Address of Registered Agent in Guam:

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13. If the Proposed Captive is not yet incorporated or organized, Names and Addresses of Incorporators or Organizers:

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14. Name and Address of Company's Proposed Independent Auditor:

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FORM C, ATTACHED AS APPENDIX 3 TO THESE REGULATIONS, MUST BE SUBMITTED WITH THIS APPLICATION FOR THE COMPANY'S PROPOSED INDEPENDENT AUDITOR.

15. Names and Residence Addresses of the Directors of the Company:

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FORM B, ATTACHED AS APPENDIX 2 TO THESE REGULATIONS, MUST BE SUBMITTED WITH THIS APPLICATION FOR EACH DIRECTOR OF THE COMPANY.

16. Names and Business Addresses of the Officers of the Company:

President: \_\_\_\_\_

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Vice President: \_\_\_\_\_

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Treasurer: \_\_\_\_\_

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FORM B, ATTACHED AS APPENDIX 2 TO THESE REGULATIONS MUST BE SUBMITTED WITH THIS APPLICATION FOR EACH OFFICER OF THE COMPANY. PLEASE ATTACH AN EXHIBIT WITH THE NAMES AND BUSINESS ADDRESSES OF ANY ADDITIONAL OFFICERS OF THE COMPANY.

17. Name and Address of Company's Proposed Loss Reserve Specialist:

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FORM D, ATTACHED TO THESE REGULATIONS AS APPENDIX 4, MUST BE SUBMITTED WITH THIS APPLICATION FOR THE COMPANY'S PROPOSED LOSS RESERVE SPECIALIST.

18. Detailed Statement of Proposed Business Plan, Including:

- (i) Five year projection of type of risk and party(ies) to be insured;
- (ii) Five year projection of net annual premium income;
- (iii) Five year projection of maximum retained risk (per loss and annual aggregate);
- (iv) Five year projection of income and loss;
- (v) Copies of all policy forms to be issued by the company in a format approved by the Commissioner.

- (vi) Actuarial feasibility study of planned operation;
  - (vii) Statement of Rating Program;
  - (viii) Statement of Reinsurance Program;
  - (ix) Five year projection of the amount and liquidity of assets relative to the proposed risks assumed;
  - (x) Five year projected balance sheet.
19. Attach a description showing the adequacy of the loss prevention program of each parent, affiliate, or member corporation or organization that the company proposes to insure.
  20. Attach a proposed letter of credit or depository agreement for deposit of capital and surplus.
  21. If the company has been incorporated, or organized attach a statement of its financial condition that is sworn to under oath by the company's president and its secretary.
  22. Certificate of the Truth of all of the matters contained in the application signed by each director.

§30003 Review of Applications and Issuance of Licenses

(a) The Commissioner shall review each application submitted by a company that has already been incorporated to determine whether the company meets the requirements of the Act. The Commissioner shall notify each applicant in writing of his approval or disapproval of the application. Within 30 days after the Commissioner shall notify an applicant of the approval of the application, the company shall pay the \$2,500.00 license fee and shall provide the Commissioner with proof of compliance with Section 23104 of the Act in the form of cash deposit and 23105 of the Act, either in the form of cash deposit or an irrevocable

letter of credit issued by a member bank of the Federal Reserve System which is licensed in Guam and approved by the Commissioner.

(b) In lieu of cash or an irrevocable letter of credit no other form of assets shall be accepted by the Commissioner from the applicant as proof of compliance with Section 23105 of the Act except unencumbered marketable securities listed and traded in a regulated United States securities market or any similarly regulated securities market in other jurisdictions. The marketable securities shall be physically deposited by the applicant with the Commissioner and its market value of shall be certified by a securities broker dealer licensed in the jurisdiction in which the marketable securities is listed and traded, on the date of the filing of application and every year thereafter and shall be equal to one hundred twenty percent (120%) of the required minimum surplus.

(c) An application submitted for a company that has not been incorporated shall be deemed to include a petition for the certificate required by Section 23106 of the Act in order to incorporate the company. The Commissioner shall, upon review of the application, notify the applicant in writing of his approval or disapproval of the application. If the Commissioner approves the application, the notice of approval shall include a certificate



setting forth his findings that the establishment and maintenance of the proposed corporation will promote the general good of Guam, as required by Section 23106 of the Act. Within 60 days after, the Commissioner shall notify the applicant of the approval of the application, the applicant shall:

(i) transmit the articles of incorporation or association to the Director of Revenue and Taxation,

(ii) provide the Commissioner with certified copies of the articles of incorporation or association and by-laws of the company, in the form approved by the Commissioner, and a certificate of incumbency of the officers and directors of the company,

(iii) pay the \$2,500.00 license fee,

(iv) provide the Commissioner with a statement of the financial condition of the company that is sworn to under oath by the company's president and secretary and is acceptable to the Commissioner, and

(v) provide the Commissioner with proof of compliance with Sections 23104 and 23105 of the Act, as provided in Section 30003(a) of these Regulations.

(a) Any non-domestic insurance company that has operated as an insurance company on Guam pursuant to a Guam Certificate of Authority during the five (5) years immediately preceding the enactment of this Chapter as set forth in Section 23102(b)(5) of the Act may apply to convert its existing Certificate of Authority to a captive insurance license by submitting to the commissioner, all documents required pursuant to Section 30002 of these Regulations including a completed application form and all other documents required in the application form, together with a statement that the company intends to conduct its business in compliance with the requirements of the Act and to surrender its existing license to engage in the insurance business in Guam upon the issuance of the license under the Act. Payment of the application fee of \$200.00 and the license fee of \$2,500.00 shall accompany the application. The Commissioner shall issue the license, unless he determines that the company does not propose to operate in a manner that complies with the Act. If the Commissioner does not issue the license, he shall notify the applicant of his decision in writing and shall refund the \$2,500.00 license fee to the applicant. In such event, the applicant's existing license shall remain in full force and effect.

(b) Any insurance company already chartered and doing

business in the Territory of Guam as a captive insurance company as set forth in Section 23102(e) of the Act shall automatically qualify for licensure by filing an application in compliance with all the requirements of Section 30002 of these regulations including the payment of application fee of \$200.00 and license fee of \$2,500.00.

(c) The application procedure set forth in this subsection shall be the exclusive means by which any company referred to in Section 23102(b)(5) may convert its Certificate of Authority to a captive insurance license or a company referred to in Section 23102(e) of the Act may exercise its right of automatic qualification for licensure under the Act. Any such company that elects to convert its Certificate of Authority to a license under the Act or a company who exercise its right of automatic qualification for licensure shall be subject to all of the requirements and limitations imposed by the Act and by these Regulations.

