

§6724. Sponsored captive insurance companies

1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

- A. "Participant" means an entity as described in subsection 6, and any affiliates thereof, that are insured by a sponsored captive insurance company. [PL 2009, c. 335, §23 (NEW).]
- B. "Participant contract" means a contract by which a sponsored captive insurance company insures the risks of a participant. [PL 2009, c. 335, §23 (NEW).]
- C. "Protected cell" means a separate account established by a sponsored captive insurance company formed or licensed under the provisions of this chapter in which assets are maintained for one or more participants in accordance with the terms of one or more participant contracts to fund the liability of the sponsored captive insurance company assumed on behalf of the participants as set forth in the participant contracts. [PL 2009, c. 335, §23 (NEW).]
- D. "Sponsor" means an entity that meets the requirements of subsection 5 and is approved by the superintendent to provide all or part of the capital and surplus required by applicable law and to organize and operate a sponsored captive insurance company. [PL 2009, c. 335, §23 (NEW).]
- E. "Sponsored captive insurance company" means a captive insurance company:
 - (1) In which the minimum capital and surplus required by applicable law is provided by one or more sponsors;
 - (2) That is formed or licensed under the provisions of this chapter;
 - (3) That insures the risks only of its participants through separate participant contracts; and
 - (4) That funds its liability to each participant through one or more protected cells and segregates the assets of each protected cell from the assets of other protected cells and from the assets of the sponsored captive insurance company's general account. [PL 2009, c. 335, §23 (NEW).]

[PL 2009, c. 335, §23 (NEW).]

2. Formation. One or more sponsors may form a sponsored captive insurance company under this chapter. In addition to the general provisions of this chapter, the provisions of this section apply to sponsored captive insurance companies. A sponsored captive insurance company must be incorporated as a stock insurer with its capital divided into shares and held by the stockholder, as a nonprofit corporation with one or more members or as a limited liability company with a limited liability company agreement approved by the superintendent.

[PL 2017, c. 169, Pt. G, §10 (AMD).]

3. Supplemental application materials. In addition to the information required by section 6702, each applicant sponsored captive insurance company shall file with the superintendent the following:

- A. Materials demonstrating how the applicant will account for the loss and expense experience of each protected cell at a level of detail found to be sufficient by the superintendent and how it will report the experience to the superintendent; [PL 2009, c. 335, §23 (NEW).]
- B. A statement acknowledging that all financial records of the sponsored captive insurance company, including records pertaining to any protected cells, will be made available for inspection or examination by the superintendent or the superintendent's designated agent; [PL 2009, c. 335, §23 (NEW).]
- C. All contracts or sample contracts between the sponsored captive insurance company and any participants; and [PL 2009, c. 335, §23 (NEW).]

D. Evidence that expenses will be allocated to each protected cell in a fair and equitable manner. [PL 2009, c. 335, §23 (NEW).]
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4. Protected cells. A sponsored captive insurance company formed or licensed under the provisions of this chapter may establish and maintain one or more protected cells to insure risks of one or more participants, subject to the following conditions:

A. The shareholders of a sponsored captive insurance company must be limited to its participants and sponsors, except that a sponsored captive insurance company may issue nonvoting securities to other persons on terms approved by the superintendent; [PL 2009, c. 335, §23 (NEW).]

B. Each participant contract must specify one or more protected cells as the sole source of the participant's coverage and limit the covered losses of the participant to an amount not to exceed the amount recoverable from the assets of the protected cell or cells identified in the contract and shall provide for pro rata distribution if the assets of a cell are insufficient to pay all liabilities to participants. If the sponsored captive insurance company enters into a contract involving more than one protected cell, the rights and obligations relating to each protected cell must be several rather than joint and the contract must make clear provisions for apportionment of the rights and obligations between protected cells; [PL 2017, c. 169, Pt. G, §11 (AMD).]

