

ACT NO. 7025

BILL NO. 27-0203

TWENTY-SEVENTH LEGISLATURE OF THE VIRGIN ISLANDS

Regular Session

2008

An Act amending Title 22 of the Virgin Islands Code adding chapter 54 to provide for the establishment, operation and management of Captive Insurance and Reinsurance companies, special purpose vehicles and protected cells as a means of accessing alternative sources of capital and achieving the benefits of insurance securitization; to establish the Virgin Islands as an international insurance center; to promote the growth, development and diversification of the economy of the Virgin Islands and to issue tax incentives to achieve that end; and repealing title 22 Virgin Islands Code, chapter 55

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Be it enacted by the Legislature of the Virgin Islands:

SECTION 1. Title 22, of the Virgin Islands Code is amended by adding Chapter 54 and subchapters to read as follows:

“CHAPTER 54

Subchapter One: Captive Insurers and International Reinsurers

§ 1312. Short title

This chapter may be cited as “The Alternative Market and International Reinsurance Act”.

§ 1313. Interpretation

(a) Any captive insurance company regulated and licensed by the Superintendent of Alternative Markets under this chapter is exempt from all other insurance laws of the Virgin Islands, other than those contained in this chapter or contained in specific references in this chapter.

(b) No provisions of this title, other than those contained or specifically referred to in this chapter, apply to captive insurance companies.

(c) The Superintendent of Alternative Markets may, by rule, regulation, or order, exempt special purpose captive insurance companies, on a-case-by-case basis,

from provisions of this chapter which the Superintendent determines to be inappropriate given the nature of the risks to be insured.

§ 1314. Definitions

As used in this chapter, unless the context requires otherwise:

(1) “actuary” means a person qualified as an actuary by examination of the Institute of Actuaries in England or the Faculty of Actuaries in Scotland Casualty Actuarial Society, or the Society of Actuaries in the United States of American or Canada,

(2) “advisory board” means an ad hoc board of five members appointed by and with full discretion of the SAM, possessing knowledge of technical and complex issues that arise in the Alternative Insurance Business, which the Sam may use evaluating the request to form or change the business plan of an applicant or licensed company.

(3) “alien captive insurance company” means an insurance company formed to write insurance business for its parents and affiliates and licensed pursuant to the laws of an alien jurisdiction ,a non-United States domicile, which imposes statutory or regulatory standards in a form acceptable to the SAM on companies transacting the business of insurance in such jurisdiction.

(4) “affiliated company” means a company in the same corporate system as a parent, an industrial insured, or a member organization by virtue of common ownership, control, operation, or management.

(5) “affiliated person” means an individual or an entity that is related to a parent or owner of an entity by virtue of being: a spouse, father, mother, child, brother or sister of such individual person; or the owner, parent or affiliated company, with respect to any such person which is an entity.

(6) “alternative market insurer” means a company that may insure or reinsure the risks of parents, owners, affiliates, and related business, the insurance or reinsurance which it writes complies with the laws and regulations of the United States domicile for direct placement of risk, and may directly insure the members of an association which owns the alternative market insurer.

(7) “auditor” means an individual who sits and successfully passes a financial examination and is inducted into financial charters and societies and has earned the designation as a Certified Public Accountant or similarly recognized definition in various countries and possesses such qualifications in insurance accountancy as the SAM, by written order, approves, and is in good standing with respect to such qualifications.

(8) “branch business” means any insurance business transacted by a branch captive insurance company in this Territory.

(9) “branch captive insurance company” means an alien captive insurance company licensed by the SAM to transact the business of insurance in this Territory through a business unit with a principal place of business in this Territory.

(10) “branch operations” means any business operations of a branch captive insurance company in this Territory.

(11) “broker” means an individual who places insurance risks with insurers and international reinsurers.

(12) “consolidated debt to total capital ratio” means the ratio of the sum of:

(A) all debts and hybrid capital instruments including, , all borrowings from banks, all senior debt, all subordinated debts, all trust preferred shares, and all other hybrid capital instruments that are not included in the determination of consolidated GAAP net worth issued and outstanding

(B) total capital, consisting of all debts and hybrid capital instruments as described in subparagraph (A) plus owners’ equity determined in accordance with GAAP for reporting to the United States Securities and Exchange Commission.

(13) “consolidated GAAP net worth” means the consolidated owners’ equity determined in accordance with GAAP for reporting to the United States Securities and Exchange Commission.

(14) “contract of insurance” includes any policy, certificate, interim receipt, renewal receipt, or writing evidencing the contract, whether sealed or not, and a binding oral agreement.

(15) “department” means the Office of the Commissioner of Insurance.

(16) “domestic insurance company” means a company licensed and domiciled in the Virgin Islands.

(17) “foreign insurer”: An insurer domiciled in a U. S. state.

(18) “GAAP” means generally accepted accounting principles.

(19) “GAP” as used in this chapter means the amount of risk between the funded or secured loss premium and approved aggregate reinsurance.

(20) “general business” means insurance business that is not long-term business.

(21) “insurance manager” means a firm that has an employee who is, or has available to him or her, a person with such insurance knowledge and expertise as the

SAM may consider necessary for the conduct and management of the insurance business of any one or more insurers in a competent manner.

(22) “intermediary” means one who places reinsurance with or for an insurance or reinsurance company.

(23) “international reinsurer” means a company that reinsures an insurance company, including a domestic Virgin Islands company and may write excess insurance over both self insured and primary insured risks in any domicile outside of the Virgin Islands with a plan approved by the SAM.

(24) “long term business” means insurance business involving the making of contracts of insurance:

(A) on human life or contracts to pay annuities on human life; but excluding contracts for credit life insurance and term life insurance for a period of five years or less, other than convertible and renewable term life contracts;

(B) against risks of the persons insured sustaining injury as a result of an accident or of an accident of a specified class or dying as a result of an accident of a specified class or becoming incapacitated in consequence of disease or diseases of a specified class, being contracts that are expressed to be in effect for a period of not less than five years or without limit of time and either not expressed to be terminable by the insurer before the expiration of five years from the taking thereof or are expressed to be terminable before the expiration of that period only in special circumstance there mentioned; and

(C) whether by bonds, endowment certificates or otherwise whereby in return for one or more premiums paid to the insurer a sum or series of sums is to become payable to the person insured in the future, not being a contract falling within paragraphs (A) or (B) of this section.

(25) “marketer” means an individual appointed by the SAM who identifies potential companies, develops the market, and is involved in all aspects of marketing Alternative Markets and International Reinsurance.

(26) “mutual insurance company” means a company that is not limited by shares and carries on insurance business on the mutual principle as a cooperative enterprise where the company is owned by its policy holders and must maintain a reserve fund to which policy holders contribute by way of premiums.

(27) “NAIC” means National Association of Insurance Commissioners.

(28) “owner” of an entity means a person or entity holding title to any portion of the shares, partnership interests, membership interests or other securities of an entity.

(29) “parent” means any corporation, limited liability company, partnership, other entity or individual that directly or indirectly owns, controls, or holds with power to

vote more than fifty percent of the outstanding voting interests of a captive insurance company or group captive insurance company.

(30) “participant” means an entity, individual or organization as defined in section 1348, and any affiliates of that entity, individual or organization that are insured by a protected cell insurance company, where the losses of the participant are limited through a participant contract to the assets of a protected cell.

(31) “participant contract” means a contract by which a protected cell insurance company insures the risks of a participant and limits the losses of the participant to the assets of a protected cell.

(32) “principal office” means the chief place of business required to be maintained within the Territory by every insurer, international reinsurer, or manager licensed under this chapter and at which the insurer’s, international reinsurer’s, or manager’s books and records which are prescribed by this chapter are kept permanently.

(33) “protected cell” means a separate account established and maintained by a protected cell insurance company for one or more participant.

(34) “protected cell insurance company” means a company that has been approved by the SAM to maintain segregated accounts and to segregate each participant’s assets, liabilities, and activities from each other and whose owner meets appropriate capital and surplus requires appropriate C & S and reinsurance from each participants.

(35) “qualified insurance manager” means an insurance manager who has received a tax incentive benefit certificate from the SAM for the management of alternative market insurers and insurance support services of other domiciled insurance activities.

(36) “qualifying insurer or international reinsurer company” means an insurer or authorized to write reinsurance by this Territory.

(37) “regulations” means the regulations promulgated by the SAM pursuant to authority established by this chapter.

(38) “SAM” means the Superintendent of Alternative Markets or the Superintendent’s designee.

(39) “SAM licensed intermediary/broker” means an intermediary or broker, licensed pursuant to this chapter by the SAM to act as a reinsurance intermediary or broker of alternative market companies and international reinsurers only. A licensed intermediary/broker is not required to be licensed by the SAM or the Division of Banking and Insurance as a local agent or broker. Insurance agents and brokers licensed by the Division of Banking and Insurance are not automatically SAM-licensed intermediary/brokers, but may apply for such a license. SAM- licensed

intermediary/brokers are not automatically licensed to act as local agents or brokers, but may apply for such a license with the Director of the Division of Banking and Insurance.

(40) “segregated account” means a separate account established and maintained by a protected cell captive insurer:

(A) in which the minimum capital and surplus required under this chapter is provided by one or more persons or entities;

(B) that is formed and licensed under this chapter;

(C) that insures risks of separate participants by contract;

(D) with respect to which one or more of the participants are authorized to act on matters relating to the segregated account; and

(E) that limits each participant’s losses through one or more segregated accounts.

(41) “special purpose financial captive insurance company” SPFC means a captive insurance company that is formed or licensed under this chapter which does not meet the definition of any other type of captive insurance company defined in this chapter.

(42) “stock insurer” means an incorporated insurer with issued and outstanding shares whose capital and surplus is owned by its shareholders.

(43) “superintendent of alternate markets” is the superintendent of the Division of Alternative Markets and International Reinsurance Section of the Office of the Commissioner of Insurance.

(44) “Territory” means the Territory of the Virgin Islands of the United States of America.

(45) “Treasury rates” means the United States Treasury strips asked yield as published in the Wall Street Journal as of a balance sheet date.

§ 1315. Creation of alternative markets and international reinsurance section

There is established within the Office of the Commissioner of Insurance, the Division of Alternative Markets and International Reinsurance. The Commissioner of Insurance, with the advice and consent of the Governor, shall appoint the Sam and determine the Sam’s compensation, and the Sam shall report to the Commissioner of Insurance.

