

**DIVISION 3
OFFICE OF THE COMMISSIONER OF
BANKING**

**CHAPTER 15
COMMISSIONER OF BANKING**

(Division of Insurance, Securities and Banking--
Department of Revenue and Taxation)

NOTE: Rule making authority cited for regulations by the Commissioner of Banking, 11 GCA §103103, §103112, and §109120. The laws regulating activities in foreign exchange can be found in 11 GCA Chapter 109.

§15101. Rules and Regulations Incorporated by Reference. The rules and regulations of the Office of the Commissioner of Banking are incorporated herein by reference. (The regulations of the Office of the Commissioner of Banking can be found in 11 GCA Chapter 106.)

CHAPTER 16
CAPTIVE INSURANCE COMPANY

- §16101. Definitions.
- §16102. Application Procedure for Captive Insurance License.
- §16103. Review of Applications and Issuance of Licenses.
- §16104. Insurance Company may Convert to Captive Insurance
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- §16108. Change of Independent Auditor.
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- §16112. Other Requirements and Restrictions.
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- §16118. Directors.
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- §16123. Change of Business.

NOTE: Rule making authority cited for formulation of regulations by the Captive Insurance Company, 22 GCA §23101.

§16101. Definitions. In these regulations, unless the context requires otherwise,

(a) The *Act* means 22 GCA Division 2.

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

(c) *Association* means any legal association of individuals, corporations, partnerships, or other legal entities, the member organizations of which collectively:

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

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

(d) *Association captive insurance company* means any company that insures risks of the member organizations of that association, and their affiliates.

(e) The *Commissioner* means the Insurance Commissioner of the Government of Guam.

(f) *Company or captive insurance company* means any pure captive insurance company or association captive insurance company formed or licensed under the provisions of the Act.

(g) *Control* means:

(1) ownership of more than 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.

(h) *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.

(i) *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.

(j) *Loss reserve specialist* means a person approved by the Commissioner under §16102 and §16107 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.

(k) *Member organization* means a corporation, partnership, or other legal entity that belongs to an association.

(l) *Pure captive insurance company* means any company that insures risks of its parent and affiliates and no more than three unaffiliated companies.

(m) *Regulation* means any regulation promulgated under the Act.

§16102. Application Procedure for Captive Insurance License. (a) **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:

(1) A certified copy of the articles of incorporation of the company, but if the company is not yet incorporated, a copy of the proposed articles of incorporation of the company.

(2) 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.

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

(4) A consent of 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 22 GCA §23102 and in §16113 of these regulations.

(5) An application for approval of the company's designated Independent Auditor as required under 22 GCA §23108, submitted on Form C attached as Appendix 3 to these regulations.

(6) An application for approval of the company's designated Loss Reserve Specialist as required under

Chapter C(3)(E) of these regulations, submitted on Form D attached as Appendix 4 to these regulations.

(7) 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
_____ Association (Stock)
_____ Association (Mutual)
3. Type of Insurance: Life
_____ Casualty
_____ Professional Liability
_____ Products Liability
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:
(1) _____
(2) _____
(3) _____

FORM B, ATTACHED AS APPENDIX 2 TO THESE REGULATIONS, MUST BE SUBMITTED WITH THIS APPLICATION FOR EACH SHAREHOLDER 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:

13. If the Proposed Captive is not yet Incorporated, Names and Addresses of Incorporators:

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

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

15. Name and Residence Address of the Directors of the Company:

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

16. Name and Business Address of the Officer of the Company:

President: _____

Vice President: _____

Treasurer: _____

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 Addresses of Company's Proposed Loss Reserve Specialist:

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;

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- (iii) Five year projection of maximum retained risk (per loss and annual aggregate);
- (iv) Five year projection of income and loss;
- (v) Copy 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, 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.

§16103. 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 22 GCA §23104 and §23105, either in the form of cash or an irrevocable letter of credit issued by a bank either chartered by the Territory of Guam or a member bank of the Federal Reserve System, and in either case, such bank to be approved by the Commissioner.

(b) An application submitted for a company that has not been incorporated shall be deemed to include a petition for the certificate required by 22 GCA §23106 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 22 GCA §23106. Within 60 days after, the Commissioner shall notify the applicant of the approval of the application, the applicant shall:

(i) transmit the articles of association to the Director of Revenue and Taxation;

(ii) provide the Commissioner with certified copies of the articles of 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 22 GCA §§23104 and §23105, either in the form of cash or an irrevocable letter of credit issued by a bank either chartered by the Territory of Guam or a member bank of the Federal Reserve System, and in either case, such bank to be approved by the Commissioner.

