

## DEPARTMENT OF INSURANCE AND FINANCIAL SERVICES

### CAPTIVE INSURANCE COMPANY RULES

(By authority conferred on the director of the department of insurance and financial services by sections 210, 4651, 4747, and 4813 of 1956 PA 218, 1969 PA 306, E.O. 2013-1; MCL 500.210, MCL 500.4651, MCL 500.4747, MCL 500.4813, MCL 24.231 to MCL 24.233, MCL 550.991.)

#### **R 500.101 Definitions.**

Rule 1. As used in these rules:

(a) “Act” means the insurance code of 1956, 1956 PA 218, MCL 500.100 to 500.8302.

(b) “Captive insurance company” means a captive insurance company as defined in section 4601 of the act, a special purpose financial captive as defined in section 4701 of the act, or a protected cell company as defined in section 4801 of the act.

(c) “Captive manager” means any person entering into a contract with a captive insurance company, or the parent or affiliate of a captive insurance company, for the purpose of managing the operations of the captive insurance company.

(d) “Director” means the director of the department of insurance and financial services unless otherwise noted.

(e) “Limited certificate of authority” means a limited certificate of authority issued by the director pursuant to chapter 46 or 47 of the act, MCL 500.4601 to 500.4673, MCL 500.4701 to 500.4747.

(f) “Person” means an individual, corporation, limited liability company, association, partnership, limited partnership, limited liability partnership, trust, business trust, entity, unincorporated organization, joint venture, or other legal or commercial entity.

(g) Terms defined in the insurance code of 1956, 1956 PA 218, MCL 500.100 to MCL 500.8302, have the same meanings when used in these rules.

History: 2015 AACCS.

#### **R 500.102 Severability.**

Rule 2. If a provision of a rule or the application of a rule to any person or circumstance is held invalid by a court of competent jurisdiction, then the provision or application shall not affect other provisions that can be given effect without the invalid provision or application.

History: 2015 AACCS.

#### **R 500.103 Application for limited certificate of authority.**

Rule 3. An application for a captive insurance company limited certificate of authority shall include all of the information requested on an application form prescribed by the director.

History: 2015 AACCS.

#### **R 500.104 Record retention.**

Rule 4. (1) Each captive insurance company shall maintain, in a place secure from theft, loss, or destruction, the financial, investment, and business records of the captive insurance company. The records shall include accurate, complete, legible, and permanent records, in electronic or hard copy format, of any books, records, data, or documents pertaining to, prepared, or generated by the captive insurance company, including, but not limited to, all of the following:

- (a) Accounting records.
- (b) Actuarial reports and studies.
- (c) Audits and auditor management letters.
- (d) Board, shareholder, member, audit, and claim committee meeting minutes.
- (e) Captive insurance company formation documents.
- (f) Claims records.
- (g) Correspondence.
- (h) Computer generated data.
- (i) Contracts.
- (j) Coverage applications, forms, and policies.
- (k) Internal audit records.
- (l) Investment records.
- (m) Loss prevention plans.
- (n) Segregated cell formation, financial, investment, and claims documents.

(2) Captive insurance companies shall do both of the following:

(a) Retain captive insurance company records for a minimum of 7 years.

(b) Make captive insurance company records available to the director or the director's designee for review or examination at the principal Michigan office of the captive insurance company or, if requested by the director, provide copies of such records to the director in a format prescribed by the director.

History: 2015 AACCS.

#### **R 500.105 Captive manager.**

Rule 5. (1) A captive insurance company desiring to utilize a captive manager shall ensure that the captive manager has submitted to the director for approval a complete captive manager application in a form prescribed by the director.

(2) A captive insurance company may utilize only a captive manager whose captive manager application has been approved by the director. A captive insurance company shall do both of the following:

(a) Submit a copy of the captive manager contract to the director.

(b) Ensure that the captive manager contract states that a captive manager is subject to the control of the captive insurance company's board of directors or other supervisory management body.

(3) Captive manager contracts in effect prior to the effective date of these rules shall not be subject to prior approval by the director until such time as they are renewed by the captive manager and the captive insurance company. All new captive manager contracts and captive

manager contracts renewed on or after the effective date of these rules are subject to subrules (1) and (2) of this rule.

(4) The director may withdraw or suspend approval of a captive manager if any of the following occur:

(a) The captive manager knows or should know the officers or directors of the company are or were engaged in any conduct that, in connection with the captive entity, violates state or federal laws, rules, or regulations.

(b) The captive manager engages in conduct that would otherwise threaten the solvency of the captive insurer and fails to report such conduct to the director in a timely manner.

(c) The captive manager knows or should know of actions of a captive under management that may lead to revocation or suspension of the limited certificate of authority under the act and fails to inform the captive board of directors and the director in a timely manner.

(d) The captive manager fails to perform the basic manager responsibilities or reporting requirements required under the act and these rules.

(e) The captive manager engages in conduct detrimental to the interests of the captive insurer, including but is not limited to, a conflict of interest or conduct that constitutes a breach of the fiduciary duty owed to the captive insurer.

History: 2015 AACCS.