§ 1316. Authority of the SAM

(a) The SAM may :

(1) generally supervise the alternative market and captive insurance business being carried on in or from the Territory;

(2) ensure compliance with and enforcement of the laws and regulations relating to the conduct of the alternative market and international reinsurance businesses;

(3) examine and prepare reports pursuant to section 1317 from time to time on all matters connected with the alternative market and international reinsurance;

(4) summon or subpoena persons to attend a hearing or to testify as a witness, to enforce attendance, and to compel production of books and evidence relevant to an inquiry necessary or appropriate under this chapter;

(5) require examination of witnesses under oath, and to administer oaths;

(6) at all reasonable times have access to and may take copies of all the books, securities, records, and documents of any insurer, insurance manager, agent, adjuster or broker which relate to the alternative insurance market or international reinsurance business and any officer, agent or person in charge, possession, custody or control of any of those books, securities, records or documents and to issue fines against any person or entity who refuses or neglects to afford such access;

(7) make an inquiry to any insurer, international reinsurer or insurance manager relating to the conduct of its business or its financial affairs and to require such insurer, international reinsurer or insurance manager to make prompt and explicit answers and to issue fines against any person or entity which fails or refuses to provide such information and to suspend the license of the person or entity;

(8) issue certificates of tax incentive benefits in accordance with this chapter; and

(9) appoint an advisory board, pursuant to section 1382a to review all applications for licenses which may be issued under this chapter.

(b) The SAM, or any of the SAM's employees, must not be directly or indirectly:

(1) a shareholder, member, manager or partner in any company or business entity that is licensed under this chapter as an insurer carrying on insurance business in or from the Territory; or

(2) a shareholder, member, manager or partner in a company or business entity that is authorized under this chapter to act as an insurance manager, agent or broker.

(c) The SAM or any of the SAM's employees who has a conflict of interest as defined in subsection (b) of this section shall recuse himself from addressing any such matter before the Office of the Commissioner of Insurance, Division of Alternative Markets and International Reinsurance.

§ 1317. Registers

The SAM shall keep the following registers:

(a) A register of all licenses issued to insurers and international reinsurers under this chapter, in which must appear:

(1) the name of the insurer or international reinsurer;

(2) the address of the insurer or international reinsurer's principal office within the Territory;

(3) the address of the insurer or international reinsurer's principal office outside the Territory;

(4) the details of the insurance or reinsurance business, including the classes of insurance and reinsurance the insurer or international reinsurer is licensed; and

(5) any and all other information the SAM may consider necessary or appropriate to keep for purposes of this chapter;

(b) A register of all licenses issued under this chapter to insurance managers, intermediaries, brokers and agents, in which must appear the names and addresses of the insurers and international reinsurers for whom they are authorized to act;

(c) A register of the names and addresses of all directors and officers of every insurer and international reinsurer licensed under this chapter; and

(d) A register of all actuaries approved by the Sam to provide actuarial services under this chapter.

§ 1318. Public information and confidential information

(a) Except as provided in section 1317, information submitted pursuant to the provisions of this chapter is confidential and may not be made public by the SAM or an agent or employee of the SAM, without the written consent of the entity, except that:

(1) information may be discoverable by a party in a civil action or contested case to which the submitting captive insurance company is a party, upon a showing by the party seeking to discover the information that:

(A) the information sought is relevant to and necessary for the furtherance of the action or case;

(B) the information sought is unavailable from other non-confidential sources; or

(C) a subpoena issued by a judicial or administrative law officer of competent jurisdiction has been submitted to the SAM; and

(2) the SAM may disclose the information to the public officer having jurisdiction over the regulation of insurance in a state or territory if:

(A) the public official agrees in writing to maintain the confidentiality of the information; and

(B) the laws of the state or territory in which the public official serves do not require the information to be confidential.

(b) The SAM shall post on a website and maintain on line:

(1) a list of all current regulations related to the alternative market and international reinsurers;

(2) a current list of all licensed insurers, international reinsurers and insurance managers, along with their principal place of business in the Territory, the class of insurance or reinsurance they are authorized to write, their capital and surplus; and

(3) a current list of all licensed actuaries, auditors, insurance managers and intermediaries, and their principal place of business in the Territory.

§ 1319. Revolving fund established

(a) There is established in the Treasury of the Virgin Islands a special account known as the "Alternative Market and International Reinsurance Revolving Fund" for providing the financial means for the SAM to administer this chapter and for reasonable expenses incurred in promoting the captive insurance industry in the Territory.

(b) The fund consists of all fees, fines and other sums collected by the SAM under this chapter as well as sums appropriated to it from time to time from the Legislature.

All funds deposited in the fund remain available until expended. The SAM, the Commissioner of Insurance and the Commissioner's designee are the certifying officers for expenditures under the fund.

(c) The SAM shall have deposited into the Fund

(1) all application fees, license fees, renewal fees, assessments and taxes collected by the SAM under this chapter;

(2) all administrative penalties and fines; and

(3) all fees received by the SAM from international reinsurers who assume risks only from captive insurance companies.

(d) All payments from the Fund for the hiring, training, maintenance of staff and associated expenses, including contractual services as necessary, may be disbursed from the Treasury only upon requests issued by the SAM, after receipt of proper documentation regarding services rendered and expenses incurred or to be incurred.

(e) The interest on the monies on deposit in the fund must also be deposited into the fund until balance in the fund exceeds \$10,000,000. Whenever the balance in the Fund exceeds \$10,000,000, the interest must be deposited into the General Fund.

§ 1320. License fees

(a) The following initial license application fees and initial annual license fees, subject to regulation and with full discretion of the SAM, must be charged by and collected by the SAM and deposited in the Alternative Market and International Reinsurance Revolving Fund:

(1) Initial License Application Fee: \$500

(2) Application Review Fee by Actuary: \$3,200.

(3) Annual License Fees:

(A) Insurance Managers: \$500

(B) Qualified Insurance Managers: \$10,000

(C) Captive Insurance Company, Class A, B and C: \$2,000

(D) Protected Cell or SPV: \$5,000

(E) Qualified Insurer or Qualified International Reinsurer – all classes: \$10,000.00

(b) The SAM by regulation may alter and set reasonable fees, pursuant to the notice requirements of title 3, Section 913.

§ 1321. Licensing; required information and documentation; fee; renewal

(a) A captive insurance company, insurance manager, intermediary, broker, support business actuary or auditor, when permitted by its articles of incorporation, articles of organization, operating agreement, or charter, may apply to the SAM for a license to do all insurance business.

(1) Worker's compensation insurance may be written only as excess of qualified self insurance, reimbursement of high deductible plans, or as reinsurance.

(2) In general, a special purpose captive insurance company may insure only the risks of its parent. Notwithstanding any other provisions of this chapter, a special purpose captive insurance company may provide insurance and reinsurance, for risks, as approved by the SAM;

(3) A captive insurance company may not provide personal, motor vehicle, or homeowner's insurance coverage or any component of these coverages;

(4) A captive insurance company may not accept or cede reinsurance except as provided in section 1336.

(b) To conduct insurance business in this Territory, a captive insurance company, insurance manager, intermediary, broker, actuary and auditor shall:

(1) obtain from the SAM a license authorizing it to conduct insurance business in this Territory;

(2) hold at least one board of directors meeting, or in the case of a limited liability company a meeting of the managing board, each year in this Territory

(3) maintain its principal place of business in this Territory, or in the case of a branch captive insurance company, maintain the principal place of business for its branch operations in this Territory, including books and records; and

(4) appoint a resident agent to accept service of process and to otherwise act on its behalf in this Territory. In the case of a captive insurance company formed as a corporation, a nonprofit corporation, or a limited liability company, whenever the registered agent cannot with reasonable diligence be found at the registered office of the captive insurance company, the SAM must be an agent of the captive insurance company upon whom any process, notice or demand may be served:

(c) (1) Before receiving a license, a captive insurance company, insurance manager, intermediary, broker, actuary or auditor:

(A) formed as a corporation or a nonprofit corporation, shall file with the SAM a certified copy of its articles of incorporation and bylaws, a statement under oath of its treasurer or other authorized officer showing its financial condition, and any other statements or documents required by the SAM;

(B) formed as a limited liability company, shall file with the SAM a certified copy of its articles of organization and operating agreement, a statement under oath by its managers showing its financial condition, and any other statements or documents required by the SAM;

(2) In addition to the information required by paragraph (1), an applicant captive insurance company shall file with the SAM evidence of:

(A) the amount and liquidity of its projected assets relative to the risks to be assumed;

(B) the adequacy of the expertise, experience, and character of the person who will manage it;

(C) the overall soundness of its plan of operation;

(D) the adequacy of the loss prevention programs of its parent, member organizations, affiliates, or industrial insureds as applicable; and

(E) such other factors considered relevant by the SAM in ascertaining whether the proposed captive insurance company will be likely to meet its policy obligations.

(3) In addition to the information required by paragraphs (1) and (2) an applicant protected cell insurance company shall file with the SAM:

(A) a business plan 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 SAM, and how it will report the experience to the SAM;

(B) a statement acknowledging that all financial records of the protected cell insurance company, including records pertaining to any protected cells, must be made available for inspection or examination by the SAM;

(C) all contracts or sample contracts between the protected cell insurance company and any participants; and

(D) evidence that expenses will be allocated to each protected cell in an equitable manner.

(4) Information submitted under this section is confidential as provided in section 1318, except that information is discoverable by a party in a civil action or contested case to which the captive insurance company that submitted the information is a party, upon a specific finding by the court that:

(A) The captive insurance company is a necessary party to the action and not joined only for the purposes of evading the confidentiality provisions of this chapter;

(B) The information sought is relevant, material to, and necessary for the prosecution or defense of the claim asserted in litigation; and

(C) The information sought is not available through another source.

(d) (1) A captive insurance company shall pay to the SAM a nonrefundable fee of \$500 for processing its application for license. In addition, the SAM may retain legal, financial, and examination services from outside the Government to examine and investigate the application, the reasonable cost of which may be charged against the applicant, or the SAM may use internal resources to examine and investigate the application for a fee of \$3000.

(2) Section 1333 applies to examinations, investigations, and processing conducted under this section.

(3) In addition, a captive insurance company shall pay an application fee of \$500 and a license fee for the year of registration of \$2000 and an annual renewal fee of \$2000.

