

THE INSURANCE CODE OF 1956 (EXCERPT)
Act 218 of 1956

500.4705 Limited certificate of authority to transact insurance or reinsurance; transaction of business by SPFC; limitation; requirements; submission of documents to commissioner; contents; liability of director; submission of documents to office of attorney general; evidence and documents required, considered, and reviewed by commissioner; additional filings; confidentiality; transaction of business; fees; limited certificate of authority granted after certain findings; renewal; foreign captive as SPFC.

Sec. 4705.

(1) A captive insurance company, a captive LLC, or a company otherwise qualified as an authorized insurer may apply to the commissioner for a limited certificate of authority to transact insurance or reinsurance business as authorized by this chapter. An SPFC only may insure or reinsure the risks of its counterparty. Notwithstanding any other provision of this chapter, an SPFC may purchase reinsurance to cede the risks assumed under the SPFC contract as approved by the commissioner.

(2) To transact business in this state, an SPFC shall do all of the following:

(a) Obtain from the commissioner a limited certificate of authority authorizing it to conduct insurance or reinsurance business, or both, in this state.

(b) Hold at least 1 management meeting each year in this state.

(c) Maintain its principal place of business in this state.

(d) File with the commissioner the name and address of a resident registered agent designated to accept service of process and to otherwise act on its behalf in this state. The designation shall remain in force as long as any liability remains within the state.

(e) Provide such documentation of the insurance securitization as requested by the commissioner immediately upon the closing of the insurance securitization transaction, including an opinion of legal counsel with respect to compliance with this chapter and any other applicable laws as of the effective date of the insurance securitization transaction and a statement under oath of its president and secretary showing its financial condition.

(f) Provide a complete set of documentation of the insurance securitization to the commissioner shortly following closing of the insurance securitization transaction.

(3) Before granting a limited certificate of authority for an SPFC, the commissioner shall require the applicant to submit organizational documents that contain all of the following:

(a) The names and places of residence of at least 3 incorporators or organizers of whom at least 2 are residents of this state.

(b) The location of the principal office in this state.

(c) The name by which the legal entity will be known.

(d) The purposes of the creation of the entity including a reference to this chapter.

(e) The manner in which the corporate powers are to be exercised.

(f) The number of directors or managers, as applicable.

(g) The number of directors or managers, as applicable, that constitute a quorum for the purposes of doing business which consists of no fewer than 1/3 of the managers required by the organizational document.

(h) The amount and value of capital stock, if any. Each share of authorized capital stock shall have a value of not less than \$1.00.

(i) The term of existence of the entity.

(4) The organizational documents of an SPFC may contain a provision providing that a director is not personally liable to the corporation or its shareholders or policyholders for monetary damages for a breach of the director's fiduciary duty. However, the provision does not eliminate or limit the liability of a director for any of the following:

(a) A breach of the director's duty of loyalty to the corporation or its shareholders or policyholders.

(b) Acts or omissions not in good faith or that involve intentional misconduct or knowing violation of law.

(c) A transaction from which the director derived an improper personal benefit.

(5) Before the organizational documents shall be effective for the purposes of this chapter, the organizational documents shall be submitted to the office of the attorney general for examination. If such documents are found to be in compliance with this chapter, the office of the attorney general shall so certify to the commissioner. Each applicant for an SPFC limited certificate of authority that submits its organizational documents to the office of the attorney general shall pay to the attorney general the examination fee provided in section 240(2).

(6) Prior to granting a limited certificate of authority to any SPFC, the commissioner shall require, consider, and review all of the following:

(a) Evidence of all of the following:

(i) The amount and liquidity of its assets relative to the risks to be assumed.

(ii) The adequacy of the expertise, experience, and character of the person or persons who manage it.