#### **R 500.106 Audited financial statements.**

Rule 6. (1) No later than 5 months after the fiscal year end of the captive insurance company, the captive insurance company shall file with the director audited financial statements of the captive insurance company prepared by an independent certified public accountant.

(2) An independent certified public accountant's audit of a captive insurance company shall include the following:

(a) The independent certified public accountant's opinion covering all years under audit. The opinion shall be addressed to the captive insurance company on the independent certified public accountant's stationary, shall bear the original handwritten signature of the independent certified public accountant, and shall be dated.

(b) A report of evaluation of the internal controls of the captive insurance company. 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 the reliability of the financial records.

(c) An independent certified public accountant's letter stating the independent certified public accountant is all of the following:

(i) Independent with respect to the captive insurance company and conforms to the standard of the 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.

(ii) Properly licensed by an appropriate state regulatory authority or similar regulatory authority.

(iii) A member in good standing with the American institute of certified public accountants or similar organization.

(iv) The general background and experience of the staff engaged in the audit, including the staff's experience in auditing captive and other insurance companies.

(v) The independent certified public accountant agrees to make the audit work papers available to the director or the director's designee.

(3) The captive insurance company shall require the independent certified public accountant to do both of the following:

(a) Make the work papers prepared in the conduct of the captive insurance company's audit available to the director.

(b) Retain the audit work papers for a period not less than 7 years after the last day of the applicable reporting period.

(4) The director may, at his or her discretion, exempt a captive insurance company from the requirements of this rule.

History: 2015 AACCS.

#### **R 500.107 Scope of approval of certificate of authority.**

Rule 7. If the director approves a captive insurance company limited certificate of authority application, the approval is only for the applicant's qualification for the limited certificate of authority. The approval does not indicate or suggest that the director has considered, opined on, or approved any of the following:

(a) The qualifications or application of the applicant for any other purpose.

(b) Additional captive special purpose securitizations proposed by a special purpose financial captive.

(c) Protected cells not authorized by the certificate of authority granted to the applicant.

History: 2015 AACCS.

#### **R 500.108 Duty to disclose changes in information.**

Rule 8. The holder of a limited certificate of authority has an ongoing duty to promptly disclose any material changes in information to the director as soon as the holder of the limited certificate of authority becomes aware of the change. The holder of a limited certificate of authority shall submit to the director for review and approval before implementation of the following:

(a) Any material modifications to the captive's plan of operation.

(b) Any proposed new special purpose securitization proposed by a special purpose financial captive.

(c) Any new protected cell programs.

History: 2015 AACCS.

#### **R 500.109 Obligation to report certain events.**

Rule 9. An applicant for a limited certificate of authority and the holder of a limited certificate of authority shall provide written notice to the director at the time the applicant or holder becomes aware of any of the following:

- (a) Any change in the officers, directors, or managers of the captive insurance company.
- (b) Insolvency or impairment of capital or retained earnings.
- (c) Failure to meet the requirements of section 4611 of the act, MCL 500.4611, if applicable.
- (d) The suspension or revocation of the certificate of authority or equivalent authorization of a branch captive insurance company in the jurisdiction in which the company was formed.
- (e) A captive insurance company that is a limited liability company is no longer in good standing under section 207a of 1993 PA 23, MCL 450.4207a.
- (f) The captive insurance company fails to remove or discharge an officer or director of the company within 30 days after the director of the department of insurance and financial services makes a written request that the officer or director of the company should be removed or discharged.
- (g) The captive insurance company fails to pay any final judgment rendered against it in this state on any policy, bond, recognizance, or undertaking issued or guaranteed by it within a reasonable period of time after entry of the final judgment.

History: 2015 AACCS.

#### **R 500.110 Investigative hearings.**

Rule 10. (1) The director may initiate an investigation, undertake an examination, or take such other action as the director, in the exercise of discretion, determines is necessary or appropriate to assure the holder of a limited certificate of authority complies with all applicable provisions of the act.

(2) The director may conduct hearings for any of the following:

(a) To investigate an applicant, an application, or a holder of a limited certificate of authority.

(b) To gather information in furtherance of acting on an application for a limited certificate of authority.

(c) To investigate alleged violations of the applicable provisions of the act or these rules by a holder of a limited certificate of authority.

(3) The director may require captive managers, officers, directors, shareholders, members of an applicant, or holders of a limited certificate of authority to testify or to produce documents, records, or other materials at a proceeding conducted under this rule.

(4) The director may issue subpoenas for the production of persons, documents, or other items at a proceeding conducted under this rule.

(5) All testimony at proceedings conducted under this rule shall be given under oath or affirmation.

(6) All proceedings under this rule shall be conducted in compliance with the contested hearing procedures of the administrative procedures act, 1969 PA 306, MCL 24.201 to 24.328, and R 500.2101 to R 500.2142.

(7) The director shall direct the applicant or holder of a limited certificate of authority to pay the expenses and charges associated with an investigative hearing.

History: 2015 AACCS.

**R 500.111 Limited certificate of authority as a revocable privilege.**

Rule 11. The holder of a limited certificate of authority has an ongoing duty to comply with all applicable provisions of the act. A limited certificate of authority is not a property right, but is a revocable privilege contingent upon compliance with all applicable provisions of the act and regulations promulgated thereunder.

History: 2015 AACS.