(e) If the SAM is satisfied that the documents and statements filed by the captive insurance company comply with the provisions of this chapter, the SAM may grant a license authorizing the company to do insurance business in this Territory until March 1 of each year at which time the license may be renewed.

(f) A foreign or alien captive insurance company, upon approval of the SAM or the SAM'S designee, may become a domestic captive insurance company by complying with all of the requirements of law relative to the organization and licensing of a domestic captive insurance company of the same or equivalent type in this Territory and by filing with Office of the Lieutenant Governor its articles of association, charter, or other organizational document, with appropriate amendments to them adopted in accordance with the laws of this Territory bringing those articles of association, charter, or other organizational document into compliance with the laws of this Territory. After the approval of the SAM, the captive insurance company is entitled to the necessary or appropriate certificates and licenses to continue transacting business in this Territory and is subject to the authority and jurisdiction of this Territory. In connection with this redomestication, the SAM may waive any requirements for public hearings. It is not necessary for a company redomesticating into this Territory to merge, consolidate, transfer assets, or otherwise engage in any other reorganization, other than as specified in this section. It is not necessary for a redomesticated company to obtain the consent of any other jurisdiction in order to be licensed to transact business in or from within the Territory.

(g) (1) A non-U.S. taxpayer shall pay a 1% repatriation fee to SAM on all retained earnings of the redomesticating company.

§ 1322. Conditions of all licenses

(a) It is a condition of every license issued under this chapter, breach of which renders the license subject to cancellation by the SAM that:

(1) The licensed insurer, insurance manager, intermediary, broker, actuary and auditor must be aware of the content of each license application and business plan submitted with the license application, shall monitor for material changes in information submitted with the license application and the changes in the officers of the licensees' business organization and shall immediately notify SAM of:

(A) any material change in the information supplied in or accompanying the application or in the documents submitted with the application of which the licensee is aware, or

(B) the removal from office or the resignation of any director, officer partner or member of the licensee, and the reason for the removal or resignation from office of which the licensee was aware.

(2) No shares or other interest, whether legal or equitable, in the licensee may be issued, transferred or otherwise disposed of and no appointment of a director, officer, partner or member may be made without the prior written consent of the SAM.

(3) The licensee may not without the prior written consent of the SAM:

(A) enter into any merger, amalgamation, consolidation or reorganization;

(B) transfer, other than in the ordinary course of business by way of reinsurance any of its contracts of insurance or the whole or any part of its property, assets or liabilities;

(C) charge or pledge the whole or any part of its assets;

(D) change its name from that set out in its license;

(E) engage in or carry on insurance business other than that of the class or classes of insurance named in the license or other than specified therein;

(F) alter the terms of its articles of incorporation, articles of organization or other instrument of incorporation or formation.

(b) The SAM may not grant to a licensee approval for any transaction described in paragraph (a) unless the SAM is satisfied that:

(1) the proposed insurer involved in the merger, amalgamation, consolidation or merger with the licensee is licensed or qualified to be licensed under this chapter; and

(2) the paid-in capital and unimpaired surplus of such proposed insurer after the merger, amalgamation, consolidation or reorganization will be in amounts that are approved by the auditor and actuary of the proposed insurer and are acceptable to the SAM.

(c) With every application for a license under this chapter, the applicant shall file with the SAM a business plan. The SAM may rely upon the business plan as a condition of issuing a license.

(d) Every licensed insurer shall file with the SAM any proposed change in the business plan. Unless advised otherwise by the SAM, the insured may effect the requested change to the business plan after thirty days after the SAM receives the request.

(e) The SAM may approve or deny the requested change to the business plan in its discretion.

(f) All licensed managers, whether qualified or not, shall report to the SAM any and all actual and proposed changes to the business plan of an insurer or international reinsurer.

§ 1323. Captive reinsurance companies

(a) A captive reinsurance company, if permitted by its articles of incorporation or charter, may apply to the SAM for a license to write reinsurance covering property and casualty insurance or reinsurance contracts. A captive reinsurance company authorized by the SAM may write reinsurance contracts covering risks in any state or territory with the specific written approval of the SAM.

(b) To conduct business in this Territory, a captive reinsurance company shall:

(1) obtain from the SAM a license authorizing it to conduct business as a captive reinsurance company in this Territory;

(2) hold at least one board of directors' meeting each year in this Territory on the island where its principal place of business is located;

(3) maintain its principal place of business in this Territory; and

(4) appoint a registered agent to accept service of process and act otherwise on its behalf in this Territory.

(c) Before receiving a license, a captive reinsurance company shall file with the SAM:

(1) a certified copy of its charter and bylaws;

(2) a statement under oath of its president and secretary showing its financial condition; and

(3) other documents required by the SAM.

(d) In addition to the information required by subsection (c), the applicant captive reinsurance company shall file with the SAM evidence of:

(1) the amount and liquidity of its assets relative to the risks to be assumed;

(2) the adequacy of the expertise, experience, and character of the person who manages it;

(3) the overall soundness of its plan of operation; and

(4) other overall factors considered relevant by the SAM in ascertaining if the proposed captive reinsurance company is able to meet its policy obligations.

(e) Information submitted pursuant to this section is confidential as provided in section 1318, except that information is discoverable by a party in a civil action or contested case to which the captive insurance company that submitted the information is a party, upon a finding by the court that:

(1) the captive is a necessary party to the action and not joined only for the purposes of evading the confidentiality provisions of this chapter;

(2) the information sought is relevant, material to, and necessary for the prosecution or defense of the claim asserted in litigation; and

(3) the information sought is not available through another source.

(f) Captives existing before the effective date of this chapter have one year from the effective date to comply with all new regulations as described in this chapter.

§ 1324. Adoption of name

A captive insurance company or captive reinsurance company, insurance manager, intermediary, broker, auditor, actuary or any other entity that may be licensed under this chapter may not adopt a name that is the same as, deceptively similar to, or likely to be confused with or mistaken for any other existing business name registered in this Territory or in the state or country in which it will conduct business.

§ 1325. Capitalization requirements; security requirements for branch captive insurance companies; restriction on payment of dividends

(a) The SAM may not issue a license to a captive insurance company unless the company possesses and maintains unimpaired paid in capital and surplus of:

(1) in the case of a protected cell insurance company, not less than one hundred thousand dollars; however, if the protected cell insurance company does not assume any risk, the SAM may reduce this amount to an amount less than one hundred thousand dollars;

(2) in the case of a special purpose captive insurance company, an amount determined by the SAM after giving due consideration to the company's business plan, feasibility study, and pro-formas, including the nature of the risks to be insured.

(b) Except for a protected cell insurance company that does not assume any risk, the capital must be in the form of cash, cash equivalent, or an irrevocable letter of credit issued by a bank chartered by this Territory or a member bank of the Federal Reserve System with a branch office in this Territory or as approved by the SAM.

(c) For a protected cell insurance company that does not assume any risk, the capital also may be in the form of other high quality securities as approved by the SAM; But until the requirements of this section have been met in full, and satisfactory evidence of the requirements has been submitted to the SAM, the license is provisional only and does not permit the company to insure risks of unaffiliated persons, other than controlled unaffiliated businesses, during the provisional period.

(d) Notwithstanding any provision in this chapter to the contrary, the SAM may consider as part of the capital stated in this section the value of cash or letters of credit. The SAM may prescribe additional capital and surplus based upon the class, volume, and nature of insurance business transacted by the captive insurance company or segregated account.

(e) The SAM may not issue a license to a captive insurance company unless the company possesses and maintains unimpaired paid-in capital and surplus of:

(1) In the case of an insurer of:

Class A - \$100,000

Class B - \$200,000

Class C - \$300,000

Class A insurer may insure or reinsure general business risks;

Class B insurer may insure or reinsure long term risks; and a

Class C insurer may insure or reinsure both long term and general business risks.

(f) Contributions to a captive insurance company incorporated as a nonprofit corporation must be in the form of cash, cash equivalent, or an irrevocable letter of credit issued by a bank chartered by this Territory or a member bank of the Federal Reserve System with a branch office in this Territory or as approved by the SAM.

(g) The SAM may issue a license expressly conditioned upon the captive insurance company providing to the SAM satisfactory evidence of possession of the minimum required unimpaired paid in capital. Until this evidence is provided, the captive insurance company may not issue any policy, assume any liability, or otherwise provide coverage. The SAM summarily may revoke the conditional license without legal recourse by the company if satisfactory evidence of the required capital is not provided within a maximum period of time, not to exceed one year, to be established by the SAM at the time the conditional license is issued.

(h) The SAM may prescribe additional capital or net assets based upon the type, volume, and nature of insurance business transacted. Contributions in connection with these prescribed additional net assets or capital must be in the form of:

- (1) cash;
- (2) cash equivalent;
- (3) an irrevocable letter of credit issued by a bank chartered by this Territory or a member bank of the Federal Reserve System with a branch office in this Territory or as approved by the SAM; or
- (4) securities invested as provided in section 1335.

(i) In the case of a branch captive insurance company, as security for the payment of liabilities attributable to branch operations, the SAM shall require that a trust fund, funded by an irrevocable letter of credit or other acceptable asset, be established and maintained in the United States for the benefit of United States policyholders and United States ceding insurers under insurance policies issued or reinsurance contracts issued or assumed, by the branch captive insurance company through its branch operations. The amount of the security may be no less than the capital and surplus required by this chapter and the reserves on these insurance policies or reinsurance contracts, including reserves for losses, allocated loss adjustment expenses, incurred but not reported losses and unearned premiums with regard to business written through branch operations; however, the SAM may permit a branch captive insurance company that is required to post security for loss reserves on branch business by its international reinsurer to reduce the funds in the trust account required by this section by the same amount so long as the security remains posted with the international reinsurer. If the form of security selected is a letter of credit, the letter of credit must be established by, or issued or confirmed by, a bank chartered in this Territory or a member bank of the Federal Reserve System.

(j) A captive insurance company may not pay a dividend out of, or other distribution with respect to, capital or surplus, in excess of the limitations set forth in section 1328 without the prior approval of the SAM. Approval of an ongoing plan for the payment of dividends or other distributions must be conditioned upon the retention, at the time of each payment, of capital or surplus in excess of amounts specified by, or determined in accordance with formulas approved by, the SAM.

