

HAWAII ADMINISTRATIVE RULES

TITLE 16

DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS

CHAPTER 17

CAPTIVE INSURANCE COMPANIES

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SUBCHAPTER 1

GENERAL PROVISIONS

§16-17-1 Purpose and authority. The purpose of this chapter is to set forth the financial, reporting, record-keeping, and other requirements which the commissioner deems necessary for the regulation of captive insurance companies, as authorized by the captive insurance law, chapter 431, article 19, Hawaii Revised Statutes, "captive insurance code." Reference hereunder to "captive" shall mean captive insurance company or companies, as applicable, unless otherwise specified. [Eff 5/13/91; am and comp 3/12/01] (Auth: HRS §431:19-114) (Imp: HRS §431:19-114)

§16-17-2 Definitions. For purposes of this chapter:

"Adverse financial condition" means one or more of the following conditions:

- (1) The impairment of capital resulting from an imbalance of liabilities and assets;
- (2) Financial ratios exceeding levels established by the commissioner; or
- (3) The material degradation of financial results envisioned by the designated captive insurance manager or certified public accountant through predictive forecasting.

"Commissioner" means the insurance commissioner of the State of Hawaii or a duly authorized representative.

"Unauthorized reinsurer" means a reinsurer that is not licensed or authorized to conduct the business of insurance in this State. [Eff 5/13/91; am and comp 3/12/01] (Auth: HRS §431:19-114) (Imp: HRS §431:19-114)

SUBCHAPTER 2

FORMATION PROVISIONS

§16-17-5 Repealed. [R 3/12/01]

§16-17-6 Fee schedule. (a) Each captive insurance company applying for a certificate of authority under the captive insurance code shall pay to the

commissioner a nonrefundable fee of \$1,000 for examining, investigating, and processing its application for license. In addition, each captive insurance company receiving a license from the commissioner shall pay a license fee for the year of registration and a renewal fee for each succeeding year as follows:

- (1) \$300 for each class 1 or class 2 captive insurance company;
- (2) \$500 for each class 3 captive insurance company; or
- (3) \$1,000 for each class 4 or class 5 captive insurance company.

(b) Each captive insurance company shall pay to the commissioner a nonrefundable fee of \$25 for the preparation and issuance of each of the following: certificates of compliance, deposit, application, capital and surplus, transcript of records, annual statements, report of examination, and other certifications as may be necessary, but excluding certificates of authority.

(c) Each captive insurance company shall pay to the commissioner a nonrefundable fee of twenty-five cents per side of each page for photocopies of documents.

(d) The rates and fees charged by approved advisors shall be subject to the review of the commissioner. [Eff 5/13/91; am and comp 3/12/01] (Auth: HRS §§431:19-102, 431:19-114, 431:19-115) (Imp: HRS §431:19-102)

§16-17-7 Examination charges. (a) The commissioner shall charge an examination fee to each captive insurance company examined. Examination fees shall include fees, costs, mileage, and other reasonable and appropriate expenses, as determined by the commissioner.

(b) If insurance division staff are employed in the examination of a captive insurance company, the captive insurance company shall be liable for the following additional examination fees:

- (1) Administration at a rate of \$100 per half day or fraction thereof;
- (2) Examiner I at a rate of \$145 per half day or fraction thereof;
- (3) Examiner II at a rate of \$165 per half day or fraction thereof; and
- (4) Examiner III at a rate of \$175 per half day or fraction thereof.

(c) If an independent contractor is employed or retained by the commissioner in the examination of a captive insurance company, the captive insurance company shall be liable for the actual charges of the services rendered. [Eff and comp 3/12/01] (Auth: HRS §§431:2-306, 431:19-108, 431:19-114, 431:19-115) (Imp: HRS §§431:2-306, 431:19-108, 431:19-115)

SUBCHAPTER 3

POST-FORMATION PROVISIONS

§16-17-10 Notification of adverse financial condition. A captive shall require its certified public accountant to immediately notify the executive officers and board of directors of the captive in writing of any determination by the certified public accountant that the captive has materially misstated its financial condition or that, since its last financial report the captive has experienced results which lead the certified public accountant to the determination that the captive is in adverse financial condition. The captive and its designated captive insurance manager shall notify the commissioner in writing within five working days of receipt thereof. [Eff 5/13/91; am and comp 3/12/01] (Auth: HRS §§431:19-114, 431:19-115) (Imp: HRS §§431:19-107, 431:19-108, 431:19-115)

§16-17-11 Additional deposit requirement. (a) Whenever the commissioner deems that the financial condition of a captive warrants additional security, the commissioner may require the captive to deposit with the commissioner, in trust for the captive, cash, securities approved by the commissioner, or an irrevocable letter of credit issued by a bank chartered by the State of Hawaii or a member bank of the Federal Reserve System.