B-1. A sponsored captive insurance company may only reinsure risks of its participants, and its liability to a ceding insurer must be limited to amounts recoverable from the assets of the protected cell or cells participating in the risks giving rise to the underlying losses in accordance with paragraph B. Any management fees or other unallocated expenses payable to a ceding insurer or its affiliate or contractor must be charged pro rata to the protected cell or cells assuming the reinsurance and may not be a liability of the general account; [PL 2017, c. 169, Pt. G, §12 (NEW).]

C. Each protected cell must be accounted for separately on the books and records of the sponsored captive insurance company to reflect the financial condition and results of operations of each protected cell, net income or loss, dividends or other distributions to participants and such other factors as may be provided in the participant contract or required by the superintendent. All attributions of assets and liabilities between a protected cell and the general account must be in accordance with the plan of operation approved by the superintendent; [PL 2017, c. 169, Pt. G, §13 (AMD).]

D. The assets of a protected cell may not be chargeable with liabilities arising out of any other insurance business the sponsored captive insurance company may conduct; [PL 2009, c. 335, §23 (NEW).]

E. A sale, exchange or other transfer of assets may not be made by a sponsored captive insurance company between or among any of its protected cells without the consent of the protected cells; [PL 2009, c. 335, §23 (NEW).]

F. A sale, exchange, transfer of assets, dividend or distribution may not be made from a protected cell to a sponsor or participant without the superintendent's approval and in no event may approval be given if the sale, exchange, transfer, dividend or distribution would result in insolvency or impairment with respect to a protected cell; [PL 2009, c. 335, §23 (NEW).]

G. Each sponsored captive insurance company must annually file with the superintendent such financial reports as the superintendent requires, which must include, without limitation, accounting statements detailing the financial experience of each protected cell; [PL 2009, c. 335, §23 (NEW).]

H. Each sponsored captive insurance company must notify the superintendent in writing within 10 business days of any protected cell that is insolvent or otherwise unable to meet its claim or expense obligations; [PL 2009, c. 335, §23 (NEW).]

I. A participant contract may not take effect without the superintendent's prior written approval, and the addition of each new protected cell and withdrawal of any participant or termination of any existing protected cell constitutes a change in the business plan requiring the superintendent's prior written approval; [PL 2009, c. 335, §23 (NEW).]

J. The business written by a sponsored captive insurance company, with respect to each protected cell, must be:

(1) Fronted by a properly licensed insurance company;

(2) Reinsured by a reinsurer authorized or approved by the superintendent; or

(3) Secured by a trust fund in the United States for the benefit of policyholders and claimants or funded by an irrevocable letter of credit or other arrangement that is acceptable to the superintendent. The amount of security provided must be no less than the reserves associated with those liabilities that are neither fronted nor reinsured, including reserves for losses, allocated loss adjustment expenses, incurred but not reported losses and unearned premiums for business written through the participant's protected cell. The superintendent may require the sponsored captive insurance company to increase the funding of any security arrangement established under this subparagraph. If the form of security is a letter of credit, the letter of credit must be established, issued or confirmed by a bank chartered in this State or a member of the Federal Reserve System and established in a form and upon such terms approved by the superintendent; [PL 2009, c. 335, §23 (NEW).]

K. In any action or proceeding involving the potential for monetary recovery by or against a sponsored captive insurance company or for nonmonetary relief relating to a particular protected cell or cells, any process, pleading or order must name the specific protected cell or cells affected, including if applicable the general account; and [PL 2009, c. 335, §23 (NEW).]

L. A sponsored captive insurance company shall notify the superintendent in writing within 10 business days after the company or any protected cell becomes impaired or insolvent. [PL 2017, c. 169, Pt. G, §14 (AMD).]

[PL 2017, c. 169, Pt. G, §§11-14 (AMD).]

5. Qualification of sponsors. A sponsor of a sponsored captive insurance company must be an insurer licensed under the laws of any state, a reinsurer authorized or approved under the laws of any state, a captive insurance company formed or licensed under this chapter, a broker-dealer licensed pursuant to the Maine Uniform Securities Act, a financial institution or financial institution holding company authorized under Title 9-B, including any affiliate or subsidiary of such financial institution holding company, or any other person approved by the superintendent in the exercise of the superintendent's discretion after finding that the approval of a person as a sponsor is not inconsistent with the purposes of this chapter. A risk retention group authorized pursuant to chapter 72-A may not be either a sponsor or a participant of a sponsored captive insurance company.

