




Office of the Governor of Guam

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Office of the People's Speaker
vicente (ben) c. pangelinan

JAN 02 2004

TIME: 9:59 (AM) (PM)
RECEIVED BY: 

Felix Perez Camacho
Governor

Kaleo Scott Moylan
Lieutenant Governor

31 DEC 2003

The Honorable Vicente C. Pangelinan
Speaker
I Mina'Bente Siete Na Liheslaturan Guahån
Twenty-Seventh Guam Legislature
155 Hesler Street
Hagåtña, Guam 96910

Dear Speaker Pangelinan:

Transmitted herewith is Bill No. 156 (COR), "AN ACT TO *AMEND* CHAPTER 23 OF DIVISION 2, TITLE 22 OF THE GUAM CODE ANNOTATED, RELATIVE TO CAPTIVE INSURANCE COMPANIES," which I signed into law on December 17, 2003, as Public Law No. 27-54.

Given the potential demand for protected cell captives, this measure allows the formation of this type of captive company on Guam and makes amendments to other portions of the captive insurance legislation. This would make Guam a more attractive captive insurance domicile and would diversify revenue generating industries on our island. This measure is a step towards building and growing Guam's financial services sector, enhancing our insurance institutional capacity, and contributing to the island's economic and employment diversification.

Sincerely yours,



FELIX P. CAMACHO
I Maga'låhen Guåhan
Governor of Guam

Attachment: copy attached of signed bill

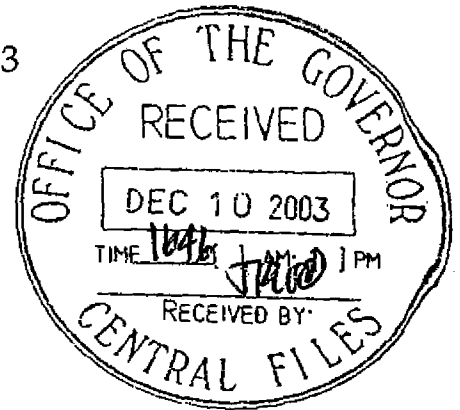
cc: The Honorable Tina Rose Muna-Barnes
Senator and Legislative Secretary



MINA' BENTE SIETE NA LIHESLATURAN GUÅHAN
TWENTY-SEVENTH GUAM LEGISLATURE
155 Hessler Place, Hagåtña, Guam 96910

December 10, 2003

The Honorable Felix P. Camacho
I Maga'lahaen Guåhan
Ufisinan I Maga'lahi
Hagåtña, Guam 96910



Dear *Maga'lahi* Camacho:

Transmitted herewith are Bill Nos. 60(COR), 62(COR), 78(LS), 107(COR), 139(COR), 154(COR) and 182(LS), and Substitute Bill Nos. 11(COR), 23(COR), 32(COR), 66(LS), 156(COR), 169(LS) and 171(LS) which were passed by *I Mina' Bente Siete Na Liheslaturan Guåhan* on December 6, 2003.

Sincerely,

A handwritten signature in black ink, appearing to read "Tina Rose Muña Barnes".

TINA ROSE MUÑA BARNES
Legislative Secretary

Enclosures (14)

CFI# 1203-4250

I MINA'BENTE SIETE NA LIHESLATURAN GUÅHAN
2003 (FIRST) Regular Session

CERTIFICATION OF PASSAGE OF AN ACT TO I MAGA'LAHEN GUÅHAN

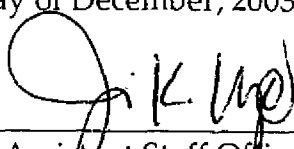
This is to certify that Substitute Bill No. 156 (COR), "AN ACT TO AMEND CHAPTER 23 OF DIVISION 2, TITLE 22 OF THE GUAM CODE ANNOTATED, RELATIVE TO CAPTIVE INSURANCE COMPANIES," was on the 6th day of December, 2003, duly and regularly passed.

Attested


Tina Rose Muña Barnes
Senator and Legislative Secretary

vicente (ben) c. pangelinan
Speaker

This Act was received by *I Maga'lahaen Guåhan* this 10th day of December, 2003, at 4:50
o'clock P.M.