#### §30005 Renewal Applications

All licenses granted under the Act shall expire on the April 1 following the date of issuance. On or before March 1 of each year, every company holding a license that wishes to renew the license for an additional year shall apply to the Commissioner for a renewal of the license. The renewal application shall consist of

a letter identifying the company and stating that it is applying to renew its license. Letters of credit or extensions of existing letters of credit or other documents which establish to the satisfaction of the Commissioner that the company continues to comply with the requirements of Sections 23104 and 23105 of the Act and expiring not later than the end of the year for which renewal of the license is sought, together with a check for the \$2,500.00 annual license fee shall be included with the application. Each application for a renewal license shall be deemed to be granted unless within sixty (60) days from receipt of the application the Commissioner notifies the applicant in writing that its application has been rejected.

§30006 ANNUAL REPORT AND AUDIT REQUIREMENTS

The purpose of this regulation is to set forth the financial and reporting requirements which the Commissioner deems necessary for the regulation of captive insurance companies as required by Sections 23107 and 23108 of the Act.

1. Annual Statement.

Every company that is licensed under the Act shall, on or before March 1 of each year, file with the Commissioner a financial statement verified under oath by two executive officers of the

company, setting forth its financial condition, transactions and affairs as of the 31st day of December immediately preceding, in accordance with statutory accounting practices plus any additional information required by the Commissioner.

2. Annual Audit.

Every company that is licensed under the Act shall have an annual audit and an audit report shall accompany the filing of an annual statement prior to March 1 of each year. The audit report shall be rendered by its appointed Independent Auditor as approved by the Commissioner and shall cover the financial condition, transactions and affairs as of the 31st day of December immediately preceding in accordance with statutory accounting practices.

3. Unqualified Opinion.

The audited report shall include an unqualified opinion with respect to the financial condition of the company, except that the Commissioner may accept qualified opinions for the first three years following the incorporation or organization of a captive insurance company provided, however, that the captive insurance company shall submit quarterly reports to the Commissioner for any of the first three years in which the independent auditor renders a qualified opinion.

4. Auditor and Company shall notify the Commissioner

An auditor who is aware that the captive insurance company fails to meet the necessary capital and surplus requirements of the Act or who has rendered other than an unqualified opinion on the financial condition of a captive insurance company and the president of the captive insurance company shall both notify the Commissioner in writing within fifteen days of the discovery of failure of the captive insurance company to meet the capital or surplus requirements of the Act or within fifteen (15) days of the issuance of such qualified opinion.

§30007 Report Form. The annual audit report shall consist of the following:

(a) Opinion of Independent Certified Public Accountant

(1) Financial statements furnished pursuant to this section shall be examined by Independent Auditor in accordance with Statutory Accounting Practices in general form and context as approved by the Commissioner.

(2) The opinion of the Independent Auditor shall cover all years presented.

(3) The opinion shall be addressed to the company on stationery of the Independent Auditor showing the address of issuer, shall bear original manual signatures and shall be dated.

(4) The opinion shall contain an evaluation of management experience, ability and control.

(b) Report of Evaluation of Internal Controls

(1) This report shall include an evaluation of the internal controls of the company relating to the methods and procedures used in the securing of assets and reliability of the financial records, including but not limited to such controls as the system of authorization and approval and the separation of duties.

(2) The review shall be conducted in accordance with statutory accounting practices. The report must be filed with the Commissioner.

(c) Letter of Independent Auditor.

The Independent Auditor shall furnish the company, for inclusion in the filing of the audited annual report, a letter stating:

(1) That he is independent with respect to the company and conforms to the standards of his profession as contained in the Code of Professional Ethics and pronouncements of the American Institute of Certified Public Accountants and pronouncements of the Financial Accounting Standards Board.

(2) The general background and experience of the staff engaged in audit including the experience in auditing captives or other insurance companies.

(3) That the accountant understands that the audited annual report and his opinions thereon will be filed in compliance with this regulation with the Commissioner.

(4) That the accountant consents to the requirements of Section 30010 of the Regulations and that the accountant consents and agrees to make available for review by the Commissioner, his designee or his appointed agent, the work papers as defined in Section 30010 of the regulations.

(5) That the accountant is properly licensed by Guam or another appropriate state licensing authority as approved by the Commissioner and that he is a member in good standing in the American Institute of Certified Public Accountants.



(d) Financial Statements.

Statements required shall be as follows:

- (1) Balance Sheet
- (2) Statement of gain or loss from operations
- (3) Statement of changes in financial position
- (4) Statement of changes in capital paid up, gross paid in and contributed surplus and unassigned funds (surplus)
- (5) Notes to financial statements

The notes to financial statements shall be those required by statutory accounting practices, and shall include:

(a) A reconciliation of differences, if any, between the annual statement and audited financial report and any other statement or form filed with the Commissioner.

(b) A summary of ownership and relationship of the company and all affiliated corporations or companies insured by the captive.

(c) A narrative explanation of all material transactions and balances with the company.

(e) Certification of Loss Reserves and Loss Expense Reserves.

The annual audit shall include an opinion by the company's designated Loss Reserve Specialist as to the adequacy of the company's loss reserves and loss expense reserves.

The individual who certifies as to the adequacy of reserves shall be approved by the Commissioner, and shall be a member of the Casualty Actuarial Society with three years of property and casualty loss and loss expense reserve evaluation experience, or a member in good standing of the American Academy of Actuaries with five years of property and casualty loss and loss expense reserve evaluation experience.

Certification shall be in such form as the Commissioner deems appropriate.

(f) Summary of Underwriting and Reinsurance Ceded.

The annual audit shall include a summary of all of the insurance underwritten and a schedule of reinsurance ceded during the year to all reinsurers including a statement of the percentage of each premium attributable to the insurance of an affiliated company and unaffiliated company.

§30008 Change of Independent Auditor.

Each company that is licensed under the Act shall notify the Commissioner in writing of any change in the Independent Auditor appointed by the company. The change appointment of the Independent Auditor shall be deemed to be approved by the Commissioner unless notice is given to the company, within sixty (60) days after receipt of the notice by the Commissioner's office, that the auditor is not approved, in which case the company shall appoint a substitute and notify the Commissioner of the substitute auditor which substitute shall be subject to the approval of the Commissioner under this subsection.

§30009 Notice of Adverse Financial Condition.