(b) The commissioner shall return the deposit or letter of credit of a captive insurance company if the captive ceases to do any business only after being satisfied that all obligations of the company have been discharged. [Eff 5/13/91; am and comp 3/12/01] (Auth: HRS §§431:19-114, 431:19-115) (Imp: HRS §§431:19-104, 431:19-105, 431:19-115)

§16-17-12 Availability and maintenance of work papers of the independent certified public accountant. (a) Each captive shall require its independent certified public accountant to make available for review by the commissioner or appointed agent the work papers prepared in the conduct of the annual statement and the audit of the captive. The captive shall require that the accountant retain the audit work papers for a period of not less than five years after conclusion of transactions to which they relate.

(b) The review conducted in (a) above shall be considered to be an investigation and all work papers obtained during the course of that investigation shall be confidential in accordance with the captive insurance code. The captive shall require that the certified public accountant provide photocopies of any and all work papers that the commissioner deems relevant. These copies may be retained by the insurance division.

(c) "Work papers" as referred to in this section include, but are not limited to, schedules, analyses, reconciliations, abstracts, memoranda, narratives, flow charts, copies of company records, or other documents prepared or obtained by the accountant in the conduct of the examination of the captive. [Eff 5/13/91; am and comp 3/12/01] (Auth: HRS §§431:19-114, 431:19-115) (Imp: HRS §§431:19-102.5, 431:19-107, 431:19-108, 431:19-115)

§16-17-13 Documentation required to be held in Hawaii, by Hawaii licensed captives. (a) All captives licensed by the State of Hawaii, shall maintain and make ready for inspection and examination by the commissioner, or the commissioner's agent, any and all documents pertaining to the formation, operation, management, finances, insurance, and reinsurance of each captive.

(b) Original documents may be kept in the offices of the captive manager, the captive's parent, or the captive itself. Accurate and complete copies shall be held in a Hawaii office designated by the captive and approved by the commissioner. The documents shall include but are not limited to the following:

- (1) Regulatory records:
 - (A) Certificate of authority;
 - (B) Certificate of public good;
 - (C) Articles of incorporation and by-laws;
 - (D) Corporate resolutions and minutes;
 - (E) Full application for admission and related documents, and all changes and amendments to application;
 - (F) All filings and correspondence with other jurisdictions;
 - (G) Annual reports filed with the Hawaii insurance division since the captive insurance company's commencement of business; and
 - (H) Correspondence with the commissioner, the Hawaii insurance division and its advisors.
- (2) Loss and expense records:

- (A) Reports certifying loss reserves, allocated loss adjustment expense reserves and rates by an actuary according to section 431:19-107(c);
 - (B) Incurred loss reports (loss runs) including:
 - (i) Claim numbers;
 - (ii) Occurrence dates;
 - (iii) Report dates;
 - (iv) Lines of coverage;
 - (v) Payments to date;
 - (vi) Reserve amounts;
 - (vii) Date closed;
 - (viii) Policy periods; and
 - (ix) Loss valuation dates;
 - (C) Schedule of subrogation, salvage, reinsurance, or recoverables;
 - (D) Claim file summaries and correspondence; and
 - (E) Summary narrative review of each large loss (exceeding ten per cent of retention).
- (3) Accounting files:
- (A) Audited financial statements since start-up;
 - (B) Auditors' opinion letters and reports;
 - (C) Charts of general ledger accounts;
 - (D) Ledgers (general, payable, receivable);
 - (E) Journals (general, cash receipts, disbursements);
 - (F) Documentation supporting accounting records;
 - (i) Bank statements and reconciliations;
 - (ii) Checks and deposit slips;
 - (iii) Signature authorization cards and board resolutions of approval;
 - (iv) Letters of credit and other approved securities or guarantees, with board approvals;
 - (v) Investment statements, documentation, with board approvals;
 - (vi) Premium invoices, deferrals, and payment plans;
 - (vii) Deferred start-up/acquisition cost statements, with board approval; and
 - (viii) Schedule of premium taxes and fees paid and payable.
- (4) Fronting arrangements:
- (A) Signed, approved fronting agreements, with board approval;