Assistant Staff Officer
Maga'lahaen's Office

APPROVED:


FELIX P. CAMACHO
I Maga'lahaen Guåhan

Date:

12/17/03

Public Law No. 27-54

I MINA'BENTE SIETE NA LIHESLATURAN GUÅHAN
2003 (FIRST) Regular Session

Bill No. 156 (COR)

As substituted by the Committee on Rules
and amended on the Floor.

Introduced by:

Toni Sanford
F. R. Cunliffe
J. A. Lujan
F. B. Aguon, Jr.
T. R. Muña Barnes
J. M.S. Brown
C. Fernandez
Mark Forbes
L. F. Kasperbauer
R. Klitzkie
L. A. Leon Guerrero
v. c. pangelinan
J. M. Quinata
R. J. Respicio
Ray Tenorio

**AN ACT TO AMEND CHAPTER 23 OF DIVISION 2, TITLE
22 OF THE GUAM CODE ANNOTATED, RELATIVE TO
CAPTIVE INSURANCE COMPANIES.**

1 **BE IT ENACTED BY THE PEOPLE OF GUAM:**

2 **Section 1. Legislative Findings and Intent.** In an effort to diversify
3 Guam's economy, *I Liheslaturan Guåhan* has enacted legislation to allow for
4 the formation of captive insurance companies on Guam. However, the
5 current laws governing these companies do not provide for protected cell
6 captives, a new type of captive that is becoming increasingly more popular.

1 Given the potential demand for this type of captive company, *I*
2 *Liheslaturan Guåhan* finds that the insurance laws should be amended to allow
3 the formation of protected cell captives on Guam. It is also the intent of *I*
4 *Liheslaturan Guåhan* to make certain amendments to other portions of the
5 captive insurance legislation, based on advice from industry experts, to make
6 Guam a more attractive captive insurance domicile.

7 **Section 2.** §23101 of Chapter 23, Division 2, Title 22, of the
8 Guam Code Annotated is hereby *amended* to read:

9 “§23101. **Definitions.** As used in this Chapter, unless the
10 context requires otherwise:

11 **(1) ‘Captive insurance company’:**

12 (a) Means a limited purpose insurance subsidiary of a
13 company with the specific objective of financing risks of its
14 parent and affiliated companies; and

15 (b) Is a pure captive insurance company, group
16 captive insurance company, or industrial insured captive
17 company formed or licensed under the provisions of this
18 Chapter.

19 **(2) ‘Affiliated company’** means any company in the same
20 corporate system as a parent or a member organization by
21 virtue of common ownership, control, operation or
22 management, or, in the case of a pure captive insurance
23 company, that maintains a working relationship with, and
24 whose business risks insured by the pure captive insurance

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

3 (3) 'Commissioner' means the Insurance Commissioner.

4 (4) 'Director' means the Director of the Department of
5 Revenue and Taxation.

6 (5) 'Domestic Insurer' means an insurer domiciled in the
7 island of Guam.

8 (6) 'Excess workers compensation insurance' means in the
9 case of an employer that has insured or self-insured the
10 workers compensation risks in accordance with applicable state
11 or Federal law, insurance in excess of a specified per-incident
12 or aggregate limit established by the Commissioner.

13 (7) 'Fair value' of an asset (or liability) means the amount at
14 which that asset (or liability) could be bought (or incurred) or
15 sold (or settled) in a current transaction between willing
16 parties, that is, other than in a forced or liquidation sale.
17 Quoted market prices in active markets are the best evidence of
18 fair value and shall be used as the basis for the measurement, if
19 available. If a quoted market price is available, the fair value is
20 the product of the number of trading units times market price.
21 If quoted market prices are not available, the estimate of fair
22 value shall be based on the best information available. The
23 estimate of fair value shall consider prices for similar assets and
24 liabilities and the results of valuation techniques to the extent