Each company that is licensed under the Act shall require its Independent Auditor to immediately notify in writing the president or his designee and all members of the board of directors of the captive insurance company of any determination by the Independent Auditor that the company has materially misstated its financial condition in any of its reports to the Commissioner. The president of the company or his designee shall furnish such notification to the Commissioner within five working days of receipt of such information from the Independent Auditor.

§30010 Access to and Maintenance of Working Papers of Independent Auditor and Loss Reserve Specialist.

Each company that is licensed under the Act shall require its Independent Auditor and Loss Reserve Specialist to make available for review by the Commissioner or his appointed agent the work papers prepared in the conduct of the audit of the company. The company shall require that the Independent Auditor and Loss Reserve Specialist retain the audit work papers for a period of not less than five (5) years after the period reported upon.

The aforementioned review by the Commissioner shall be considered investigations, and all work papers obtained during the course of such investigations shall be confidential. The company shall require that the Independent Auditor and Loss Reserve Specialist provide photocopies of any of the work papers which the Commissioner considers relevant. Such work papers may be retained by the Commissioner.

"Work Papers" as referred to in this section include, but are not necessarily limited to, schedules, analyses, reconciliations, abstracts, memoranda narratives, flow charts, copies of company records or other documents prepared or obtained by the accountant and his employees in the conduct of their examination of the company.

§30011 Security.

Whenever the Commissioner deems that the financial condition of the company warrants additional security, he may require a company to deposit with the Treasurer of Guam or an escrow agent approved by the Commissioner cash or securities approved by the Commissioner or, alternatively, to furnish the Commissioner a clean irrevocable letter of credit issued by a member bank of the Federal Reserve System which is licensed in Guam and approved by the Commissioner.

The company may receive interest or dividends from said deposit or exchange the deposits for others of equal value with the approval of the Commissioner.

If such company discontinues business and surrenders its license, the Commissioner shall return such deposit only after being satisfied that all obligations of the company have been discharged.

§30012 OTHER REQUIREMENTS AND RESTRICTIONS.

This Chapter contains interpretations of various additional requirements and restrictions applicable to captive insurance companies.

(a) Minutes of Annual Meeting of the Board of Directors.

For companies that qualify as captive insurance companies under Sections 23102(b)(5) and 23102(e) of the Act, copies of the minutes of the annual meeting of the Board of Directors of such companies shall be filed with the Commissioner within thirty (30) days after such meeting.

(b). Principal Place of Business.

(1) To fulfill the requirements of Section 23102(b)(2) of the Act, requiring that a captive insurance company maintain its principal place of business in Guam, a company must have an office in Guam in which it maintains its business and corporate records, financial books, copies of all insurance policies that it issues, arranged in numerical and alphabetical order, copies of all reinsurance treaties and copies of its audited financial reports. A captive insurance company may establish its principal office in Guam in office space that it shares with other businesses, including other captive insurance companies or affiliates of the captive insurance company, or it may locate its principal place of business in an office in Guam of a company that engages in the business of managing the business affairs of captive insurance companies.

(2) For companies that qualify as captive insurance companies under Sections 23102(b)(5) and 23102(e) of the Act, such company shall be required to maintain an office in Guam in which it maintains copies of its business and corporate records, financial books, copies of all insurance policies that it issues, copies of reinsurance treaties and copies of its audited financial reports. For companies qualifying under Sections 23102(b)(5) and 23102(e) of the Act, such office in Guam may be an office space that it shares with other businesses including other captive insurance companies or affiliates of the captive insurance company, or it may locate its office as required under this section in an office in Guam of a company that engages in the business of managing the business affairs of captive insurance companies.

§30013 Resident Registered Agent for Service of Process.

The registered agent of a licensed captive insurance company shall be either an individual who resides in Guam or a corporation or a partnership or a limited liability company formed on Guam that maintains an office in Guam that is regularly open for business during normal business hours. Both the registered agent for service of process and the captive insurance company licensed under the Act shall notify the Commissioner in writing within ten (10) days of any change in the address of its registered agent for service of process.

§30014 Extension of Period Between Examinations.

Under Section 23108 of the Act, requiring that the Commissioner make an examination of the affairs of each captive insurance company at least once every three years, but the Commissioner has the right upon application, to enlarge the three (3) year period to five (5) years upon application, provided that certain conditions are met. A captive insurance company shall apply for such an enlargement of the examination period by request made in writing accompanied the company's annual audit report in which the independent auditor has rendered an unqualified opinion. If the Commissioner grants the application, the enlargement of the examination period to five (5) years shall remain in effect until the Commissioner, in his discretion, revokes his consent to the enlargement of said period in writing.

§30015 Restrictions on Insurance of Direct Risks and Maximum Premiums for Captive Insurance Companies.

(a) Section 23102(a)(1) of the Act, limiting the insurance of risks by pure captive insurance companies, applies only to direct insurance of risks and not to reinsurance, which is governed by Sections 23102(a)(4) and 23111 of the Act and Section 30016 of these Regulations. A pure captive insurance company shall not insure any direct risk of any entity other than its parent and



affiliated companies.

(b) Section 23102(a)(2) of the Act, limiting the insurance of risks by a group captive insurance company to risks of its member organizations and of affiliates of its member organizations, does not apply to reinsurance, which is governed by Sections 23102(a)(4) and 23111 of the Act and Section 30016 of these Regulations.

(c) Section 23102(a)(3) of the Act limiting the insurance of risks by an industrial insured captive insurance company to the risks of industrial insureds that comprise the industrial insured group and their affiliated companies does not apply to reinsurance which is governed by Sections 23102(a)(4) and 23111 of the Act and Section 30016 of these Regulations.

(d) No any captive insurance company shall reinsure workers' compensation of a qualified self-insured plan of its parent and affiliated companies under Section 23102(a)(5) of the Act if such self-insured plans or qualified self-insured plans are prohibited by the laws of the state or jurisdiction in which the risks are located.

(e) No captive insurance company shall write, assume and retain net premiums in excess of maximum allowed under Section 23116 of the Act. Should any captive insurance company be found in violation of the maximum amount of premiums charged under Section

23116 of the Act, the Commissioner shall impose a civil money penalty of \$10,000.00 for each month or a fraction of the month during which the violation exists until such violation is corrected, provided, however, the Commissioner shall waive the civil money penalty if the captive insurance company shall on its own correct such violation within two (2) months from the end of the month in which such violation had occurred, provided, further, that if the violation continues for more than three (3) months from the time such violation had occurred, the Commissioner may suspend, revoke or refuse to renew the license of the captive insurance company.

