WEST VIRGINIA CODE: §33-31A-5

§33-31A-5. Protected cells.

A sponsored captive insurance company formed or licensed under the provisions of this article may establish and maintain one or more protected cells to insure risks of one or more participants, subject to the following conditions:

(1) The shareholders of a sponsored captive insurance company shall be limited to its participants and sponsors: Provided, That a sponsored captive insurance company may issue nonvoting securities to other persons on terms approved by the commissioner;

(2) Each protected cell shall 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 such 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 commissioner;

(3) The assets of a protected cell shall not be chargeable with liabilities arising out of any other insurance business the sponsored captive insurance company may conduct;

(4) No sale, exchange or other transfer of assets may be made by such sponsored captive insurance company between or among any of its protected cells without the consent of such protected cells;

(5) No sale, exchange, transfer of assets, dividend or distribution may be made from a protected cell to a sponsor or participant without the commissioner's approval and in no event shall such approval be given if the sale, exchange, transfer, dividend or distribution would result in insolvency or impairment with respect to a protected cell;

(6) Each sponsored captive insurance company shall annually file with the commissioner such financial reports as the commissioner shall require, which shall include, without limitation, accounting statements detailing the financial experience of each protected cell;

(7) Each sponsored captive insurance company shall notify the commissioner in writing within ten business days of any protected cell that is insolvent or otherwise unable to meet its claim or expense obligations;

(8) No participant contract shall take effect without the commissioner's prior written approval and the addition of each new protected cell and withdrawal of any participant or termination of any existing protected cell shall constitute a change in the business plan requiring the commissioner's prior written approval; and

(9) The business written by a sponsored captive, with respect to each cell, shall be:

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(A) Fronted by an insurance company licensed under the laws of any state;

(B) Reinsured by a reinsurer authorized or approved by the State of West Virginia; or

(C) 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 commissioner. The amount of security provided shall be no less than the reserves associated with those liabilities which 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 commissioner may require the sponsored captive to increase the funding of any security arrangement established under this subdivision. 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, a member of the federal reserve system or a bank chartered by another state if such state chartered bank is acceptable to the commissioner. A trust maintained pursuant to this paragraph shall be established in a form and upon such terms approved by the commissioner.

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