1 available in the circumstances. Examples of valuation
2 techniques include the present value of estimated expected
3 future cash flows using a discount rate commensurate with the
4 risks involved, option-pricing models, matrix pricing, option-
5 adjusted spread models and fundamental analysis. Valuation
6 techniques for measuring financial assets and liabilities and
7 servicing assets and liabilities shall be consistent with the
8 objective of measuring fair value. Those techniques shall
9 incorporate assumptions that market participants would use in
10 their estimates of values, future revenues, and future expenses,
11 including assumptions about interest rates, default,
12 prepayment, and volatility. In measuring financial liabilities
13 and servicing liabilities at fair value by discounting estimated
14 future cash flows, an objective is to use discount rates at which
15 those liabilities could be settled in an arm's-length transaction.
16 Estimates of expected future cash flows, if used to estimate fair
17 value, shall be the best estimate based on reasonable and
18 supportable assumptions and projections. All available
19 evidence shall be considered in developing estimates of
20 expected future cash flows. The weight given to the evidence
21 shall be commensurate with the extent to which the evidence
22 can be verified objectively. If a range is estimated for either the
23 amount or timing of possible cash flows, the likelihood of
24 possible outcomes shall be considered in determining the best
25 estimate of future cash flows.

1 (8) 'Fully funded' means that, with respect to any exposure
2 attributed to a protected cell, the fair value of the protected cell
3 assets, on the date on which the insurance securitization is
4 effected, equals or exceeds the maximum possible exposure
5 attributable to the protected cell with respect to such exposures.

6 (9) 'General account' means the assets and liabilities of a
7 protected cell company other than protected cell assets and
8 protected cell liabilities.

9 (10) 'Group' means any legal association of individuals,
10 corporations, partnerships, limited liability companies or
11 associations, the member organizations of which collectively:

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

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

17 (11) 'Group captive insurance company' means any company
18 that insures risks of the member organizations of that group,
19 and their affiliated companies.

20 (12) 'Indemnity trigger' means a transaction term by which
21 relief of the issuer's obligation to repay investors is triggered by
22 its incurring a specified level of losses under its insurance or
23 reinsurance contracts.

24 (13) 'Industrial insured' means an insured:

1 (a) who procures the insurance of any risk or risks by use
2 of the services of an employee acting as an insurance manager
3 or buyer;

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

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

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

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

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

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

17 (ii) have corporate voting control over an industrial
18 insured captive insurance company incorporated as a
19 mutual insurer; or

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

1 (16) 'Member organization' means a corporation, partnership
2 or association that belongs to a group.

3 (17) 'Non-indemnity trigger' means a transaction term by
4 which relief of the issuer's obligation to repay investors is
5 triggered solely by some event or condition other than the
6 individual protected cell company incurring a specified level of
7 losses under its insurance or reinsurance contracts.

8 (18) 'Parent' means a corporation, partnership, limited
9 liability company, or individual that directly or indirectly
10 owns, controls, or holds the power to vote more than fifty
11 percent (50%) of the outstanding voting securities of a pure
12 captive insurance company.

13 (19) 'Protected cell' means an identified pool of assets and
14 liabilities of a protected cell company segregated and insulated
15 by means of this Chapter from the remainder of the protected
16 cell company's assets and liabilities.

17 (20) 'Protected cell account' means a specifically identified
18 bank or custodial account established by a protected cell
19 company for the purpose of segregating the protected cell
20 assets of one (1) protected cell from the protected cell assets of
21 other protected cells and from the assets of the protected cell
22 company's general account.

1 (21) **'Protected cell assets means'** all assets contract rights and
2 general intangibles, identified with and attributable to a
3 specific protected cell of a protected cell company.

4 (22) **'Protected cell company'** means a captive insurance
5 company that has one (1) or more protected cells.

6 (23) **'Protected cell company insurance securitization'** means
7 the issuance of debt instruments, the proceeds from which
8 support the exposures attributed to the protected cell, by a
9 protected cell company where repayment of principal or
10 interest, or both, to investors pursuant to the transaction terms
11 is contingent upon the occurrence or nonoccurrence of an event
12 with respect to which the protected cell company is exposed to
13 loss under insurance or reinsurance contracts it has issued.

14 (24) **'Protected cell liabilities'** means all liabilities and other
15 obligations identified with and attributable to a specific
16 protected cell of a protected cell company.

17 (25) **'Pure captive insurance company'** means any company
18 that insures risks of its parent and affiliated companies."