(k) An irrevocable letter of credit which is issued by a financial institution other than a bank chartered by this Territory or a member bank of the Federal Reserve System, must meet the same standards as an irrevocable letter of credit which has been issued by either entity.

§ 1326. Minimum capitalization or reserves

(a) In addition to the capitalization requirements contained in section 1325, the SAM may prescribe additional capital or surplus based upon the type, volume, and nature of the insurance business transacted.

(b) A captive reinsurance company may not pay a dividend out of, or other distribution with respect to, capital or surplus in excess of the limitations, without the prior approval of the SAM. Approval of an ongoing plan for the payment of dividends or other distributions must be conditioned upon the retention, at the time of each payment, of capital or surplus in excess of amounts specified by, or determined in accordance with formulas approved by, the SAM.

(c) Every applicant must maintain an amount of capital determined by the SAM in accordance with the business plan on file with the SAM, provided, however, the amount of capital may be less than the amount fixed by this chapter.

§ 1327. Minimum margin of solvency

The SAM may not issue a license to a captive insurance company unless it maintains a “minimum margin of solvency”. A minimum margin of solvency is twenty percent (20%) of the net written premiums up to five million dollars, with a minimum of one hundred thousand dollars; for a company with net written premiums of greater than five million dollars, the minimum capital is one million dollars, plus ten percent.

(a) In determining the minimum margin of solvency, for classes of insurance other than life insurance business and long-term insurance business, a captive insurance company’s contingent and prospective liabilities does not include incurred but not reported losses, or unincurred losses under outstanding contracts of insurance.

(b) Notwithstanding anything in this section to the contrary, the SAM may require a greater margin of solvency, in a particular case.

(c) SAM may consider letters of credit posted as “gap” security as capital and surplus for solvency purposes.

§ 1328. Restriction on payment of dividends; liability

(a) A corporation or other entity may declare and pay dividends or make other distributions in cash or its bonds or its property, including the shares or bonds of other corporations, on its outstanding shares, except when the corporation is insolvent or would thereby be made insolvent, or when the declaration, payment or distribution would be contrary to any restrictions contained in the certificate of incorporation or organizational document.

(b) Dividends may be declared or paid and other distributions may be made out of surplus only, so that the net assets of the corporation or entity remaining after such declaration, payment or distribution at least equals the amount of its stated capital.

(c) Directors of a corporation or managers of an LLC who vote for or concur in any of the following corporate actions are jointly and severally liable to the corporation or LLC for the benefit of its creditors, shareholders or members, to the extent of any injury suffered by such persons, respectively, as a result of such action:

(1) The declaration of any dividend or other distribution to the extent that it is contrary to the provisions of paragraphs (a) and (b) of this section.

(2) The distribution of assets to shareholders or members after dissolution of the corporation or LLC without paying or adequately providing for all known liabilities of the corporation or LLC, excluding any claims not filed by creditors within the time limit set in a notice given to creditors.

§1329a. Segregation of accounts

(a) An international insurance company that is domiciled or licensed to do business in any State of the United States, or that is otherwise subject to United States federal income taxation as if it were so domiciled or licensed, shall regularly employ in its books of accounts a detailed segregation of receipts, expenditures, assets, liabilities and net worth that clearly distinguishes the income derived from insuring United States risks from the income derived from insuring other foreign risks by first allocating such items which are specifically identifiable as pertaining exclusively to the United States risks.

(b) Investment income earned on reserves pertaining to United States risks constitute investment income pertaining to the United States risks.

§ 1329. Incorporation of a captive reinsurance company

(a) A captive reinsurance company must be incorporated as a stock insurer with its capital divided into shares and held by its shareholders.

(b) A captive reinsurance company may not have fewer than three incorporators of whom at least two must be residents of this Territory.

(c) Before the articles of incorporation are transmitted to the Office of the Lieutenant Governor, Division of Corporations and Trademarks, the incorporators shall petition the SAM to issue a certificate finding that the establishment and maintenance of the proposed corporation promotes the general good of the Territory. In arriving at this finding the SAM shall consider:

(1) the character, reputation, financial standing, and purposes of the incorporators;

(2) the character, reputation, financial responsibility, insurance experience, and business qualifications of the officers and directors; and

(3) other factors the SAM considers advisable.

(d) The capital stock of a captive reinsurance company must be issued at par value or greater.

(e) At least one of the members of the board of directors of a captive reinsurance company incorporated in this Territory must be a resident of this Territory.

§ 1330 Incorporation options and requirements

(a) In the case of a captive insurance company seeking a license to transact business in the Territory, and formed as a corporation, a nonprofit corporation, or a limited liability company, before the articles of incorporation or articles of organization are transmitted to the Office of the Lieutenant Governor, the incorporators or organizers shall petition the SAM to issue a certificate setting forth a finding that the establishment and maintenance of the proposed entity will promote the general good of the Territory. In arriving at this finding the SAM shall consider:

(1) the character, reputation, financial standing, and purposes of the incorporators or organizers;

(2) the character, reputation, financial responsibility, insurance experience, and business qualifications of the officers and directors or managers; and

(3) other aspects as the SAM considers advisable.

(b) The articles of incorporation or articles of organization, the certificate issued pursuant to subsection (a) if any, and the organization fees required by the Virgin Islands Code, as applicable, must be transmitted to the Office of the Lieutenant Governor, which shall record both the articles of incorporation or articles of organization and the certificate.

(c) In the case of a captive insurance company licensed as a branch captive insurance company, the alien captive insurance company shall petition the SAM to issue a certificate setting forth the SAM's finding that, after considering the character, reputation, financial responsibility, insurance experience, and business qualifications of the officers and directors or managers of the alien captive insurance company, the licensing and maintenance of the branch operations will promote the general good of the Territory. The alien captive insurance company may register to do business in this Territory after the SAM's certificate has been issued.

(d) The capital stock or membership interests of a captive insurance company incorporated as a stock insurer or limited liability company must be issued at not less than par value.

(e) In the case of a captive insurance company formed as a corporation or a nonprofit corporation, the corporation must have at least three directors. In the case of a captive insurance company formed as a limited liability company, at least one of the managers of the captive insurance company must be a resident of this Territory.

(f) A captive insurance company formed as a corporation, a nonprofit corporation, or a limited liability company, pursuant to this chapter has the privileges and is subject to the provisions of the general corporation law, including the Virgin Islands Nonprofit Corporations law for nonprofit corporations and the Virgin Islands Uniform Limited Liability Company Act for limited liability companies, as applicable, as well as the applicable provisions contained in this chapter. If a conflict occurs between a provision of the general corporation law, including the Virgin Islands Nonprofit Corporations statute for nonprofit corporations and the Virgin Islands Uniform Limited Liability Company Act for limited liability companies, as applicable, and a provision of this chapter, the latter controls. The provisions of this title pertaining to mergers, consolidations, conversions, mutualizations, and redomestications apply in determining the procedures to be followed by a captive insurance company in carrying out any of the transactions described in those provisions, except the SAM may waive or modify the requirements for public notice and hearing in accordance with regulations which the SAM may promulgate addressing categories of transactions. If a notice of public hearing is required, but no one requests a hearing, the SAM may cancel the hearing.

(g) The articles of incorporation or bylaws of a captive insurance company may authorize a quorum of a board of directors to consist of no less than one third of the fixed or prescribed number of directors as provided for in this chapter. In the case of a limited liability company, the articles of organization or operating agreement of a captive insurance company may authorize a quorum to consist of no less than one third of the managers required by the articles of organization or the operating agreement.

§ 1331. Reports

(a) A captive insurance company may not be required to make an annual report except as provided in this chapter.

(b) Before March 1 of each year, a captive insurance company or a captive reinsurance company shall submit to the SAM a report of its financial condition, verified by oath of one of its executive officers. Except as provided in sections 1325 and 1328, a captive insurance company or captive reinsurance company shall report using generally accepted accounting principles; or in accordance with generally accepted accounting principles; or in accordance with standards acceptable to the NAIC, unless the SAM approves the use of statutory accounting principles, with useful or necessary modifications or adaptations required or approved or accepted by the SAM for the type of insurance and kinds of insurers to be reported on, and as supplemented by addition information required by the SAM. In addition, all companies shall submit to the SAM certified audited financials by June 30 of each year. The SAM by regulation shall prescribe the forms on which pure captive insurance companies and industrial insured captive insurance companies report. Information submitted pursuant to this section is confidential as provided in section 1318. The SAM may require that the annual financial statements of a captive insurance company be certified by an independent auditor when the SAM determines that such certification is in the best interest of the policyholders or the Territory, but any captive insurance company engaged in life insurance business or long term insurance business shall submit certified financial statements each year. An

annual actuarial statement of opinion is required. However, SAM may waive this requirement, but not for two consecutive years.

(c) Sixty days after the fiscal year end, a branch captive insurance company shall file with the SAM a copy of all reports and statements required to be filed under the laws of the jurisdiction in which the alien captive insurance company is formed, verified by oath by two of its executive officers. If the SAM is satisfied that the annual report filed by the alien captive insurance company in its domiciliary jurisdiction provides adequate information concerning the financial condition of the alien captive insurance company, the SAM may waive the requirement for completion of the captive annual statement for business written in the alien jurisdiction. Such waiver must be in writing and subject to public inspection.

(d) All accounts of a licensed insured must be reviewed by the insured's approved auditor in order to generate the report.

(e) The report must contain a statement of the condition of the insurer's affairs at the end of the preceding fiscal year, and must:

(1) be in a form and content as prescribed by regulations;

(2) exhibit the assets, liabilities, receipts and expenditures of the insurers or international reinsurer for the preceding fiscal year.

(3) exhibit particulars of the business transacted by the insurer or international reinsurer in or from the Territory during the preceding fiscal year; and

(4) contain a statement from insurer's approved auditor that it has examined the books and records of the insurer and international reinsurer and is satisfied that the insurer and international reinsurer is not in breach of any of the conditions of its license or in contravention of any provision of this chapter or by regulations.

(f) For the purposes of the report required by this section, the assets of the insurer or international reinsurer must be valued and its liabilities must be calculated by the SAM in accordance with this chapter and regulations.

(g) The report may not show as assets the unpaid balances owing by agents or other insurers that are more than six months overdue or bills receivable on account thereof or trade receivables more than one year overdue, or investment in office furniture or equipment, or unpaid capital, or unpaid premium on subscribed shares of capital stock, nor may such report include as assets any investments prohibited or not authorized by this chapter or the regulations.