- (B) Reports and correspondence with front or underwriters; and
 - (C) Audit reports and board acceptances.
- (5) Reinsurance reports:
- (A) Reinsurance agreements and amendments, with board approvals;
 - (B) Binders, cover notes, slips;
 - (C) Correspondence with brokers and underwriters;
 - (D) Evidence of reinsurance premium payments with board approvals;
 - (E) Reinsurance audit reports or letters with board approvals; and
 - (F) Letters of credit with notice to the commissioner if "call" is made.
- (6) Insurance policy records:
- (A) Policy registers - numeric control;
 - (B) Application summaries;
 - (C) Declaration pages, forms, and endorsements;
 - (D) Binders, cover notes, certificates of insurance;
 - (E) Schedules of exceptions to normal underwriting/ implementation process;
 - (F) Risk control reports and policyholder response/ implementation plans; and
 - (G) Underwriting and rating plans, with board approvals.
- (7) Professional services providers:
- (A) Contracts or agreements with providers of captive services, with board approvals, including but not limited to:
 - (i) Actuaries;
 - (ii) Banker/trust departments;
 - (iii) Insurance and reinsurance brokers;
 - (iv) Claim managers;
 - (v) Investment managers/advisors/custodians;
 - (vi) Lawyers;
 - (vii) Program/underwriting managers;
 - (viii) Risk control advisors; and
 - (ix) Risk management advisors;
 - (B) Non-privileged reports and correspondence with each.
- (8) Other information which the commissioner deems pertinent. [Eff 5/13/91; am and comp 3/12/01] (Auth: HRS §§431:19-114, 431:19-115) (Imp: HRS §§431:19-108, 431:19-115)

16-17-14 Reinsurance. (a) Reinsurance under this section shall be effected through a written agreement of reinsurance setting forth the terms, provisions, and conditions governing the reinsurance.

(b) Prior to the issuance of the certificate of authority, the reinsurance should be in place to commence upon issuance of the certificate of authority.

(c) Unauthorized reinsurance companies shall be subject to approval by the insurance commissioner and shall, at the commissioner's discretion, be required to submit for review the following:

- (1) A copy of its most recent interim or annual report;
- (2) An actuarial reserve opinion; and
- (3) Audited financial reports. [Eff 5/13/91; am and comp 3/12/01] (Auth: HRS §§431:19-114, 431:19-115) (Imp: HRS §431:19-111)

§16-17-15 Changes in captive business plan, operations, leadership, and ownership. (a) The captive shall obtain prior approval from the commissioner before implementing changes in its business plan, operations, leadership, or ownership.

(b) The captive shall immediately notify the insurance commissioner upon making changes in board members or officers.

(c) Notification to the commissioner of a request for approval or changes in business plan, operations, leadership, or ownership shall be accompanied by an appropriate board resolution authorizing such changes. [Eff 5/13/91; am and comp 3/12/01] (Auth: HRS §§431:19-114, 431:19-115) (Imp: HRS §§431:19-106, 431:19-109, 431:19-115)

§16-17-16 Suspension or revocation of license. (a) The commissioner may by order suspend or revoke the license of a captive for any reason provided in section 431:19-109, HRS or pursuant to the captive's request.

(b) In case of suspension or revocation the commissioner will advise the captive of procedures and requirements for ongoing operations and winding up of the captive's business. [Eff 5/13/91; am and comp 3/12/01] (Auth: HRS §§431:19-114, 431:19-115) (Imp: HRS §§431:19-109, 431:19-115)

BENJAMIN J. CAYETANO
Governor
State of Hawaii

March 2, 2001

Filed

DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS

Amendment and Compilation of Chapter 16-17,
Hawaii Administrative Rules

February 22, 2001

SUMMARY

1. §§16-17-1 and 16-17-2 are amended.
2. §16-17-5 is repealed.
3. §16-17-6 is amended.
4. §16-17-7 is added.
5. §§16-17-10 through 16-17-16 are amended.
6. Chapter 17 is compiled.

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