19 **Section 3.** Subsection (a) of §23102 of Chapter 23, Division 2, Title
20 22, of the Guam Code Annotated is hereby *amended* to read:

21 “(a) Any captive insurance company, when permitted by its articles
22 of association, or charter, may apply to the Commissioner for a
23 license to do any and all insurance comprised in Article 1 of Chapter
24 18, Title 22, Guam Code Annotated; provided, however, that:

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

3 (2) no group captive insurance company may insure any risks
4 other than those of the member organization of its group, and their
5 affiliated entities;

6 (3) no industrial insured captive insurance company may
7 insure any risks other than those of the industrial insured that
8 comprise the industrial insured group, and their affiliated entities, or
9 controlled unaffiliated businesses;

10 (4) no captive insurance company, except a duly registered
11 and licensed rent-a-captive or protected cell facility, may accept or
12 cede reinsurance except as provided in §23111 of this Chapter; and

13 (5) any captive insurance company may provide excess
14 workers compensation insurance to its parent and affiliated
15 companies, unless prohibited by the laws of the state having
16 jurisdiction over the transaction. Any captive insurance company
17 may reinsure workers compensation of a qualified self-insured plan
18 of its parent and affiliated entities.”

19 **Section 4.** §23104 of Chapter 23 of Division 2 of Title 22 of the
20 Guam Code Annotated is hereby *amended* to read:

21 “§23104. **Minimum Capital.** No pure captive insurance
22 company, group captive insurance company incorporated as a stock
23 insurer or industrial insured captive insurance company
24 incorporated as a stock insurer, a rent-a-captive or a protected cell

1 captive insurance company shall be issued a license unless it shall
2 possess and thereafter maintain unimpaired paid-in capital of:

3 (1) in the case of a pure captive insurance company, not less
4 than Fifty Thousand Dollars (\$50,000.00);

5 (2) in the case of a group captive insurance company
6 incorporated as a stock insurer, not less than One
7 Hundred Thousand Dollars (\$100,000.00);

8 (3) in the case of an industrial insured captive insurance
9 company incorporated as a stock insurer not less than
10 One Hundred Fifty Thousand Dollars (\$150,000.00); and

11 (4) in the case of a rent-a-captive or a protected cell captive,
12 not less than One Hundred Fifty Thousand Dollars
13 (\$150,000.00) for the first client or cell, increasing by One
14 Hundred Fifty Thousand Dollars (\$150,000.00) for each
15 additional client or cell up to a maximum of Seven
16 Hundred Fifty Thousand Dollars (\$750,000.00).

17 Such capital may be in the form of cash deposited in a member bank
18 of the Federal Reserve System licensed to do business in Guam and
19 approved by the Commissioner."

20 **Section 5.** §23105 of Chapter 23, Division 2, Title 22, of the Guam
21 Code Annotated is hereby *amended* to read:

22 "§23105. **Minimum Surplus; Letter of Credit.** No captive
23 insurance company shall be issued a license unless it shall possess
24 and thereafter maintain free surplus of:

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

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

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

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

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

15 (6) in the case of a rent-a-captive or a protected cell
16 company, not less than Two Hundred Fifty Thousand Dollars
17 (\$250,000.00).

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

22 **Section 6.** §23106 of Chapter 23, Division 2, Title 22, of the Guam
23 Code Annotated is hereby *amended* to read:

1 “§23106. Formation of Captive Insurance Companies on
2 Guam.

3 (a) A pure captive insurance company shall be
4 incorporated as a stock insurer with its capital divided into
5 shares and held by the stockholders.

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

9 (1) as a stock insurer with its capital divided into
10 shares and held by the stockholders; or

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

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

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

- 1 (1) the character, reputation, financial standing
2 and purpose of the incorporators or attorney-
3 in-fact;
- 4 (2) the character, reputation, financial
5 responsibility, insurance experience and
6 business qualifications of the officers and
7 directors;
- 8 (3) the amount and liquidity of its assets relative
9 to the risks to be assumed;
- 10 (4) the adequacy of the expertise, experience and
11 character of the persons who will manage the
12 captive insurer;
- 13 (5) the overall soundness of its plan of operation;
- 14 (6) the adequacy of the loss prevention programs
15 of its parent or member organizations;
- 16 (7) the establishment of business relationships
17 with banks and services including, but not
18 limited to, accountants, attorneys, investment
19 advisers, broker-dealers and other
20 professionals that are licensed to transact
21 business in Guam; and
- 22 (8) such other aspects as the Commissioner shall
23 deem advisable.