§ 1332. Discounting of loss and loss adjustment expense reserves

(a) A protected cell insurance company or a captive reinsurance company may discount its loss and loss adjustment expense reserves at treasury rates applied to the applicable payments projected through the use of the expected payment pattern associated with the reserves.

(b) A protected cell insurance company and a captive reinsurance company shall file annually an actuarial opinion on loss and loss adjustment expense reserves provided by an independent actuary licensed under this chapter. The actuary may not be an employee of the captive company or any of its affiliates, or an employee of a parent of the captive or an owner of the captive company or its affiliates.

(c) The SAM may disallow the discounting of reserves if a protected cell insurance company or a captive reinsurance company violates a provision of this chapter.

§ 1333. Inspections and examinations; confidentiality of reports; limitations applicable to branch captive insurance companies; application of general provisions

(a) At least once every three years, which may be extended to five years by the SAM, and whenever the SAM determines it to be prudent, the SAM, or competent person appointed by the SAM, shall visit any captive insurance company and thoroughly inspect and examine its affairs to ascertain its financial condition, its ability to fulfill its obligations, and whether it has complied with this chapter. The scope of the examination is determined by the SAM upon application, and the SAM may determine that an examination is not necessary, if a captive insurance company during that period is subject to a comprehensive annual audit by independent auditors approved by the SAM and a scope satisfactory to the SAM. The expenses and charges of the examination must be paid to the Territory by the company examined, and the SAM shall issue its bills for the proper charges incurred in all examinations.

(b) All examination reports, preliminary examination reports or results, working papers, recorded information, documents and copies of documents produced by, obtained by, or disclosed to the SAM or any other person in the course of an examination made under this section are confidential and are not subject to subpoena and may not be made public by the SAM or an employee or agent of the SAM without the prior written consent of the company, except to the extent provided in this subsection.

(1) Nothing in this subsection prevents the SAM from using the information in furtherance of the SAM's regulatory authority under this chapter.

(2) The SAM may grant access to the information to public officers having jurisdiction over the regulation of insurance in any other territory, state or country, or to law enforcement officers of this Territory or any other territory, state, or agency of the federal government at any time, so long as the officers receiving the information agree in writing to hold it in a manner consistent with this section.

(c) (1) This section applies to all business written by a captive insurance company; however, the examination for a branch captive insurance company must be of branch business and branch operations only, as long as the branch captive insurance company provides annually to the SAM, a certificate of compliance, or its equivalent, issued by or filed with the licensing authority of the jurisdiction in which the branch captive insurance company is formed and demonstrates to the SAM's satisfaction that it is operating in sound financial condition in accordance with all applicable laws and regulations of that jurisdiction.

(2) As a condition of licensure, the alien captive insurance company shall grant authority to the SAM for examination of the affairs of the alien captive insurance company in the jurisdiction in which the alien captive insurance company is formed.

§ 1334. Suspension or revocation of license

(a) The license of a captive insurance company, insurance manager, intermediary broker, actuary and auditor to conduct an insurance business in this Territory may be suspended or revoked by the SAM for:

- (1) insolvency or impairment of capital or surplus;
- (2) failure to meet the requirements of sections 1325 or 1328;
- (3) refusal or failure to submit an annual report, as required by section 1331, or any other report or statement required by law or by lawful order of the SAM;
- (4) failure to comply with its own charter, bylaws, or other organizational documents;
- (5) failure to submit to examination or any legal obligation relative to an examination, as required by section 1333;
- (6) refusal or failure to pay the cost of examination as required by section 1333;
- (7) use of methods that, although not otherwise specifically prohibited by law, nevertheless render its operation detrimental or its condition unsound with respect to the public or to its policyholders; or
- (8) failure otherwise to comply with laws of this Territory.

(b) If the SAM finds, upon examination, hearing, or other evidence, that a captive insurance company has committed any of the acts specified in subsection (a) of this section, the SAM may suspend or revoke such license if the SAM considers it in the

best interest of the public and the policyholders of the captive insurance company, notwithstanding any other provision of this chapter.

§ 1335. Applicability of investment requirements; loans

(a) A captive insurance company, a captive reinsurance company, a special purpose captive insurance company, and a protected cell insurance company are not subject to any restrictions on allowable investments contained in this chapter; however, the SAM may request a written investment plan and may prohibit or limit an investment that threatens the solvency or liquidity of the company.

(b) A captive insurance company may make loans to its parent company or affiliates, but only upon the prior written approval of the SAM, and such loans must be evidenced by a note in a form approved by the SAM. Loans of minimum capital and surplus funds required by sections 1325 and 1328 are prohibited.

§ 1336. Reinsurance; effect on reserves

(a) A captive insurance company may provide reinsurance, as authorized in this chapter, on risks ceded by any other insurer.

(b) A captive insurance company may take credit for reserves on risks or portions of risks ceded to international reinsurers complying with the provisions of this chapter, regulations and as approved by the SAM. A captive insurer may not take credit for reserves on risks or portions of risks ceded to a international reinsurer if the international reinsurer is not in compliance with this chapter, regulations or not approved by the SAM.

§ 1337. No requirement to join ratings organization

A captive insurance company is not required to join a ratings organization.

§ 1338. Participation in plan, pool, association, or guaranty or insolvency fund

(a) A captive insurance company, including a captive insurance company organized as a reciprocal insurer under this chapter, may not join or contribute financially to a plan, pool, association, or guaranty or insolvency fund in this Territory, and a captive insurance company, or its insured or its parent or any affiliated company or any member organization of its association, or in the case of a captive insurance company organized as a reciprocal insurer, a subscriber of the company, may not receive a benefit from a plan, pool, association, or guaranty or insolvency fund for claims arising out of the operations of such captive insurance company, except as provided in paragraph (b) below.

(b) This section does not apply to cross insurance arrangements among groups of captive insurance companies whereby each participating company insures risks of business operations related to other participating companies; provided that such

arrangements do not involve reinsurance or guaranties among participating captive insurance companies.

§ 1339. Premium Tax payment; rates

No Premium taxes are applicable for any policies written by companies pursuant to this chapter.

§ 1340. Annual captive reinsurance tax

(a) Unless it is approved for tax incentive benefits under section 1376 and has received a contract under section 1378, a captive reinsurance company shall pay to the SAM by March 1 of each year a captive reinsurance tax of five thousand dollars.

(b) The tax provided in this section is the only tax collectible pursuant to the laws of this Territory from a captive reinsurance company, and neither tax on reinsurance premiums nor any other taxes may be levied or collected from a captive reinsurance company by the Territory, except taxes on real and personal property used in the production of income.

(c) A captive reinsurance company failing to make returns or to pay all taxes required by this section is subject to sanctions as provided in this chapter.

§ 1341. Rules, regulations, and orders

The SAM may promulgate and from time to time amend rules and regulations, and issue such orders relating to captive insurance companies as are necessary to enable the SAM to carry out the provisions of this chapter.

§ 1342. Applicability of provisions relating to insurance reorganizations, receiverships, and injunctions; sponsored captive insurance company assets and capital provisions

(a) Except as otherwise provided in this section, the terms and conditions set forth in this title pertaining to insurance reorganizations, receiverships, and injunctions apply in full to captive insurance companies formed or licensed under this chapter.

(b) In the case of a sponsored captive insurance company:

(1) the assets of the protected cell may not be used to pay expenses or claims other than those attributable to the protected cell; and

(2) its capital and surplus at all times must be available to pay expenses of or claims against the sponsored captive insurance company and may not be used to pay expenses or claims attributable to a protected cell.

§ 1346. Formation of captive insurance company; establishing protected cells

(a) One or more entities may form a protected cell insurance company under this chapter.

(b) A protected cell insurance company formed or licensed under this chapter may establish and maintain one or more protected cells to insure risks of one or more participants, subject to the following conditions:

(1) each protected cell must be accounted for separately on the books and records of the captive insurance company to reflect the financial condition and results of operations of the protected cell, net income or loss, dividends or other distributions to participants, and other factors may be provided in the participant contract or required by the SAM;

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

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

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

(5) a protected cell insurance company annually shall file with the SAM such financial reports as the SAM requires which includes, but are not limited to, accounting statements detailing the financial experience of each protected cell;

(6) a protected cell insurance company shall notify the SAM in writing within ten business days of a protected cell that is insolvent or otherwise unable to meet its claim or expense obligations;

(7) no participant contract may take effect without the SAM's prior written approval, and the addition of each new protected cell and withdrawal of any participant of any existing protected cell constitutes a change in the business plan requiring the SAM's prior written approval.

§ 1348. Participants in protected cell insurance companies

(a) An association, a corporation, a limited liability company, a partnership, a trust, or other business entity may be a participant in a protected cell insurance company formed or licensed pursuant to this chapter.

(b) The owner may be a participant in a protected cell insurance company.

(c) A participant need not be a shareholder of the protected cell insurance company or an affiliate of the company.

§ 1349. Terms and conditions for protected cell insurance companies; exception

In the case of a protected cell insurance company:

(a) a protected cell need not be established solely for the purpose of effecting insurance securitizations, but may be established for the purpose of isolating the expenses and claims of a protected cell insurance company participant; and

(b) the protected cell insurance company shall attribute all insurance obligations, assets, and liabilities relating to a participant's risks to the participant's protected cell.

Subchapter Two: Special Purpose Financial Captives**§ 1351. Purpose**

This subchapter provides for the creation of Special Purpose Financial Captives (SPFCs) exclusively to facilitate the securitization of one or more risks, as a means of accessing alternative sources of capital and achieving the benefits of securitization. SPFCs are created for the limited purpose of entering into an SPFC contract and insurance securitization transactions and into related agreements to facilitate the accomplishment and execution of those transactions. The creation of SPFCs is intended to achieve greater efficiencies in structuring and executing insurance securitizations, to diversify and broaden insurers' access to sources of capital, to facilitate access for many insurers to insurance securitization and capital markets financing technology, and to further the economic development and expand the interest of the Territory through its captive insurance program.

§ 1352. Definitions

For purposes of this subchapter:

(a) "Court" means the Superior Court of the Virgin Islands.

(b) “affiliated company” means a company in the same corporate system as a parent, by virtue of common ownership, control, operation, or management.

(c) “contested case” means a proceeding in which the legal rights, duties, obligations, or privileges of a party are required by law to be determined by the Court after an opportunity for hearing.