§30016 Reinsurance.

(a) Any captive insurance company authorized to do business under the Act may take credit for reserves on risks ceded to a reinsurer subject to the following limitations:

(1) No credit shall be allowed for reinsurance where the reinsurance contract does not result in the complete transfer of the risk or liability to the reinsurer.

(2) No credit shall be allowed, as an asset or a deduction from liability to any ceding insurer for reinsurance

unless the reinsurance is payable by the assuming insurer on the basis of the liability of the ceding insurer under the contract reinsured without diminution because of the insolvency of the ceding insurer. In the event the captive insurance company is declared insolvent by its board of directors or by the Commissioner or is placed in receivership for rehabilitation or liquidation any reinsurance due or becoming due and payable by the assuming insurer shall be paid to the Commissioner or the court appointed receiver or liquidator. The Insurers Rehabilitation and Liquidation Model Act of 1996 of the National Association of Insurance Commissioners shall be followed by the Commissioner in administering any company placed in receivership or liquidation.

(3) No credit shall be allowed for reinsurance ceded unless the reinsurer and amount of reinsurance has been approved by the Commissioner annually.

(b) Reinsurance under this section shall be effected through a written agreement of reinsurance setting forth the terms, provisions and conditions governing such reinsurance.

The Commissioner in his discretion shall require that complete copies of all reinsurance treaties and contracts be filed and/or approved by him.

§30017 Insurance Managers and Intermediaries.

(a) In addition to the "Principal Place of Business" requirement set forth in Section 30012(b) of these Regulations, the insurance manager of the captive insurance company shall be a person who resides in Guam. Any entity or association organized under the laws of Guam and keeping a principal office in Guam may apply and be authorized as an insurance manager provided that the individuals authorized to act under the license of the entity or association reside in Guam and are authorized by the Commissioner.

(b) In considering whether to authorize a person as an insurance manager, the Commissioner shall determine whether the person has adequate knowledge of the insurance business to enable such person to act as an insurance manager. All persons filing an application for an insurance manager shall submit a Biographical Data Affidavit by using Form B of these regulations.

(c) No person shall act as an insurance manager, broker, agent, or reinsurance intermediary for captive insurance business in Guam without the authorization of the Commissioner. An application for such authorization must be on a form prescribed by the Commissioner. The application fee for an insurance manager, broker, agent, or reinsurance intermediary for captive business shall be \$10.00.

§30018 Directors.

Every company shall report to the Commissioner within thirty (30) days after any change in its executive officers or directors, including in its report a statement of the business and professional affiliations of any new executive officer or director. No director, officer, or employee of a company shall, except on behalf of the company, accept, or be the beneficiary of, any fee, brokerage, gift or other emolument because of any investment, loan, deposit, purchase, sale, payment or exchange made by or for the company but such person may receive reasonable compensation for necessary services rendered to the company in his or her usual private, professional or business capacity.

Any profit or gain received by or on behalf of any person in violation of this section shall inure to and be recoverable by the company.

§30019 Conflict of Interest.

In addition to the investment of funds limitation in Section 30018 of these Regulations, each company licensed under the Act is required to adopt a conflict of interest statement for officers, directors and key employees. Such statement shall disclose that the individual has no outside commitments, personal

or otherwise, that would divert him from his duty to further the interests of the company he represents but this shall not preclude such person from being a director or officer in more than one insurance company.

Each officer, director, and key employee shall file such disclosure with the Board of Directors yearly.

§30020 Suspension or Revocation.

The Commissioner may, for any of the following reasons, conduct proceedings for suspension or revocation of the license of a captive insurance company in accordance with the Administrative Adjudication Law:

(a) if the company has not commenced business according to its plan of operation within two years of being licensed; or

(b) if the company ceases to carry on insurance business in or from within Guam;

(c) failure to file annual statement prior to March 1 of each year as required by Section 23107 and for any reason provided in Section 23109 of the Act;

(d) violation by a captive insurance company of the provisions of Section 23116 of the Act and Section 30015(e) of these Regulations.

(e) at the request of the company.

§30021 Waiver of Hearing.

(a) In the event the suspension or revocation of license is requested by the president or any board of director of the captive insurance company, such request shall be deemed to be a waiver of hearing. The Commissioner may upon receipt of such request from the company immediately issue the order of suspension or revocation of license with or without further hearing and shall cause such order to be served on the company.

(b) If a captive insurance company shall fail to file a notice of defense within fifteen (15) days after service of the accusation or statement of issues, such failure shall be deemed to be a waiver of all rights to a hearing. The Commissioner upon finding that a captive insurance company has failed to file a notice of defense, may immediately issue an order of suspension or revocation of the captive insurance license and shall cause such order to be served on the company.

§30022 Acquisition of Control of or Merger with Domestic Company.

No person other than the issuer shall make a tender offer for or a request or invitation for tenders of, or enter into any agreement to exchange securities for, seek to acquire, or acquire in the open market or otherwise, any voting security of a domestic if, after the consummation thereof, such person would, directly or indirectly (or by conversion or by exercise of any right to acquire) be in control of such company; and no person shall enter into an agreement to merge with or otherwise to acquire control of a domestic company without the prior written approval of the Commissioner. In considering any application for the acquisition of control or merger with a domestic company, the Commissioner shall consider all of the facts and circumstances surrounding the application as well as the criteria for establishment of a company set out in these Regulations.

§30023 Change of Business.

Any change in the nature of the captive, business from that stated in the company's plan of operation filed with the Commissioner upon application requires prior approval from the Commissioner.



Any change in any other information filed with the application must be filed with the Commissioner but does not require prior approval.

APPENDIX 1

FORM A

SAMPLE LETTER OF CREDIT FORM

CAPTIVE INSURANCE COMPANY  
IRREVOCABLE LETTER OF CREDIT

(ADDRESS)  
TERRITORY OF GUAM

Letter of Credit No. (000001)  
Date: \_\_\_\_\_

Commissioner of Insurance  
Government of Guam

Commissioner:

1. We hereby establish our IRREVOCABLE LETTER OF CREDIT in your favor for the account of (Guam Captive Insurance Company) up to the aggregate amount of (\$ \_\_\_\_\_ ) available by your draft(s) drawn on us, at sight, bearing the number of this IRREVOCABLE LETTER OF CREDIT No. (000001). This LETTER OF CREDIT shall expire at our Letter of Credit Department, Guam, at our close of business on July 31, 19\_\_\_\_, unless as herein-after extended.