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

5 (f) The capital stock of a captive insurance company
6 incorporated as a stock insurer shall be issued at not less than
7 Ten Dollars (\$10.00) par value.

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

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

18 (i) The Articles of Incorporation or bylaws of a captive
19 insurance company may authorize a quorum of a board of
20 directors to consist of no fewer than the required majority of
21 the board members as specified in the Articles of Incorporation.

22 (j) Establishment of Protected Cells.

23 (1) A protected cell company may establish one
24 (1) or more protected cells with the prior written approval

1 of the Commissioner of a plan of operation or
2 amendments thereto submitted by the protected cell
3 company with respect to each protected cell in connection
4 with an insurance securitization. Upon the written
5 approval of the Commissioner of the plan of operation,
6 which shall include, but not be limited to, the specific
7 business objectives and investment guidelines of the
8 protected cell, the protected cell may, in accordance with
9 the approved plan of operation, attribute to the protected
10 cell insurance obligations with respect to its insurance
11 business and obligations relating to the insurance
12 securitization and assets to fund the obligations. A
13 protected cell shall have its own distinct name or
14 designation, which shall include the words 'protected
15 cell'. The protected cell company shall transfer all assets
16 attributable to a protected cell to one (1) or more
17 separately established and identified protected cell
18 accounts bearing the name or designation of that
19 protected cell. Protected cell assets shall be held in the
20 protected cell accounts for the purpose of satisfying the
21 obligations of that protected cell.

22 (2) All attributions of assets and liabilities
23 between a protected cell and the general account shall be
24 in accordance with the plan of operation approved by the
25 Commissioner. No other attribution of assets or liabilities

1 may be made by a protected cell company between the
2 protected cell company's general account and its protected
3 cells. Any attribution of assets and liabilities between the
4 general account and a protected cell, or from investors in
5 the form of principal on a debt instrument issued by a
6 protected cell company in connection with a protected cell
7 company securitization shall be in cash or in readily
8 marketable securities with established market values.

9 (3) The creation of a protected cell does not
10 create, in respect of that protected cell, a legal person
11 separate from the protected cell company. Amounts
12 attributed to a protected cell under this Chapter, including
13 assets transferred to a protected cell account, are owned
14 by the protected cell company and the protected cell
15 company may not be, nor hold itself out to be, a trustee
16 with respect to those protected cell assets of that protected
17 cell account. Notwithstanding the foregoing, the
18 protected cell company may allow for a security interest to
19 attach to protected cell assets or a protected cell account
20 when in favor of a creditor of the protected cell and
21 otherwise allowed under applicable law.

22 (4) This Chapter shall *not* be construed to
23 prohibit the protected cell company from contracting with
24 or arranging for an investment advisor, commodity
25 trading advisor, or other third party to manage the

1 protected cell assets of a protected cell, provided that all
2 remuneration, expenses and other compensation of the
3 third party advisor or manager are payable from the
4 protected cell assets of that protected cell and not from the
5 protected cell assets of other protected cells or the assets of
6 the protected cell company's general account.

7 (5) (i) A protected cell company shall establish
8 administrative and accounting procedures necessary to
9 properly identify the one (1) or more protected cells of the
10 protected cell company and the protected cell assets and
11 protected cell liabilities attributable to the protected cells.
12 It shall be the duty of the directors of a protected cell
13 company to:

14 (A) keep protected cell assets and protected
15 cell liabilities separate and separately identifiable
16 from the assets and liabilities of the protected cell
17 company's general account; and

18 (B) keep protected cell assets and protected
19 cell liabilities attributable to one (1) protected cell
20 separate and separately identifiable from protected
21 cell assets and protected cell liabilities attributable
22 to other protected cells.

23 (ii) Notwithstanding the foregoing, if this Section
24 is violated, the remedy of tracing shall be applicable to
25 protected cell assets when commingled with protected

1 cell assets of other protected cells or the assets of the
2 protected cell company's general account. The remedy of
3 tracing shall not be construed as an exclusive remedy.