- (iii) The overall soundness of its plan of operation.
- (iv) Other factors considered relevant by the commissioner in ascertaining whether the proposed SPFC is able to meet its policy obligations.
- (v) The applicant SPFC's financial condition, including the source and form of the minimum capitalization to be contributed to the SPFC.
- (b) A plan of operation, consisting of a description of or statement of intent with respect to the contemplated insurance securitization, the SPFC contract, and related transactions, which shall include all of the following:
 - (i) Draft documentation or, at the commissioner's discretion, a written summary of all material agreements that are entered into in connection with the SPFC contracts and the insurance securitization, including the names of the counterparty, the nature of the risks to be assumed, and the proposed use of protected cells, if any. The documentation or written summary shall also include the maximum amounts, purpose, nature, and the relationship between the various transactions effectuating the insurance securitization.
 - (ii) A description of any party, other than the SPFC or the counterparty, that will issue SPFC securities in an insurance securitization, including a description of its contemplated operation.
 - (iii) The source and form of additional capitalization to be contributed to the SPFC.
 - (iv) The proposed investment strategy of the SPFC.
 - (v) A description of the underwriting, reporting, and claims payment methods by which reserves covered by the SPFC contract are reported, accounted for, and settled.
 - (vi) A pro forma balance sheet and income statement illustrating various stress case scenarios for the performance of the SPFC under the SPFC contract.
- (c) Biographical affidavits in a form prescribed by the commissioner of all of the prospective SPFC's officers and directors, providing their legal names, any names under which they have or are conducting their affairs, and any affiliations with other persons, together with other biographical information as the commissioner may request.
- (d) An affidavit from the applicant SPFC verifying all of the following:
 - (i) The applicant SPFC meets the provisions of this chapter.
 - (ii) The applicant SPFC operates only pursuant to the provisions in this chapter.
 - (iii) The applicant SPFC's investment strategy reflects and takes into account the liquidity of assets and the reasonable preservation, administration, and asset management of such assets relative to the risks associated with the SPFC contract and the insurance securitization transaction.
- (iv) The SPFC securities proposed to be issued are valid legal obligations that are either properly registered with the securities commissioner or constitute an exempt security or form part of an exempt transaction under section 402 of the uniform securities act, 1964 PA 265, MCL 451.802. If the issuer of the SPFC securities is not the SPFC, the SPFC shall obtain and submit an affidavit from the issuer that the securities proposed to be issued satisfy this subparagraph.
- (v) Unless otherwise exempted by the commissioner, the trust agreement, the trusts holding assets that secure the obligations of the SPFC under the SPFC contract, and the SPFC contract with the counterparty in connection with the contemplated insurance securitization are structured pursuant to the provisions in this chapter.
- (e) Any other statements or documents required by the commissioner to evaluate and authorize the SPFC.
- (7) In addition to the requirements of this section and section 4713, if a protected cell is used, an applicant SPFC shall file with the commissioner all of the following:
 - (a) A business plan demonstrating how the applicant accounts for the paid losses, reserves, and expenses of each protected cell at a level of detail found to be sufficient by the commissioner, and how it reports those paid losses, reserves, and expenses to the commissioner.
 - (b) A statement acknowledging that all financial records of the SPFC, including reports pertaining to any protected cells, shall be made available for inspection or examination by the commissioner.
 - (c) All contracts or sample contracts between the SPFC and any counterparty or captive LLC related to each protected cell.
 - (d) A description of the expenses allocated to each protected cell.
- (8) Information submitted pursuant to this section is confidential and is subject to sections 4734 and 4743.
- (9) To transact insurance or reinsurance business in this state, an SPFC is subject to all of the following:
 - (a) For an applicant not authorized under chapter 46 and not filing a concurrent application under chapter 46, a nonrefundable fee of \$10,000.00 for processing its application for a limited certificate of authority. In addition, the commissioner may retain legal, financial, actuarial, and examination services from outside the office to examine and investigate the application, the reasonable cost of which may be charged against the applicant, or the commissioner may use internal resources to examine and investigate the application for a fee of \$2,700.00, which is payable upon the filing of the application.
 - (b) An SPFC shall pay an annual renewal fee by March 1 of each calendar year. However, an SPFC that is authorized under both chapter 46 and this chapter and that pays the renewal fee provided in section 4625(5) is exempt from paying this renewal fee. The annual renewal fee shall be calculated based upon the annual volume of insurance or reinsurance premiums received by the SPFC as follows:
 - (i) For annual premiums less than \$5,000,000.00, the renewal fee shall be \$5,000.00.

- (ii) For annual premiums equal to or greater than \$5,000,000.00, but less than \$10,000,000.00, the renewal fee shall be \$10,000.00.
 - (iii) For annual premiums equal to or greater than \$10,000,000.00, but less than \$15,000,000.00, the renewal fee shall be \$15,000.00.
 - (iv) For annual premiums equal to or greater than \$15,000,000.00, but less than \$25,000,000.00, the renewal fee shall be \$25,000.00.
 - (v) For annual premiums equal to or greater than \$25,000,000.00, but less than \$40,000,000.00, the renewal fee shall be \$40,000.00.
 - (vi) For annual premiums equal to or greater than \$40,000,000.00, but less than \$55,000,000.00, the renewal fee shall be \$50,000.00.
 - (vii) For annual premiums equal to or greater than \$55,000,000.00, but less than \$75,000,000.00, the renewal fee shall be \$75,000.00.
 - (viii) For annual premiums equal to or greater than \$75,000,000.00, the renewal fee shall be \$100,000.00.
- (10) The commissioner may grant a limited certificate of authority authorizing the applicant to transact insurance or reinsurance business as an SPFC in this state upon finding by the commissioner of all of the following:
- (a) The proposed plan of operation provides a reasonable and expected successful operation.
 - (b) The terms of the SPFC contract and related transactions comply with this chapter.
 - (c) All required fees have been paid.
 - (d) The commissioner of the state of domicile of each counterparty has notified the commissioner in writing or otherwise provided assurance satisfactory to the commissioner that it has approved or not disapproved the transaction.
 - (e) The limited certificate of authority authorizing the SPFC to transact business is limited to the insurance or reinsurance activities that the SPFC is allowed to conduct pursuant to this chapter.
- (11) The limited certificate of authority shall be renewed annually upon payment of the renewal fee provided for by this section.
- (12) A foreign captive, upon approval of the commissioner, may become an SPFC by complying with all of the provisions of this chapter. After this is accomplished, the foreign captive is entitled to a limited certificate of authority to transact business as an SPFC in this state and is subject to the authority and jurisdiction of this state. It is not necessary for a foreign captive redomesticating into this state to merge, consolidate, transfer assets, or otherwise engage in another reorganization, other than as specified in this section.

History: Add. 2008, Act 29, Imd. Eff. Mar. 13, 2008

Popular Name: Act 218