2. This LETTER OF CREDIT is issued to satisfy the provisions of §23105 of Chapter 23, Title 22 Guam Code Annotated and on behalf of the above mentioned (Guam Captive Insurance Company) which is applying for a certificate of authority to engage in the insurance business in the Territory of Guam as a captive insurance company.

3. It is a condition of the LETTER OF CREDIT that it shall be automatically extended for additional periods each of one year, unless at least ninety calendar days prior to the then

relevant expiration date we have advised you in writing that we elect not to extend. In that event, you may draw hereunder, up to the full amount then available hereunder, against your sight draft(s) on us, bearing the number of this LETTER OF CREDIT.

4. It is a further condition of this LETTER OF CREDIT that each automatic extension shall be measured from the then relevant expiration date, even though such date be not a business day in the Territory of Guam for this Bank. It is also a condition of this LETTER OF CREDIT that, for the purpose of drawing hereunder, if the then relevant expiration date is a non-business day for our Bank, drawing may be made not later than our next immediately following business day.

5. This LETTER OF CREDIT sets forth in full the terms of our undertaking, and such undertaking shall not in any way be modified, amended or amplified by reference to any note, document, instrument or agreement referred to herein or in which this LETTER OF CREDIT relates and any such reference shall not be deemed to incorporate herein by reference any note, document, instrument or agreement.

6. Each sight draft so drawn and presented shall be promptly honored by us if presented on or prior to the above stated expiration date or any extension thereof as above provided.

Very truly yours,

APPENDIX 2

FORM B

BIOGRAPHICAL DATA AFFIDAVIT  
FOR SHAREHOLDERS, DIRECTORS AND OFFICERS

BIOGRAPHICAL DATA AFFIDAVIT  
(Print or Type)

Name and Address of Company: \_\_\_\_\_  
\_\_\_\_\_

In connection with the above named company, I herewith make representation and supply information about myself as hereinafter set forth. (Attach addendum or separate sheet if space hereon is insufficient to answer a question fully.) IF ANSWER IS "NONE" OR "NO EXCEPTIONS, SO STATE.

1. Affiant's Full Name: \_\_\_\_\_

Marital Status: \_\_\_\_\_ Social Security No. \_\_\_\_\_

2. Other Names Used at Any Time: \_\_\_\_\_

3. Date of Birth: \_\_\_\_\_ Place of Birth: \_\_\_\_\_

Color of Hair: \_\_\_\_\_ Color of Eyes: \_\_\_\_\_ Weight: \_\_\_\_\_

4. Education and Degrees:

High School: \_\_\_\_\_

College: \_\_\_\_\_

Graduate or Professional: \_\_\_\_\_

(LIST ALL EDUCATIONAL INSTITUTIONS AND LOCATIONS ON ADDITIONAL SHEET, IF NECESSARY.)

5. Member of Professional Societies or Associations (List): \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

6. I control directly or indirectly, or own legally or beneficially, 10% or more of the outstanding shares (in voting power) of the following insurers: \_\_\_\_\_  
\_\_\_\_\_

6a. If any of the above stock is pledged or hypothecated in any way, please detail fully: \_\_\_\_\_

\_\_\_\_\_

7. Present Chief Occupation: \_\_\_\_\_

Position or Title: \_\_\_\_\_ How Long: \_\_\_\_\_

Employer's Name: \_\_\_\_\_

Employer's Address: \_\_\_\_\_

How long with this employer? \_\_\_\_\_ Where? \_\_\_\_\_

8. Other jobs, positions, directorates, or officerships concurrently held at present: \_\_\_\_\_

\_\_\_\_\_

9. Complete Employment Record for Past 20 Years:

<u>DATES</u>	<u>EMPLOYER AND ADDRESS</u>	<u>TITLE</u>
--------------	-----------------------------	--------------

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

10. For the last 10 years, I have lived at the following address or addresses:

<u>ADDRESS</u>	<u>CITY</u>	<u>DATES</u>
----------------	-------------	--------------

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

11. I have never been adjudicated as bankrupt, except as follows:

\_\_\_\_\_

\_\_\_\_\_

12. I have never been convicted or had a sentence imposed, suspended or had pronouncement of a sentence pardoned for conviction of, or pleaded guilty of or nolo contendere to any information or an indictment charging a felony for embezzlement, theft or larceny, mail fraud, or violating any corporate securities statute or any insurance law, nor have I been the subject of cease and desist order of any federal or state securities regulatory agency, except as follows:

---

---

13. During the last 10 years, I have neither been refused a professional, occupational, or vocational license issued by any public or governmental licensing agency or regulatory authority, nor has such a license held by me ever been suspended or revoked, except as follows:

---

---

13a. I presently hold or have held in the past the following professional, occupational, or vocational licenses issued by a public or governmental licensing agency or authority (state date license issued, insurer or license, date terminated, reason for termination):

---

---

14. I have never been an officer, director, trustee, investment committee member, key employee, or controlling stockholder of an insurer which, while I occupied any such position or capacity with respect to, it became insolvent or was placed in conservatorship, or was enjoined from or ordered to cease and desist from violating any securities or insurance law, except as follows:

---

---

15. The certificate of authority or license to do business of any insurance company of which I was an officer or key management person has never been suspended or revoked while I occupied such position, except as follows:

---



16. No insurer of which I was an officer, director, or key management person at the time has ever been denied or refused or voluntarily withdrawn its application for a license or certificate of authority, except as follows:

\_\_\_\_\_  
\_\_\_\_\_  
Dated and signed this \_\_\_\_\_ day of \_\_\_\_\_,  
at \_\_\_\_\_

I hereby certify under penalty of perjury that the following statements are true and correct to the best of my knowledge and belief.

\_\_\_\_\_  
(Signature of Affiant)

SUBSCRIBED AND SWORN TO BEFORE ME this \_\_\_\_\_ day of \_\_\_\_\_,  
1986.

\_\_\_\_\_  
(Notary Public)

APPENDIX 3

FORM C

APPLICATION FOR AUTHORIZATION AS  
INDEPENDENT AUDITOR FOR  
CAPTIVE INSURANCE COMPANY

GOVERNMENT OF GUAM  
DEPARTMENT OF BANKING AND INSURANCE

APPLICATION FOR AUTHORIZATION  
AS AN  
INDEPENDENT AUDITOR  
FOR  
CAPTIVE INSURANCE COMPANY

To the Commissioner of Banking and Insurance, Government of Guam  
I hereby apply for authorization as a/an:

Individual / / Partnership / / Corporation / / Other / /

for the transacting of audits as required under Section 30006  
through 30010 of the Regulations for Captive Insurance Companies.