4 (6) The protected cell company shall, when
5 establishing a protected cell, attribute to the protected cell
6 assets with a value at least equal to the reserves and other
7 insurance liabilities attributed to that protected cell.

8 (k) Use and operation of protected cells.

9 (1) The protected cell assets of a protected cell
10 may not be charged with liabilities arising out of any
11 other business the protected cell company may conduct.
12 All contracts or other documentation reflecting protected
13 cell liabilities shall clearly indicate that only the protected
14 cell assets are available for the satisfaction of those
15 protected cell liabilities.

16 (2) The income, gains and losses, realized or
17 unrealized, from protected cell assets and protected cell
18 liabilities shall be credited to or charged against the
19 protected cell without regard to other income, gains or
20 losses of the protected cell company, including income,
21 gains or losses of other protected cells. Amounts
22 attributed to any protected cell and accumulations on the
23 attributed amounts may be invested and reinvested and
24 the investments in a protected cell or cells shall not be
25 taken into account in applying the investment limitations

1 otherwise applicable to the investments of the protected
2 cell company.

3 (3) Assets attributed to a protected cell shall be
4 valued at their fair value on the date of valuation.

5 (4) A protected cell company shall, in respect of
6 any of its protected cells, engage in fully funded
7 indemnity triggered insurance securitization to support
8 in full the protected cell exposures attributable to that
9 protected cell. A protected cell company insurance
10 securitization that is non-indemnity triggered shall
11 qualify as an insurance securitization under the terms of
12 this Chapter only after the Commissioner, in accordance
13 with the authority granted under Section 23114 of this
14 Chapter, adopts regulations addressing the methods of
15 funding of the portion of the risk that is not indemnity
16 based, account, disclosure, risk based capital treatment,
17 and assessing risks associated with such securitizations.
18 A protected cell company insurance securitization that is
19 not fully funded, whether indemnity triggered or non-
20 indemnity triggered, is prohibited. Protected cell assets
21 may be used to pay interest or other consideration on any
22 outstanding debt or other obligation attributable to that
23 protected cell, and nothing in this Subsection shall be
24 construed or interpreted to prevent a protected cell
25 company from entering into a swap agreement or other

1 transaction for the account of the protected cell that has
2 the effect of guaranteeing interest or other consideration.

3 (5) In all protected cell company insurance
4 securitizations, the contracts or other documentation
5 effecting the transaction shall contain provisions
6 identifying the protected cell to which the transaction will
7 be attributed. In addition, the contracts or other
8 documentation shall clearly disclose that the assets of that
9 protected cell, and only those assets, are available to pay
10 the obligations of that protected cell. Notwithstanding
11 the foregoing, and subject to the provisions of this
12 Chapter and any other applicable law or regulation, the
13 failure to include the language in the contracts or other
14 documentation shall not be used as the sole basis by
15 creditors, reinsurers or other claimants to circumvent the
16 provisions of this Chapter.

17 (6) A protected cell company shall only be
18 authorized to attribute to a protected cell account the
19 insurance obligations relating to the protected cell
20 company's general account. Under no circumstances
21 shall a protected cell be authorized to issue insurance or
22 reinsurance contracts directly to policyholders or
23 reinsureds or have any obligation to the policyholders or
24 reinsureds of the protected cell company's general
25 account.

1 (7) At the cessation of business of a protected cell
2 in accordance with the plan approved by the
3 Commissioner, the protected cell company shall
4 voluntarily close out the protected cell account.

5 (1) Reach of creditors and other claimants.

6 (1) (i) Protected cell assets shall only be available
7 to the creditors of the protected cell company that are
8 creditors in respect to that protected cell and shall thereby
9 be entitled, in conformity with the provisions of this
10 Chapter, to have recourse to the protected cell assets
11 attributable to that protected cell, and shall be absolutely
12 protected from the creditors of the protected cell
13 company that are creditors in respect of that protected
14 cell and who, accordingly, shall not be entitled to have
15 recourse to the protected cell assets attributable to that
16 protected cell. Creditors, with respect to a protected cell,
17 shall not be entitled to have recourse against the
18 protected cell assets of other protected cells or the assets
19 of the protected cell company's general account.