(d) “control” including the terms “controlling”, “controlled by”, and “under common control with” means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract other than a commercial contract for goods or non-management services, or otherwise, unless the power is the result of an official position with or corporate office held by the person. Control is presumed to exist if a person, directly or indirectly, owns, controls, holds with the power to vote, or holds proxies representing ten percent or more of the voting securities of another person. This presumption may be rebutted by a showing that control does not exist. Notwithstanding other provisions of this section, for purposes of this subchapter, the fact that an SPFC exclusively provides reinsurance to a ceding insurer under an SPFC contract is not by itself sufficient grounds for a finding that the SPFC and ceding insurer are under common control.

(e) “counterparty” means an SPFC’s parent or affiliated company, as ceding insurer to the SPFC contract, or subject to the prior approval of the SAM, a nonaffiliated company.

(f) “fair value” means:

(1) as to cash, the amount of it; and

(2) as to an asset other than cash:

(A) the amount at which that asset could be bought or sold in a current transaction between arms length, willing parties;

(B) the quoted mid-market price for the asset in active markets must be used if available; and

(C) if quoted mid-market prices are not available, a value determined using the best information available considering values of similar assets and other valuation methods, such as present value of future cash flows, historical value of the same or similar assets, or comparison to values of other asset classes, the value of which have been historically related to the subject asset.

(g) “insolvency” or “insolvent” means that the SPFC or one or more of its protected cells is unable to pay its obligations when they are due, unless those obligations are the subject of a bona fide dispute, or the SAM previously has established by order

other criteria for determining the solvency of the SPFC or one or more of its protected cells, in which case the SPFC is insolvent if it fails to meet that criteria.

(h) “insurance securitization” means a package of related risk transfer instruments, capital market offerings, and facilitating administrative agreements by which proceeds are obtained by an SPFC directly or indirectly through the issuance of securities, which complies with applicable securities law, and which proceeds are held in trust pursuant to the provisions of this subchapter to secure the obligations of the SPFC under one or more SPFC contracts with a counterparty, where investment risk to the holders of these securities is contingent upon the obligations of the SPFC to the counterparty under the SPFC contract in accordance with the transaction terms.

(i) “management” means the board of directors, managing board, manager or other individual or individuals vested with overall responsibility for the management of the affairs of the SPFC, including the election and appointment of officers or other of those agents to act on behalf of the SPFC.

(j) “organizational document” means the SPFC’s articles of incorporation, articles of organization, bylaws, operating agreement, or other foundational documents that establish the SPFC as a legal entity or prescribes its existence.

(k) “parent” means any corporation, limited liability company, partnership, entity or individual that directly or indirectly owns, controls, or holds with power to vote more than fifty percent of the outstanding voting securities of an SPFC.

(l) “permitted investments” means those investments that meet the qualifications pursuant to section 1365.

(m) “protected cell” means a separate account established and maintained by an SPFC for one SPFC contract and the accompanying insurance securitization with a counterparty as further provided for in this chapter.

(n) “qualified United States financial institution” means, for purposes of meeting the requirements of a trustee as specified in section 1365, a financial institution that is eligible to act as a fiduciary of a trust, and is:

(1) organized or, in the case of a United States branch or agency office of a foreign banking organization, is licensed under the laws of the United States or the Territory; and

(2) regulated, supervised, and examined by federal, state or Territorial authorities having regulatory authority over banks and trust companies.

(o) “securities” means those different types of debt obligations, equity, surplus certificates, surplus notes, funding agreements, derivatives, and other legal forms of financial instruments.

(p) “securities commissioner” means the Lieutenant Governor or the Lieutenant Governor’s designee;

(q) “SPFC” or “Special Purpose Financial Captive” means a captive insurance company which has received a license from the SAM for the limited purposes provided for in this subchapter.

(r) “SPFC contract” means a contract between the SPFC and the counterparty pursuant to which the SPFC agrees to provide insurance or reinsurance protection to the counterparty for risks associated with the counterparty’s insurance or reinsurance business.

(s) “SPFC securities” means the securities issued by an SPFC.

(t) “surplus note” means an unsecured subordinated debt obligation deemed to be a surplus certificate and otherwise possessing characteristics consistent with paragraph 3 of the Statement of Statutory Accounting Principles No. 41, as amended, National Association of Insurance Commissioners (NAIC).

(u) “third party” means a person unrelated to an SPFC or its counterparty, or both, that has been aggrieved by a decision of the SAM regarding that SPFC or its activities.

§ 1353. Relation to other Title 22 provisions

(a) No provisions of Title 22, other than those specifically referenced in this subchapter apply to an SPFC, and those provisions apply only as modified by this subchapter. If a conflict occurs between a provision of Title 22 and a provision of this subchapter, the latter controls.

(b) The SAM, by rule, regulation, or order, may exempt an SPFC or its protected cells, on a case by case basis, from provisions of this subchapter that he determines to be inappropriate given the nature of the risks to be insured.

§ 1354. License to transact business in Territory; contents of application; fees; foreign corporations

(a) An SPFC, when permitted by its organizational documents, may apply to the SAM for a license to transact insurance or reinsurance business as authorized by this subchapter. An SPFC may insure or reinsure only the risks of its counterparty. Notwithstanding any other provision of this subchapter, an SPFC may purchase reinsurance to cede the risks assumed under the SPFC contract as approved by the SAM.

(b) To transact business in this Territory an SPFC shall:

(1) obtain from the SAM a license authorizing it to conduct insurance or reinsurance business, or both, in this Territory;

(2) hold at least one management meeting each year in this Territory;

(3) maintain its principal place of business in this Territory;

(4) appoint a resident registered agent to accept service of process and to otherwise act on its behalf in this Territory. If the registered agent, with reasonable diligence, is not found at the registered office of the SPFC, the SAM must be an agent of the SPFC upon whom any process, notice, or demand may be served;

(5) provide such documentation of the insurance securitization as requested by the SAM immediately upon closing of the transaction, including:

(A) an opinion of legal counsel with respect to compliance with this subchapter and any other applicable laws as of the effective date of the transaction; and

(B) a statement under oath of its president and secretary, or manager, showing its financial condition; and

(6) provide a complete set of the documentation of the insurance securitization to the SAM shortly following closing of the transaction

(c) A complete SPFC application must include the following:

(1) a certified copy of its organizational documents; and

(2) evidence of:

(A) the amount and liquidity of its assets relative to the risks to be assumed;

(B) the adequacy of the expertise, experience, and character of the person or persons who manages it;

(C) the overall soundness of its plan of operation;

(D) other factors considered relevant by the SAM in ascertaining whether the proposed SPFC is able to meet its policy obligations; and

(E) the applicant SPFC's financial condition, including the source and form of the minimum capitalization to be contributed to the SPFC.

(3) 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 must include:

(A) draft documentation or, at the discretion of the SAM, a written summary of all material agreements that are entered into to effectuate the SPFC contract and, before effecting such, the insurance securitization, to include the names of the counterparty, the nature of the risks being assumed, the proposed use of protected cells, if any, and the maximum amounts, purpose, and nature and the interrelationships of the various transactions required to effectuate the insurance securitization;

(B) the source and form of additional capitalization to be contributed to the SPFC;

(C) the proposed investment strategy of the SPFC;

(D) a description of the underwriting, reporting, and claims payment methods by which losses covered by the SPFC contract are reported, accounted for, and settled; and

(E) a pro forma balance sheet and income statement illustrating various stress case scenarios for the performance of the SPFC under the SPFC contract.

(4) biographical affidavits in NAIC format of all of the prospective SPFC's officers and directors and managers, 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 SAM may request.

(5) An affidavit from the applicant SPFC verifying:

(A) the applicant SPFC meets the provisions of this subchapter;

(B) the applicant SPFC operates only pursuant to the provisions in this subchapter;

(C) 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;

(D) the securities proposed to be issued are valid legal obligations that are either properly registered with the Office of the

Lieutenant Governor, Division of Banking and Insurance or constitute an exempt security or form part of an exempt transaction under Virgin Islands law; and

(E) unless otherwise exempted by the SAM, 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 subchapter.

(6) Any other statements or documents required by the SAM to evaluate and complete the licensing of the SPFC.

(d) In addition to the information required by subsection (c), and to the provisions of section 1358, if a protected cell is used, an applicant SPFC shall file with the SAM:

(1) a business plan demonstrating how the applicant accounts for the loss and expense experience of each protected cell at a level of detail found to be sufficient by the SAM, and how it reports the experience to the SAM;

(2) a statement acknowledging that all financial records of the SPFC, including records pertaining to any protected cells, must be made available for inspection or examination by the SAM;

(3) all contracts or sample contracts between the SPFC and any counterparty, related to each protected cell; and

(4) a description of the expenses allocated to each protected cell.

(e) Information submitted pursuant to this subsection is confidential and is subject to section 1373.

(f) Sections 1333 and 1334 apply to examinations, investigations, and processing conducted pursuant to the authority of this subchapter.

(g) To transact insurance or reinsurance business in this Territory, an SPFC shall pay to the SAM:

(1) a nonrefundable fee of five hundred dollars for processing its application for license. In addition, the SAM may retain legal, financial, and examination services from outside the Government to examine and investigate the application, the reasonable cost of which may be charged against the applicant, or the SAM may use internal resources to examine and investigate the application for a fee of twelve thousand dollars, half of which is payable upon filing of the application and the remainder upon licensure, or both;

(2) a license fee for the year of registration of five hundred dollars and an annual renewal fee of five hundred dollars;

(3) an annual review fee of thirty two hundred dollars or, if higher, the actual cost as determined by the SAM; and

(4) premium taxes as required by this subchapter.

(h) The SAM may grant a license authorizing the SPFC to transact insurance or reinsurance business as an SPFC in this Territory until March first, at which time the license may be renewed, upon finding that the:

(1) proposed plan of operation provides a reasonable and expected successful operation;

(2) terms of the SPFC contract and related transactions comply with this subchapter;

(3) proposed plan of operation is not hazardous to any counterparty;

(4) commissioner of the state of domicile of each counterparty has notified the SAM in writing or otherwise provided assurance satisfactory to the SAM that it has approved or not disapproved the transaction; and

(5) the license authorizing the SPFC to transact business is limited only to the insurance or reinsurance activities that the SPFC is allowed to conduct pursuant to this subchapter.