IF APPLICANT IS AN INDIVIDUAL

1. Full Legal Name: \_\_\_\_\_
2. Business Address: \_\_\_\_\_ Telephone: \_\_\_\_\_
3. (a) Residence Address: \_\_\_\_\_  
(b) Date of Birth: \_\_\_\_\_ (c) Social Security No. \_\_\_\_\_  
(d) Education and Degree:  
High School: \_\_\_\_\_  
College: \_\_\_\_\_  
Graduate or Professional: \_\_\_\_\_
4. List all insurance and/or captive auditing experiences for  
past 15 years: (Attach additional sheets as necessary)  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
5. Has applicant ever been arrested or indicted for and/or  
convicted of any crime or offense other than a traffic viola-  
tion? \_\_\_\_\_  
If "yes" submit full particulars of each case and disposition  
thereof.

6. I control directly or indirectly or own legally or beneficially the outstanding stock of the following insurers:

---

---

7. Do you currently hold or have you held any type of insurance license?

---

(TYPE) (STATE) (EXPIRATION DATE)

8. Have you ever had a license or privilege refused or revoked by any Insurance Department? If so, give details. \_\_\_\_\_

---

9. Are you currently licensed by the Territory of Guam as a CPA?

---

10. Has your license as a CPA in this Territory or any State of the United States ever been suspended or revoked? \_\_\_\_\_

If so, give details. \_\_\_\_\_

---

IF APPLICANT IS OTHER THAN AN INDIVIDUAL

11. Name of Partnership, Corporation, etc.: \_\_\_\_\_

BusinessAddress: \_\_\_\_\_

Federal I.D.# \_\_\_\_\_ Telephone No. \_\_\_\_\_

12. List of insurance and/or auditing experience for past 15 years: (Attach additional sheets as necessary)

---

---

---

13. Indicate insurance experience of partner, manager, supervisor, etc. of individual(s) responsible for auditing of captive(s):

\_\_\_\_\_  
\_\_\_\_\_

14. Will you assign only individuals that have a minimum of two years insurance auditing experience? Yes / / No / /

I hereby certify that I will immediately notify in writing an officer of the company and all members of the Board of Directors of the company of any determination by me that the company has materially misstated its financial condition in any of its reports to the Commissioner.

I hereby certify that I have read and understand all of the requirements and provisions of Guam Insurance Regulation Section 30006 through 30010 relating to Captive Insurance Companies, and will fully comply therewith.

(NO FEE REQUIRED) Signed \_\_\_\_\_  
Dated \_\_\_\_\_

SUBSCRIBED AND SWORN TO before me this \_\_\_\_\_ day of \_\_\_\_\_  
19\_\_\_\_\_.

NOTARY SEAL

Signature of Notary Public \_\_\_\_\_

Notary Public authorized by law of the Territory Guam to administer oaths. My commission expires on \_\_\_\_\_

APPENDIX 4

FORM D

APPLICATION FOR AUTHORIZATION  
AS CAPTIVE INSURANCE COMPANY  
LOSS RESERVE SPECIALIST

GOVERNMENT OF GUAM  
DEPARTMENT OF BANKING AND INSURANCE

APPLICATION FOR AUTHORIZATION  
AS CAPTIVE INSURANCE COMPANY  
LOSS RESERVE SPECIALIST

To the Commissioner of Banking and Insurance Government of Guam.

I hereby apply for authorization to certify as to the adequacy of loss reserves and loss expense reserves as required by the Captive Insurance Regulations.

INDIVIDUALS ONLY MAY APPLY

1. Full Legal Name: \_\_\_\_\_

2. Residence Address: \_\_\_\_\_  
(Street)

\_\_\_\_\_  
(City or Town) (State) (Zip)

3. (a) Date of Birth: \_\_\_\_\_ (b) Social Security No. \_\_\_\_\_

4. Education and Degree:

High School: \_\_\_\_\_

College: \_\_\_\_\_

Graduate or Professional: \_\_\_\_\_

LIST ALL EDUCATIONAL INSTITUTIONS ATTENDED AND ADDRESSES ON ADDITIONAL SHEET, IF NECESSARY. INDICATE MAJOR CONCENTRATION AND ACTUARIAL EXAM COMPLETED IF NOT A FELLOW.

5. Member of Professional Societies or Associations (List): \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

6. Present Chief Occupation: \_\_\_\_\_

Position or Title: \_\_\_\_\_ How Long \_\_\_\_\_

Employer's Name: \_\_\_\_\_

Address: \_\_\_\_\_

How long with this employer? \_\_\_\_\_ Where \_\_\_\_\_

7. Other jobs, positions, directorates, or officerships concurrently held at present:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

8. Complete Employment Record for Past 20 Years:

<u>DATES</u>	<u>EMPLOYER AND ADDRESS</u>	<u>TITLE</u>
--------------	-----------------------------	--------------

_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

9. Indicate property and casualty loss reserve and loss expense reserve experience:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

10. In order to qualify to sign statements of opinion relating to loss an loss adjustment expense reserves for a captive insurance company, an applicant must qualify in one or more of the following areas. Indicate by an /X/ which area(s) you qualify in:



- / / A member of the Casualty Actuarial Society and, three years of property and casualty loss and loss expense reserve evaluation experience.
- / / A member in good standing of the American Academy of Actuaries and five years of property and casualty loss and loss expense reserve evaluation experience.

I hereby certify that my responses to the above are true and complete, and I have read and understand all of the requirements and provisions of the Captive insurance Regulation Sections 30007(e) and 30010 and will fully comply therewith.

(NO FEE REQUIRED)

Signed \_\_\_\_\_

Dated \_\_\_\_\_

SUBSCRIBED AND SWORN TO before me this \_\_\_\_ day of \_\_\_\_\_  
19\_\_\_\_.

Signature of Notary Public \_\_\_\_\_

NOTARY SEAL

Notary Public authorized by law  
of the State of \_\_\_\_\_  
administer oaths. My commission  
expires on \_\_\_\_\_

**24th Guam Legislature**  
**Committee on Rules, Government**  
**Reform and Federal Affairs**  
*Senator Mark Forbes, Chairman*

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**SEP 25 1997**

MEMORANDUM

**TO:** Chairman  
Committee on Finance and Taxation

**FROM:** Chairman  
Committee on Rules, Government Reform and Federal Affairs

**SUBJECT:** Referral- Bill No. 386

The above Bill is referred to your Committee as the principal committee. It is recommended you schedule a public hearing at your earliest convenience.