20 (ii) Protected cell assets shall only be
21 available to creditors of a protected cell company after all
22 protected cell liabilities have been extinguished or
23 otherwise provided for in accordance with the plan of
24 operation relating to that protected cell.

1 (2) When an obligation of a protected cell
2 company to a person arises from a transaction, or is
3 otherwise imposed, in respect of a protected cell:

4 (i) that obligation of the protected cell company
5 shall extend only to the protected cell assets attributable
6 to that protected cell, and the person shall, with respect to
7 that obligation, be entitled to have recourse only to the
8 protected cell assets attributable to that protected cell;
9 and

10 (ii) that obligation of the protected cell company
11 shall not extend to the protected cell assets of any other
12 protected cell or the assets of the protected cell company's
13 general account, and that person shall not, with respect to
14 that obligation, be entitled to have recourse to the
15 protected cell assets of any other protected cell or the
16 assets of the protected cell company's general account.

17 (3) When an obligation of a protected cell company
18 relates solely to the general account, the obligation of the
19 protected cell company shall extend only to, and that creditor
20 shall, with respect to that obligation, be entitled to have
21 recourse only to, the assets of that protected cell company's
22 general account.

23 (4) The activities, assets, and obligation relating to a
24 protected cell are not subject to the provisions of any guaranty
25 fund, and neither a protected cell nor a protected cell company

1 shall be assessed by or otherwise be required to contribute to
2 any guaranty fund or guaranty association in Guam with
3 respect to the activities, assets, or obligations of a protected cell.
4 Nothing in this Subsection shall affect the activities or
5 obligations of an insurer's general account.

6 (5) In no event shall the establishment of one (1) or
7 more protected cells alone constitute or be deemed to be a
8 fraudulent conveyance, an intent by the protected cell company
9 to defraud creditors, or the carrying out of business by the
10 protected cell company for any other fraudulent purpose.

11 (m) Conservation, rehabilitation or liquidation of protected
12 cell companies.

13 (1) Notwithstanding any contrary provision in the
14 insurance code of Guam, the regulations promulgated under
15 the insurance code of Guam, or any other applicable law or
16 regulation, upon any order of conservation, rehabilitation or
17 liquidation of a protected cell company, the receiver shall be
18 bound to deal with the protected cell company's assets and
19 liabilities, including protected cell assets and protected cell
20 liabilities, in accordance with the requirements set forth in this
21 Chapter.

22 (2) With respect to amounts recoverable under a
23 protected cell company insurance securitization, the amount
24 recoverable by the receiver shall not be reduced or diminished
25 as a result of the entry of an order of conservation,

1 rehabilitation or liquidation with respect to the protected cell
2 company notwithstanding any provisions to the contrary in the
3 contracts or other documentation governing the protected cell
4 company insurance securitization.”

5 **Section 7.** §23107 of Chapter 23, Division 2, Title 22, of the Guam
6 Code Annotated is hereby *amended* to read:

7 **“§23107. Financial Statements and Reports.**

8 (a) Each pure captive insurance company shall submit to the
9 Commissioner a statement of financial condition written according to
10 generally accepted accounting principles and audited by an
11 independent certified public accountant on or before the last day of
12 the sixth (6th) month following the end of the company’s fiscal year.

13 (b) Each captive insurance company that is not a pure
14 captive insurance company shall annually file with the
15 Commissioner the following:

16 (1) Annual statement and audit:

17 (a) On or before March 1, or such day subsequent
18 thereto as the Commissioner upon request and for cause
19 may specify, an annual statement using the National
20 Association of Insurance Commissioners’ annual
21 statement form plus any additional information required
22 by the Commissioner, which shall be a true statement of
23 its financial condition, transactions, and affairs as of the
24 immediately preceding December 31. The reported

1 information shall be verified by oaths of at least two (2) of
2 the captive's principal officers;

3 (b) On or before June 1, or such day subsequent
4 thereto as the Commissioner upon request and for cause
5 may specify, an audit by a designated independent
6 certified public accountant or accounting firm of the
7 financial statements reporting the financial condition and
8 results of the operation of the captive;

9 (c) The annual statement and audit shall be
10 prepared in accordance with the National Association of
11 Insurance Commissioners' annual statement instructions
12 and Accounting Practices and Procedures Manual; and

13 (2) On or before each March 1, or such day subsequent
14 thereto as the Commissioner upon request and for cause may
15 specify, a risk-based capital report; provided that the RAC
16 insurance companies shall not be required to file their risk-
17 based capital reports with the National Association of
18 Insurance Commissioners.