(i) In evaluating the expectation of a successful operation, the SAM shall consider, among other factors, whether the proposed SPFC, and its management are of known good character and reasonably believed not to be affiliated, directly or indirectly, through ownership, control, management, reinsurance transactions, or other insurance or business relations, with a person known to have been involved in the improper manipulation of assets, accounts, or reinsurance.

(j) A foreign or alien corporation or limited liability company, upon approval of the SAM, may become a domestic SPFC by complying with all of the provisions of this subchapter and by filing with the Office of the Lieutenant Governor its organizational documents, together with appropriate amendments to it, as may be adopted pursuant to the provisions of this subchapter to bring these organizational documents into compliance with this subchapter. After this is accomplished, the foreign or alien corporation or limited liability company is entitled to the necessary or appropriate certificates or licenses to transact business as an SPFC in this Territory and is subject to the authority and jurisdiction of this Territory. In connection with this redomestication, the SAM may waive any requirements for public hearings. It is not necessary for a corporation or limited liability company redomesticating into this Territory to merge,

consolidate, transfer assets, or otherwise engage in another reorganization, other than as specified in this section.

§ 1355. Organization requirements; privileges and restrictions

(a) An SPFC may be established as a stock corporation, limited liability company, mutual, partnership, or other form of organization approved by the SAM.

(b) The SPFC's organizational documents must limit the SPFC's authority to transact the business of insurance or reinsurance to those activities the SPFC conducts to accomplish its purpose as expressed in this subchapter.

(c) The SPFC may not adopt a name that is the same as, deceptively similar to, or likely to be confused with or mistaken for another existing business name registered in this Territory.

(d) An SPFC may not have fewer than three incorporators or organizers of whom not fewer than two must be residents of this Territory.

(e) Before transmitting its organizational documents to the Office of the Lieutenant Governor, the incorporators or organizers shall petition the SAM to issue a certificate setting forth a finding that the establishment and maintenance of the proposed SPFC promotes the general good of the Territory. In arriving at this finding the SAM shall consider:

(1) the character, reputation, financial standing, and purposes of the incorporators or organizers;

(2) the character, reputation, financial responsibility, insurance experience, and business qualifications of the officers, directors, partners, members, manager, or organizers, as applicable;

(3) other aspects as the SAM considers advisable.

(f) The organizational documents, the certificate issued pursuant to subsection (e), and the required organization fees must be transmitted to the SAM and the Office of the Lieutenant Governor, Division of Corporations and Trademarks who shall record the relevant organizational documents.

(g) At least one of the members of the management of the SPFC must be a resident of this Territory.

(h) An SPFC formed pursuant to the provisions of this subchapter has the privileges of and is subject to the provisions of the Virgin Islands Code, applicable to its formation, as well as the applicable provisions contained in this subchapter. If a conflict occurs between a provision of the applicable law and a provision of this subchapter, the

latter controls. Nothing contained in this subsection with respect to an SPFC may abrogate, limit, or rescind in any way the authority of the Director of the Division of Banking and Insurance.

§ 1356. Capitalization

(a) An SPFC initially shall possess and after that maintain minimum capitalization of not less than two hundred and fifty thousand dollars. All of the minimum initial capitalization must be in cash. All other funds of the SPFC in excess of its minimum initial capitalization must be in the form of cash, cash equivalent, or securities invested as provided in section 1365 and approved by the SAM.

(b) Additional capitalization for the SPFC must be determined, if so required, by the SAM after giving due consideration to the SPFC's business plan, feasibility study, pro-formas, and the nature of the risks being insured or reinsured, which may be prescribed in formulas approved by the SAM.

(c) All of the minimum capitalization must be held in a bank or financial institution within the Territory.

§ 1357. Authorized contracts

(a) An SPFC may insure only the risks of a counter party.

(b) An SPFC may not issue a contract for assumption of risk or indemnification of loss other than an SPFC contract. However, the SPFC may cede risks assumed through an SPFC contract to third party international reinsurers through the purchase of reinsurance or retrocession protection on terms approved by the SAM.

(c) An SPFC may enter into contracts and conduct other commercial activities related or incidental to and necessary to fulfill the purposes of the SPFC contract, insurance securitization, and this subchapter. Those activities may include: entering into SPFC contracts; issuing securities of the SPFC in accordance with applicable securities law; complying with the terms of these contracts or securities; entering into trust, swap, tax, administration, reimbursement, or fiscal agent transactions; or complying with trust indenture, reinsurance, or retrocession, and other agreements necessary or incidental to effectuate an insurance securitization in compliance with this subchapter or the plan of operation approved by the SAM.

(d) (1) An SPFC may discount its reserves at discount rates as approved by the SAM.

(2) An SPFC shall file annually an actuarial opinion on reserves provided by an approved and licensed independent actuary.

§ 1358. Protected cells

(a) This section and section 1359 provide a basis for the creation and use of protected cells by an SPFC as a means of accessing alternative sources of capital, lowering formation and administrative expenses, and generally making insurance securitizations more efficient.

(b) An SPFC may establish and maintain one or more protected cells with prior written approval of the SAM and subject to compliance with the applicable provisions of this subchapter and the following conditions:

(1) a protected cell must be established only for the purpose of insuring or reinsuring risks of one or more SPFC contracts with a counterparty with the intent of facilitating an insurance securitization;

(2) each protected cell must be accounted for separately on the books and records of the SPFC to reflect the financial condition and results of operations of the protected cell, net income or loss, dividends, or other distributions to the counterparty for the SPFC contract with each cell, and other factors as may be provided in the SPFC contract, insurance securitization transaction documents, plan of operation, or business plan, or as required by the SAM;

(3) amounts attributed to a protected cell under this chapter, including assets transferred to a protected cell account, are owned by the SPFC, and the SPFC may not be, or may not hold itself out to be, a trustee with respect to those protected cell assets of that protected cell account;

(4) 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 SAM. No other attribution of assets or liabilities may be made by an SPFC between the SPFC's general account and its protected cell or cells. The SPFC shall attribute all insurance obligations, assets, and liabilities relating to an SPFC contract and the related insurance securitization transaction, including any securities issued by the SPFC as part of the insurance securitization, to a particular protected cell. The rights, benefits, obligations, and liabilities of any securities attributable to that protected cell and the performance under an SPFC contract and the related securitization transaction and any tax benefits, losses, refunds, or credits allocated, or any of them, at any point in time pursuant to a tax allocation agreement between the SPFC and the SPFC's counterparty, parent, or company or group company, or any of them, in common control with them, as the case may be, including any payments made by or due to be made to the SPFC pursuant to the terms of the agreement, must reflect the insurance obligations, assets, and liabilities relating to the SPFC contract and the insurance securitization transaction that are attributed to a particular protected cell;

(5) the assets of a protected cell must not be chargeable with liabilities arising out of an SPFC contract related to or associated with another protected

cell. However, one or more SPFC contracts may be attributed to a protected cell so long as those SPFC contracts are intended to be, and ultimately are, part of a single securitization transaction;

(6) a sale, an exchange, or another transfer of assets may not be made by the SPFC between or among any of its protected cells without the consent of the SAM, counterparty, and each protected cell;

(7) except as otherwise contemplated in the SPFC contract or related insurance securitization transaction documents, or both, a sale, an exchange, a transfer of assets, a dividend, or a distribution may not be made from a protected cell to a counterparty or parent without the SAM's approval and may not be approved if the sale, exchange, transfer, dividend, or distribution would result in insolvency or impairment with respect to a protected cell; and

(8) an SPFC may pay interest or repay principal, or both, and make distributions or repayments in respect of any securities attributed to a particular protected cell from assets or cash flows relating to or emerging from the SPFC contract and the insurance securitization transactions that are attributable to that particular protected cell in accordance with this subchapter or as otherwise approved by the SAM.

(c) An SPFC contract with or attributable to a protected cell does not take effect without the SAM's prior written approval, and the addition of each new protected cell constitutes a change in the business plan requiring the SAM's prior written approval. The SAM may retain legal, financial, and examination services from outside the Government to examine and investigate the application for a protected cell, the reasonable cost of which may be charged against the applicant, or the SAM may use internal resources to examine and investigate the application the reasonable cost of which may be charged against the applicant up to a maximum of twelve thousand dollars, or both.

(d) An SPFC utilizing protected cells initially shall possess minimum capitalization separate and apart from the capitalization of its protected cell or cells in an amount determined by the SAM after giving due consideration of the SPFC's business plan, feasibility study, and pro-formas, including the nature of the risks to be insured or reinsured. For purposes of determining the capitalization of each protected cell, an SPFC initially shall capitalize and after that time maintain capitalization in each protected cell in the amount and manner required for an SPFC in section 1356.

(e) The establishment of one or more protected cells alone does not constitute, and may not be deemed to be, a fraudulent conveyance, an intent by the SPFC to defraud creditors, or the carrying out of business by the SPFC for any other fraudulent purpose.

§ 1359. Effect of creation of protected cell; naming; management of assets

(a) (1) The creation of a protected cell does not create, with respect to that protected cell, a legal person separate from the SPFC.

(2) Notwithstanding the foregoing provision, a protected cell must have its own distinct name or designation that includes the words "protected cell". The SPFC shall transfer all assets attributable to the protected cell to one or more separately established and identified protected cell accounts bearing the name or designation of that protected cell.

(3) Although it is not a separate legal person, the property of an SPFC in a protected cell is subject to orders of a court by name as it would have been if the protected cell were a separate legal person.

(4) The property of an SPFC in a protected cell must be served in its own name with process in all civil actions or proceedings involving or relating to the activities of that protected cell or a breach by the SPFC of a duty to the protected cell or to a counterparty to a transaction linked or attributed to it by serving the SPFC.

(5) A protected cell exists only at the pleasure of the SPFC. At the cessation of business of a protected cell in accordance with the plan approved by the SAM, the SPFC voluntarily shall close out the protected cell account.

(b) Nothing in this section may be construed to prohibit an SPFC from contracting with, or arranging for, an investment advisor, commodity trading advisor, or other third party to manage the assets of a protected cell, if all remuneration, expenses, and other compensation of the third party advisor or manager are payable from the assets of that protected cell and not from the assets of other protected cells or the assets of the SPFC's general account, unless approved by the SAM.