Thank you for your attention to this matter.

**MARK FORBES**

Attachment



Carl T.C. Gutierrez  
Governor

# GUAM

ECONOMIC DEVELOPMENT AUTHORITY

**ATURIDAD INADILANTON IKUNUMIHAN GUAHAN**

*An Autonomous Agency of the Government of Guam, USA*



Madeleine Z. Bordallo  
Lieutenant Governor

**TESTIMONY ON:**

**GEDA QC Rules and Regulations  
Rev & Tax Rules and Regulations  
Bill 386, Technical Amendments to the  
Captive Insurance Law**

Submitted by:

**Ed Untalan, GEDA Administrator  
September 30, 1997**

Good evening Mr. Chairman, esteemed members of both the Committee on Tourism, Economic Development and Cultural Affairs, and the Committee on Finance and Taxation, ladies and gentlemen.

My name is Ed Untalan and I am the Administrator for the Guam Economic Development Authority (GEDA). I am submitting testimony in support of the Rules and Regulations for the GEDA Qualifying Certificate program, the Rules and Regulations for the Department of Revenue and Taxation, and the technical amendments for the Captive Insurance Law (Bill 386).

As you are aware, GEDA has been working with its consultants, AON Risk Services, Inc., in developing our insurance industry with focus on making Guam an attractive domicile for captive insurance companies. The technical amendments before you present changes that will make Guam competitive in the global arena, while maintaining the necessary controls to preserve the stability and integrity of the island's industry. GEDA and AON have conducted an extensive review of a number of different domiciles and have modeled our legislation after Bermuda, currently the world's largest insurance center.

Be that as it may, I would like to point out that as the development of this industry in Bermuda had taken nearly twenty-five years to evolve into what it is today, it is important to understand that the development of our industry will also take as much time. However, as captive insurance is relatively new to Asia, we are poised to take advantage of its growth over the coming years. With that, we project that this industry will grow into a billion dollar industry over the next ten years.

**GUAM, USA  
THE ULTIMATE DESTINATION**

The passage of the legislation is critical as we move to diversify our economic dependence on tourism. The rating agency of Standard & Poor's also has informed GEDA that the success of this industry could lead to an improvement of the Territory's credit rating once the deficit has been eliminated.

Before I close, I would like to request that Fletcher Pacific dba Terrace Guam, Inc., be granted a special exemption from 23102 (6), page 4 (lines 4,5) restricting direct writing of Guam risk by a captive. Terrace is Guam's first captive insurance company to establish in Guam and we have been using their name for promotional purposes since September 1996.

In closing, I would like to introduce Mr. Marc Lapointe, Managing Director of AON Insurance Manager's division. He is here on behalf of our consultants and will be available to answer any questions you may have.

/s/ Ed Untalan, Administrator

**REVENUE AND TAXATION**

SEP 30 1997

Honorable Anthony C. Blaz  
Chair, Committee on Finance and Taxation  
Honorable Alberto C. Lamorena, V  
Chair, Tourism, Economic Development and  
Cultural Affairs  
Twenty-Fourth Guam Legislature  
Agana, Guam 96910

Re: Bill No. 386, "An Act To Amend §23101, 23102, 23104, 23105, 23106, 23107, 23110, 23111, 23112, and 23113 of Title 22, Guam Code Annotated, and to Add §§23116, 23117, 23118 and 23119 To Said Title, Making Technical Amendments To The Captive Insurance Law" and "Rules and Regulations for Captive Insurance Companies".

Dear Senators Blaz and Lamorena:

My name is Joseph T. Duenas. I am the Director of the Department of Revenue and Taxation and Ex Officio Insurance Commissioner for the Territory of Guam.

I have reviewed Bill No. 386. I fully support this bill for the following reasons:

Captive insurance companies may not insure any risks arising in Guam. This provision addresses the concerns of the insurance industry that captive insurance companies might negatively impact the viability of insurers in Guam, particularly the domestic companies.

Captive insurance companies are required to file an annual statement and an accompanying audited report prior to March 1 of each year. The proposed bill provides for civil monetary penalty for failure to file an annual statement and audited report on time. I believe this requirement for timely reporting and penalty for noncompliance are crucial in monitoring the solvency of captive insurance companies.

In the event of an insolvency of a captive insurance company §23119 of this bill requires any reinsurer to pay any reinsurance due or becoming due to be paid to the ceding company or to the Insurance Commissioner or to any court appointed receiver or liquidator without any diminution. Without this provision, a reinsurer may quibble and possibly escape liability.

I do know that an insurance company can write a maximum of \$3 of net premium for every dollar of capital and surplus. Thus for insurers the ratio is 3:1.

However, Captive insurance companies are different from insurers. For captives it is a requirement that their parent companies, affiliated companies and members of their group institute loss prevention programs for the risks insured. A value has been assigned for the required loss prevention program of captive insurance companies. They are allowed to write a maximum of \$5 of net premium for every dollar of capital and surplus. Thus for captives the ratio is 5:1.

To monitor the required loss prevention program and solvency of captive insurance companies, I believe, the Insurance Division of the Department of Revenue and Taxation will need additional professional staff with an appropriate budget.

I invite your attention to §23118(b)(ii) of this bill. Under this provision, the Guam Captive Insurance Advisory Committee is required if advisable, to secure the formal opinion of an actuary whether the risks proposed to be insured by an applicant captive insurance company are matched by adequate capitalization.

One other area is the inclusion of any group created under the Product Liability Risk Retention Act of 1981 as being eligible to be insured by an industrial insured captive insurance company. The Act and its amendment did not include Guam in the definition of a state. As of this date, Guam has not adopted this federal statute. I believe this reference to the Act would mean that Guam is adopting this federal statute.

I also fully support the Department of Revenue and Taxation Rules and Regulations for Captive Insurance Companies. On September 23, 1997, I conducted a public hearing on the proposed rules and regulations. I firmly believe that these rules and regulations will work hand in hand with the provisions of Bill No. 386.

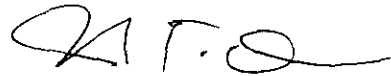
I am willing to give assurance to all applicants for captive insurance licenses that their applications will be acted upon within 28 calendar days after they have submitted a complete application. Towards this end, I suggest that §30003(a) of the rules and regulations be amended to read as follows:

§30003. Review of Applications and Issuance of Licenses

(a) The Commissioner shall review each application submitted by a company that has already been incorporated to determine whether the company meets the requirements of the Act. Within 28 calendar days after the date of the submission of a complete application, the Commissioner shall notify each applicant in writing of his approval or disapproval of the application. Within 30 days after the Commissioner notifies the applicant of the approval of the application, the company shall pay the \$2,500.00 license fee ...