§16104. Insurance Company may Convert to Captive Insurance. (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 22 GCA §23102 may convert its existing Certificate of Authority to a captive insurance license by submitting to the commissioner, all documents required pursuant to §16102 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 22 GCA Chapter 23. 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 22 GCA §23102 shall automatically qualify for licensure by filing an application in compliance with all the requirements of §16102 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 22 GCA §23102 may convert its Certificate of Authority to a captive insurance license or a company referred to in 22 GCA 123203 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 these regulations.

§16105. 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 22 GCA §§23104 and 23105 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 a license fee shall be included with the application. Each application for a renewal license shall be deemed to be granted unless the Commissioner notifies the applicant in writing that it has been rejected.

§16103. Annual Report and Audit Requirements. The purpose of this regulations is to set forth the financial and reporting requirements which the Commissioner deems necessary for the regulation of captive insurance companies, as required by 22 GCA §23107 and §23108.

(a) **NAIC MEMBERSHIP.** Every company that is licensed under the Act shall be required to become a member of the National Association of Insurance Commissioners.

(b) **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 general form and context as approved by the National Association of

Insurance Commissioners, plus any additional information required by the Commissioner.

(c) **Annual Audit.** Every company that is licensed under the Act shall have an annual audit by its appointed Independent Auditor as approved by the Commissioner, and shall file such audited financial report with the Commissioner on or before the last day of the sixth month following the end of the company's annual account period. The audited report shall be accompanied by a verification of two executive officers of the company.

(b) **Unqualified Opinion.** The audited report shall include an unqualified opinion with respect to the financial condition of the company. An auditor, who has rendered other than an unqualified opinion on the financial condition of a captive insurance company or who is aware that captive insurance company fails to meet the necessary capital and surplus requirements of the Act and the president of the captive insurance company shall both notify the Commissioner in writing within fifteen days of the issuance of such opinion or of the discovery of failure to meet the capital or surplus requirements of the Act.

§16107. 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 National Association of Insurance Commissioners.

(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 issuance, 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 §16110 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 §16110 of the regulations.

(5) That the accountant is properly licensed by the Territory of 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.

§16108. 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 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.

§16109. 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.

§16110. 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 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.

§16111. 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 bank chartered by the Territory of Guam or a member bank of the Federal

Reserve System, and, in either case, such bank to be 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.

§16112. Other Requirements and Restrictions. This Chapter contains interpretations of various additional requirements and restrictions applicable to captive insurance companies.

(a) Annual Meeting of the Board of Directors on Guam.

(1) To fulfill the requirements of 22 GCA §23102(b)(2), requiring the Board of Directors of each captive insurance company to hold at least one meeting each year on Guam, a quorum of the Board of Directors, consisting of a majority of the whole number of directors, shall be physically present on Guam for the meeting. The year referred to in this provision shall be the company's annual accounting period.

(2) For companies that qualify as captive insurance companies under 22 GCA §§23102(b)(5) and 23102(e), a copy of the minutes of the annual meeting of the Board of Directors shall be filed with the Commissioner within thirty days after such meeting.

(b) Principal Place of Business.

(1) To fulfill the requirements of 22 GCA §23102(b)(3), 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 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 22 GCA §23102(b)(5) and §23102(e), 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, and copies of its audited financial reports. For companies qualifying under 22 GCA §23102(b)(5) and §23102(e), 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.

§16113. 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 formed on Guam or a partnership formed on Guam that maintains an office in Guam that is regularly open for business during normal business hours. Each captive insurance company licensed under the Act shall notify the Commissioner in writing within 30 days of any change in the address of its registered agent for service of process.

§16114. Extension of Period Between Examination. Under 22 GCA §23108, 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 year period to five years upon application, provided that certain conditions are met, each captive insurance company shall apply for such an enlargement of the examination period either at the time of application for licensure, within 30 days after the issuance of the license, or by request made in writing accompanying the company's annual audit report. If the Commissioner grants the application, the enlargement of the examination period to five years shall remain in effect until the Commissioner, in his discretion, revokes his consent to the enlargement of said period in writing.