[PL 2009, c. 335, §23 (NEW).]

6. Participants in sponsored captive insurance companies. The following may be participants in a sponsored captive insurance company:

A. Associations, corporations, limited liability companies, partnerships, trusts and other business entities may be participants in any sponsored captive insurance company formed or licensed under this chapter; [PL 2009, c. 335, §23 (NEW).]

B. A sponsor may be a participant in a sponsored captive insurance company; [PL 2009, c. 335, §23 (NEW).]

C. A participant need not be a shareholder of the sponsored captive insurance company or any affiliate thereof; and [PL 2009, c. 335, §23 (NEW).]

D. A participant may insure only its own risks through a sponsored captive insurance company. [PL 2009, c. 335, §23 (NEW).]

[PL 2009, c. 335, §23 (NEW).]

7. Investments by sponsored captive insurance companies. Notwithstanding the provisions of subsection 5, the assets of 2 or more protected cells may be combined for purposes of investment, and such a combination may not be construed as defeating the segregation of assets for accounting or other purposes. Sponsored captive insurance companies shall comply with the investment requirements contained in this Title, as applicable, except that compliance with such investment requirements must be waived for sponsored captive insurance companies to the extent that credit for reinsurance ceded to reinsurers is allowed pursuant to section 6711 or to the extent otherwise considered reasonable and appropriate by the superintendent. Section 6707 applies to sponsored captive insurance companies except to the extent it is inconsistent with approved accounting standards in use by the company. Notwithstanding any other provision of this Title, the superintendent may approve the use of alternative reliable methods of valuation and rating.

[PL 2009, c. 335, §23 (NEW).]

8. Delinquency of sponsored captive insurance companies or protected cells. In the case of a sponsored captive insurance company, the provisions of section 6714 apply, except as otherwise provided in this subsection.

A. The insolvency of one protected cell does not constitute the insolvency of any other protected cell or of the sponsored captive insurance company itself. The insolvency of a sponsored captive insurance company does not constitute the insolvency of any of its solvent protected cells and is not a basis for the receivership of any solvent protected cell capable of independent operation. [PL 2009, c. 335, §23 (NEW).]

B. Notwithstanding the insolvency of the sponsored captive insurance company or of any other protected cell, the obligations attributed to any solvent protected cell must continue to be paid as they become due. [PL 2009, c. 335, §23 (NEW).]

C. The assets attributed to a protected cell may not be applied to the liabilities attributed to another protected cell or to the sponsored captive insurance company generally, except that:

(1) If the insolvency of the sponsored captive insurance company renders a protected cell incapable of being managed independently, a receiver may, after consultation with the creditors of a protected cell, contract for the management of the protected cell and charge to the protected cell a reasonable amount for those services;

(2) A general liability of an insolvent sponsored captive insurance company may be apportioned equitably in whole or in part to one or more of its protected cells if the Superior Court determines that the liability arises out of the operations of the protected cell or cells and that the interests of innocent creditors of the protected cell or cells are not unreasonably impaired; and

(3) If assets or liabilities have been commingled, or have been wrongfully transferred between protected cells or between a protected cell and the general account, the Superior Court shall trace the assets and attribute them to the proper accounts, giving due consideration to the terms of any relevant governing instrument or contract. [PL 2009, c. 335, §23 (NEW).]

D. The plan of rehabilitation or liquidation of any sponsored captive insurance company must make reasonable provision for the continued operation of all solvent protected cells, which may involve the formation of one or more new sponsored captive insurance companies or the transfer of one or more protected cells. [PL 2009, c. 335, §23 (NEW).]

[PL 2009, c. 335, §23 (NEW).]

SECTION HISTORY

PL 2009, c. 335, §23 (NEW). PL 2017, c. 169, Pt. G, §§10-14 (AMD).

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