For all of the foregoing reasons, I am in favor of Bill 386 and the Department of Revenue and Taxation Rules and Regulations for Captive Insurance Companies.

Sincerely,

A handwritten signature in black ink, appearing to read "J.T. Duenas", with a long horizontal flourish extending to the right.

JOSEPH T. DUENAS

Post-it Fax Note 7672

To: JOE MEGA  
Company:

Location: OFFICE OF SENATOR LAMORENA  
Fax #: 472-3535  
Comments:

Nbr of Pages: 1  
From: ED UNTALANI  
Company: GEDA  
Fax #: 642-4146  
Original destination:  Priority  Hold  Call for picture

27120

**23116 - Confidentiality Treatment of Captive Information:** All information pertaining to Guam Captive Insurance Companies shall be deemed proprietary and confidential unless:

- a) The Insurance Commissioner deems it in the public interest to make such information available for public inspection; or
- b) The Parent authorizes the Insurance Commissioner to make available such information for public inspection.

Joe Mega

Did not know where to put this, I therefore put it in the Law so that it would apply to both GEDA and Revenue and Tax.

Ed

Please call me on my cell if you need me -

687-2677

Just - just wanted to  
be sure you get a  
copy of this  
JK



Bill No. 386  
 Changes to be inserted

• Page 1, Section 1, 23101, Line 5:

(1) *Captive insurance company* .

(a) Means a limited purpose insurance subsidiary of a company with the specific objective of financing risks of its parent and a filiated companies and

(b) is any pure captive insurance company group captive insurance company, or industrial insured captive company formed or licen ed under the provisions of this Chapter.

(2) *Affiliated company*. Means any company in the same corporate system as a parent or a member organization by virtue of common ownership, control, operation, or management, or, in the case of a pure captive insurance company, that maintains a working relationship with, and whose business risks insured by the pure captive insurance company are similar or related to the business risks of, the parent insured by the pure captive insurance company.

• Page 4, Section 2, line 4:

(6) No captive insurance company may directly insure any risks arising in Guam

FISCAL NOTE  
BUREAU OF BUDGET AND MANAGEMENT RESEARCH

BBMR-F7

Bill Number: 386 (cor)  
Amendatory Bill: Yes

Date Received: September 29, 1997  
Date Reviewed: October 01, 1997

Department/Agency Affected: Guam Economic Development Authority  
Department/Agency Head: Ed Untalan, Administrator  
Total FY Appropriation to Date: Autonomous

Bill Title (preamble): AN ACT TO AMEND §§23101, 23102, 23104, 23105, 23106, 23107, 23110, 23111, 23112, AND 23113 OF TITLE 22, GUAM CODE ANNOTATED, AND TO ADD §§23116, 23117, 23118 AND 23119 TO SAID TITLE. MAKING TECHNICAL AMENDMENTS TO THE CAPTIVE INSURANCE LAW.

Change in Law: §23101, 23102, 23104, 23105, 23106, 23107, 23110, 23111, 23112, AND 23113 OF TITLE 22, GUAM CODE ANNOTATED

Bill's Impact on Present Program Funding:  
Increase \_\_\_\_\_ Decrease \_\_\_\_\_ Reallocation \_\_\_\_\_ No Change X

Bill is for:  
Operations \_\_\_\_\_ Capital Improvement \_\_\_\_\_ Other X

FINANCIAL/PROGRAM IMPACT

ESTIMATED SINGLE-YEAR FUND REQUIREMENTS (Per Bill)			
PROGRAM CATEGORY	GENERAL FUND	OTHER	TOTAL
Autonomous	1/		

ESTIMATED MULTI-YEAR FUND REQUIREMENTS (Per Bill)						
FUND	1st	2nd	3rd	4th	5th	TOTAL
GENERAL	1/					
OTHER						
TOTAL						

FUNDS ADEQUATE TO COVER INTENT OF THE BILL? Yes -- IF NO, ADD'L AMOUNT REQUIRED \$ \_\_\_\_\_  
AGENCY/PERSON/DATE CONTACTED: \_\_\_\_\_

ESTIMATED POTENTIAL MULTI-YEAR REVENUES						
FUND	1st	2nd	3rd	4th	5th	TOTAL
GENERAL FUND	1/					
OTHER						
TOTAL						

ANALYST Md DATE 10/01/97 DIRECTOR Joseph Rivera DATE OCT 1 1997  
M. Dixon Joseph E. Rivera/Acting

FOOTNOTES: See attached.

1/

*Bill 386 proposes to make technical amendments to the Captive Insurance Law. These technical amendments defines the various types of captive insurers and their applicable requirements. These amendments may allow more captive insurers to invest in Guam thus bring in more outside capital to the territory.*

**COMMITTEE ON FINANCE & TAXATION  
&  
COMMITTEE ON TOURISM, ECONOMIC DEVELOPMENT  
AND CULTURAL AFFAIRS**

**JOINT PUBLIC HEARING**

**Office of the Vice Speaker, Conference Room**

**Agenda**

**Tuesday, September 30, 1997 5:47 PM**

**REVISED**

- ▲ Bill 338** AN ACT TO ADD ARTICLE 10 TO CHAPTER 22, TITLE 5, GCA, TO AUTHORIZE THE ISSUANCE OF GOVERNMENT OF GUAM BONDS TO REFUND CERTAIN PRIOR OBLIGATIONS OF THE GOVERNMENT AND TO FUND ADDITIONAL INFRASTRUCTURE IMPROVEMENT PROJECTS.
- ▲ Bill 386** AN ACT TO AMEND §23101, 23102, 23104, 23105, 23106, 23107 23110, 23111, 23112 AND 23113 OF TITLE 22, GCA, AND TO ADD §23116, 23117, 23118 AND 23119 TO SAID TITLE, MAKING TECHNICAL AMENDMENTS TO THE CAPTIVE INSURANCE LAW.
- ▲ Rules & Regulations of the Guam Economic Development Authority on the Issuance of Qualifying Certificates**
- ▲ Rules & Regulations regarding Captive Insurance Companies for the Department of Revenue & Taxation**
- ▲ Rules & Regulations governing the certification of Tour Guides and Licensing of Tour Operator Business**