19 (c) The statements required to be filed in Subsections (a) and
20 (b) shall include, but not be limited to, actuarially appropriate
21 reserves for:

22 (1) known claims and expenses associated therewith;

23 (2) claims incurred but not reported and expenses
24 associated therewith;

1 (3) unearned premiums; and

2 (4) bad debts, reserves for which shall be shown as
3 liabilities.

4 An actuarial opinion regarding reserves for known claims and
5 expenses associated therewith and claims incurred but not
6 reported and expenses associated therewith shall be included
7 in the audited statements, except that the actuarial opinion for
8 captive insurance companies other than pure captive insurance
9 companies shall be filed with the annual statement required
10 under Subsection (b), on or before March 1 each year. The
11 actuarial opinion shall be given by a member of the American
12 Academy of Actuaries or other qualified loss reserve specialist
13 as defined in the annual statement adopted by the National
14 Association of Insurance Commissioners.

15 (d) The Commissioner may prescribe the format and
16 frequency of other reports which may include, but shall not be
17 limited to, summary loss reports and quarterly financial statements.

18 (e) The Commissioner may suspend or revoke the certificate
19 of authority or fine any captive insurer that fails to file any of the
20 documents required by Subsections (a) and (b). The fine shall not be
21 more than Five Hundred Dollars (\$500) per day past the due date.

22 (f) The failure of any captive insurance company to file a
23 report of financial condition prior to the due date of each year shall

1 constitute grounds for suspension, revocation or non-renewal of the
2 license to transact captive insurance business in Guam.”

3 **Section 8.** §23108 of Chapter 23 of Division 2 of Title 22 of the
4 Guam Code Annotated is hereby *amended* to read:

5 “§23108. **Examinations and Investigations.** At least once in
6 three (3) years, and whenever the Commissioner determines it to be
7 prudent, he shall personally, or by some competent person appointed
8 by him, visit each captive insurance company and thoroughly inspect
9 and examine its affairs to ascertain its financial condition, its ability
10 to fulfill its obligations and whether it has complied with the
11 provisions of this Chapter. The Commissioner upon application, in
12 his discretion, may enlarge the aforesaid three (3) year period to five
13 (5) years, provided said captive insurance company is subject to a
14 comprehensive annual audit during such period of a scope
15 satisfactory to the Commissioner by independent auditors approved
16 by him. The Commissioner may use independent contract examiners
17 to conduct examinations pursuant to this Section. The expenses and
18 charges of the examination shall be paid to the government of Guam
19 by the company or companies examined and the Commissioner shall
20 issue his warrants for the proper charges incurred in all
21 examinations.”

22 **Section 9.** §23113 of Chapter 23, Division 2, Title 22, of the Guam
23 Code Annotated is hereby *amended* to read:

1 “§23113. Tax on premiums collected. No taxes on qualified
2 captive insurers. Each captive insurance company to which is issued
3 a Special Qualifying Certificate pursuant to the provisions of Chapter
4 58, Title 12, Guam Code Annotated, shall pay no taxes to the
5 government of Guam on its premium or other insurance income
6 except *ad valorem* taxes on real and personal property used in the
7 production of income, and to the extent that it is first required to pay
8 its Guam income tax liability thereon before the same is rebated in
9 full, pursuant to its Special Qualifying Certificate.”

10 **Section 10.** §23116 “Maximum premiums for captive insurance
11 companies,” of Chapter 23, Division 2, of Title 22 of the Guam Code
12 Annotated is hereby *repealed* and the remaining §23117 to §23120 of
13 Chapter 23, Division 2, Title 22, of the Guam Code Annotated are hereby
14 renumbered to §23116 - §23119.

15 **Section 11. Severability.** *If* any provision of this Law or its
16 application to any person or circumstance is found to be invalid or
17 contrary to law, such invalidity shall *not* affect other provisions or
18 applications of this Law which can be given effect without the invalid
19 provisions or application, and to this end the provisions of this Law are
20 severable.