§16115. Restrictions on Insurance of Direct Risks by Captive Insurance Companies. (a) Title 22 Guam Code Annotated §23102(a)(1), 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 22 GCA §23102(a)(3) and §16116 of these regulations. A

pure captive insurance company shall not insure any direct risk of any entity other than its parent and three affiliates of the captive insurance company, except that it may insure risks of three unaffiliated companies, provided that at least 60% of its premium income during each calendar year shall be derived from its parent and affiliates. For purposes of applying the amount of 60% requirement, the premiums derived by a captive insurance company shall be the gross amount of premiums for direct insurance, and it shall not be increased reduced by the amount of any reinsurance provided or ceded by the captive insurance company.

(b) Title 22 Guam Code Annotated §23102(a)(2) of, limiting the insurance of risks by an association 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 22 GCA §23102(a)(3) and §16116 of these regulations.

§16116. 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. The NAIC Insurers Rehabilitation and Liquidation Model Act shall be used to administer 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.

§16117. Insurance Managers and Intermediaries. (a) In addition to the 'Principal Place of Business' 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, in or from within this Territory, act as an insurance manager, broker, agent, salesman, or reinsurance intermediary for captive business without the authorization of the Commissioner. Application for such authorization must be on a form prescribed by the Commissioner. The application fee for an insurance manager, broker, agent, salesman or reinsurance intermediary for captive business shall be \$10.00.

§16118. Directors. Every company shall report to the Commissioner within thirty 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.

§16119. Conflict of Interest. In addition to the investment of funds limitation in §16118 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.

§16120. Suspension or Revocation. The Commissioner may, for any of the following reasons, conduct for suspension or revocation of the license of a captive insurance company in accordance with the Administrative Adjudication Law:

- (1) if the company has not commenced business according to its plan of operation within two years of being licensed; or
- (2) if the company ceases to carry on insurance business in or from within Guam; or
- (3) for any reason provided in 22 GCA §23109; or
- (4) at the request of the company.

§16121. 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.

§16122.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 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 this chapter.

§16123. 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, 1986, unless as hereinafter extended.

2. This LETTER OF CREDIT is issued to satisfy the provisions of Section 43704 of Chapter 7, 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 or 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

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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**

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BIOGRAPHICAL DATA AFFIDAVIT

(Print or Type)

Name and Address of Company:

In connection with the above named company, I herewith make representations and supply information about myself as hereinafter set forth. (Attach addendum or separate sheet if space hereon is insufficient to answer any 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):

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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:

DATES	EMPLOYER AND ADDRESS	TITLE
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10. For the last 10 years, I have lived at the following address or addresses:

ADDRESS	CITY	DATES

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 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):

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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 know ledge and belief.

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(Signature of Affiant)

SUBSCRIBED AND SWORN TO BEFORE ME this _____ day of
_____, 20__.

(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 Chapter C of these
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:

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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 violation?

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.

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IF APPLICANT IS OTHER THAN AN INDIVIDUAL

11. Name of Partnership, Corporation, etc.:

Business Address:

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 §16106 through §16110 relating to Captive Insurance Companies, and will fully comply therewith.

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Signed

(NO FEE REQUIRED)

Dated

SUBSCRIBED AND SWORN TO before me this _____ day
of _____, 20_____.

NOTARY SEAL

Signature of Notary Public

Notary Public authorized by law of the Territory of Guam to
administer oaths.

My commission expires on _____.

APPENDIX 4

FORM D

**APPLICATION FOR AUTHORIZATION
AS CAPTIVE INSURANCE COMPANY
LOSS RESERVE SPECIALIST**

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DIV. 3 - OFFICE OF COMMISSIONER OF BANKING

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.

INDIVIDUAL 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:

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LIST ALL EDUCATIONAL INSTITUTIONS ATTENDED AND ADDRESSES ON ADDITIONAL SHEET, IF NECESSARY. INDICATE MAJOR CONCENTRATION AND ACTUARIAL EXAMS 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:

DATES EMPLOYER AND ADDRESS TITLE

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

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10. In order to qualify to sign statements of opinion relating to loss and 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 Chapter C(6) and will fully comply therewith.

Signed

(NO FEE REQUIRED)

Dated

SUBSCRIBED AND SWORN TO before me this _____ day of _____, 20_____.

Signature of Notary Public

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