(c) Creditors of a protected cell are not entitled to have recourse against the protected cell assets of other protected cells or the assets of the SPFC's general account. If an obligation of an SPFC relates only to the general account, the obligation of the SPFC extends only to that creditor, with respect to that obligation, and is entitled to have recourse only to the assets of the SPFC's general account.

(d) The assets of the protected cell may not be used to pay expenses or claims other than those attributable to the protected cell. Protected cell assets are available only to the SPFC contract counterparty and other creditors of the SPFC that are creditors only with respect to that protected cell and, accordingly, are entitled, in conformity with this subchapter, to have recourse to the protected cell assets attributable to that protected cell and absolutely are protected from the creditors of the SPFC that are not creditors with respect to that protected cell and who, accordingly, are not entitled to have recourse to the protected cell assets attributable to that protected cell. If an obligation of an SPFC to a

person or counterparty arises from an SPFC contract or related insurance securitization transaction, or is otherwise incurred, with respect to a protected cell:

(1) that obligation of the SPFC extends only to the protected cell assets attributable to that protected cell, and the person or counterparty, with respect to that obligation, is entitled to have recourse only to the protected cell assets attributable to that protected cell; and

(2) that obligation of the SPFC does not extend to the protected cell assets of another protected cell or the assets of the SPFC's general account, and that person, with respect to that obligation, is not entitled to have recourse to the protected cell assets of another protected cell or the assets of the SPFC's general account. The SPFC's capitalization held separate and apart from the capitalization of its protected cell or cells as required by section 1359 must be available at all times to pay expenses of or claims against the SPFC and may not be used to pay expenses or claims attributable to any protected cell.

(e) Notwithstanding another provision of law, an SPFC may allow for a security interest in accordance with applicable law to attach to protected cell assets or a protected cell account when in favor of a creditor of the protected cell or to facilitate the insurance securitization, including, without limitation, the issuance of the SPFC contract, to the extent those protected cell assets are not required at all times to support the risk, but without otherwise affecting the discharge of liabilities under the SPFC contract, or as otherwise approved by the SAM.

(f) An SPFC shall establish administrative and accounting procedures necessary to properly identify the one or more protected cells of the SPFC and the protected cell assets and protected cell liabilities to each protected cell. The directors of an SPFC shall keep protected cell assets and protected cell liabilities:

(1) separate and separately identifiable from the assets and liabilities of the SPFC's general account; and

(2) attributable to one protected cell separate and separately identifiable from protected cell assets and protected cell liabilities attributable to other protected cells.

(g) All contracts or other documentation reflecting protected cell liabilities clearly must indicate that only the protected cell assets are available for the satisfaction of those protected cell liabilities. In all SPFC insurance securitizations involving a protected cell, the contracts or other documentation effecting the transaction must contain provisions identifying the protected cell to which the transaction is attributed. In addition, the contracts or other documentation clearly must disclose that the assets of that protected cell, and only those assets, are available to pay the obligations of that protected cell. Notwithstanding the provisions of this subsection and subject to the provisions of this subchapter and another applicable law or regulation, the failure to include this language in the contracts or other documentation may not be used as the sole basis by

creditors, insureds or reinsureds, insurers or international reinsurers, or other claimants to circumvent the provisions of this section.

(h) An SPFC with protected cells annually shall file with the SAM accounting statements and financial reports required by this subchapter which, among other things, must:

(1) detail the financial experience of each protected cell and the SPFC separately; and

(2) provide the combined financial experience of the SPFC and all protected cells.

(i) An SPFC with protected cells shall notify the SAM in writing within ten business days of a protected cell becoming insolvent.

§ 1360. Issuance of securities

(a) An SPFC may issue securities, including surplus notes and other forms of financial instruments, subject to and in accordance with applicable law, its approved plan of operation, and its organizational documents.

(b) An SPFC, in connection with the issuance of securities, may enter into and perform all of its obligations under any required contracts to facilitate the issuance of these securities.

(c) Subject to the approval of the SAM, an SPFC may lawfully:

(1) account for the proceeds of surplus notes as surplus and not as debt for purposes of statutory accounting;

(2) submit for prior approval of the SAM periodic written requests for payments of interest on and repayments of principal of surplus notes.

(d) The SAM, without otherwise prejudicing the SAM's authority, may approve formulas for an ongoing plan of interest payments or principal repayments, or both, to provide guidance in connection with his ongoing reviews of requests to approve the payments on and principal repayments of the surplus notes.

(e) The obligation to repay principal or interest, or both, on the securities issued by the SPFC must reflect the risk associated with the obligations of the SPFC to the counterparty under the SPFC contract.

§ 1361. Swap agreements and other forms of asset management agreements

An SPFC may enter into swap agreements, or other forms of asset management agreements, including guaranteed investment contracts, or other transactions that have the

objective of leveling timing differences in funding of up-front or ongoing transaction expenses or managing asset, credit, or interest rate risk of the investments in the trust to ensure that the investments are sufficient to assure payment or repayment of the securities, and related interest or principal payments, issued pursuant to an SPFC insurance securitization transaction or the obligations of the SPFC under the SPFC contract.

§ 1362. Authority to enter into contracts; contents

(a) An SPFC, at any given time, may enter into and effectuate an SPFC contract with a counterparty, if the SPFC contract obligates the SPFC to indemnify the counterparty for losses and that contingent obligations of the SPFC under the SPFC contract are securitized through an SPFC insurance securitization and are funded and secured with assets held in trust for the benefit of the counterparty pursuant to the provisions of this subchapter pursuant to agreements contemplated by this subchapter and invested in a manner that meet the criteria as provided in section 1365.

(b) An SPFC may enter into agreements with affiliated companies and third parties and conduct business necessary to fulfill its obligations and administrative duties incidental to the insurance securitization and the SPFC contract. The agreements may include management and administrative services agreements and other allocation and cost sharing agreements, or swap and asset management agreements, or both, or agreements for other contemplated types of transactions provided in section 1361.

(c) An SPFC contract must contain provisions that:

(1) require the SPFC to enter into a trust agreement specifying what recoverables or reserves, or both the agreement is to cover and to establish a trust account for the benefit of the counterparty;

(2) stipulate that assets deposited in the trust account must be valued according to their current fair value and must consist only of permitted investments;

(3) require the SPFC, before depositing assets with the trustee, to execute assignments, endorsements in blank, or to transfer legal title to the trustee of all shares, obligations, or any other assets requiring assignments, in order that the counterparty, or the trustee upon the direction of the counterparty, may negotiate whenever necessary the assets without consent or signature from the SPFC or another entity;

(4) require that all settlements of account between the counterparty and the SPFC be made in cash or its equivalent; and

(5) stipulate that the SPFC and the counterparty agree that the assets in the trust account, established pursuant to the provisions of the SPFC contract, may be withdrawn by the counterparty at any time, notwithstanding any other

provisions in the SPFC contract, and must be utilized and applied by the counterparty or any successor by operation of law of the counterparty, including, subject to the provisions of section 1372, but without further limitation, any liquidator, rehabilitator, receiver, or conservator of the counterparty, without diminution because of insolvency on the part of the counterparty or the SPFC, only for the following purposes:

(A) to transfer all of the assets into one or more trust accounts for the benefit of the counterparty pursuant to and in accordance with the terms of the SPFC contract and in compliance with the provisions of this subchapter; and

(B) to pay any other incurred and paid amounts that the counterparty claims are due pursuant to and under the terms of the SPFC contract and in compliance with this subchapter.

(d) (1) The SPFC contract may contain provisions that give the SPFC the right to seek approval from the counterparty to withdraw from the trust all or part of the assets, or income from them, contained in the trust and to transfer the assets to the SPFC, provided that:

(A) at the time of the withdrawal, the SPFC shall replace the withdrawn assets, excluding any income withdrawn, with other qualified assets having a fair value equal to the fair value of the assets withdrawn and that meet the provisions of section 1365; and

(B) after the withdrawals and transfer, the fair value of the assets in trust securing the obligations of the SPFC under the SPFC contract is no less than an amount needed to satisfy the funded requirement of the SPFC contract.

(2) The counterparty must be the sole judge as to the application of these provisions but may not unreasonably nor arbitrarily withhold its approval.

§ 1363. Securities issued by SPFC as insurance contract; underwriters or selling agents as insurance producers

Securities issued by an SPFC pursuant to an insurance securitization may not be considered to be insurance or reinsurance contracts. An investor in these securities or a holder of these securities, by sole means of this investment or holding, may not be considered to be transacting the business of insurance in this Territory. The underwriter's placement or selling agents and their partners, directors, officers, members, managers, employees, agents, representatives, and advisors involved in an insurance securitization pursuant to this subchapter may not be considered to be insurance producers or brokers or conducting business as an insurance or reinsurance company or agency, brokerage, intermediary, advisory, or consulting business only by virtue of their activities in connection with them.

§ 1364. Requirements and guidelines for asset management

In fulfilling its function, the SPFC must adhere to the following requirements and, to the extent of its powers, must ensure that contracts obligating other parties to perform certain functions incident to its operations are substantively and materially consistent with the following requirements and guidelines:

(a) The assets of an SPFC must be preserved and administered by or on behalf of the SPFC to satisfy the liabilities and obligations of the SPFC incident to the insurance securitization and other related agreements.

(b) Assets held by an SPFC in trust must be valued at their fair value.

(c) The proceeds from the sale of securities pursuant to the insurance securitization must be deposited with the trustee to the extent required to secure its obligations under the SPFC contract as provided by this subchapter and must be held or invested by the trustee pursuant to the provisions of section 1365 and the asset management agreement, if any, filed with the SAM.

(d) Assets of the SPFC, other than those held in trust for the counterparty, and income on trust assets received by the SPFC may be used to pay interest or other consideration on any securities or outstanding debt or other obligation of the SPFC, and nothing in this subchapter may be construed or interpreted to prevent an SPFC from entering into a swap agreement or other asset management transaction that has the effect of hedging or guaranteeing the fixed or floating interest rate returns paid on the assets in trust or required for the securities issued by the SPFC generated from or other consideration or payment flows in the transaction.

(e) In the SPFC insurance securitization, the contracts or other relating documentation must contain provisions identifying the SPFC.

(f) Unless otherwise approved by the SAM, an SPFC may not:

(1) issue or otherwise administer primary insurance policies;

(2) enter into an SPFC contract with a person that is not licensed or otherwise authorized to transact the business of insurance or reinsurance in at least its state, territory or country of domicile;

(3) assume or retain exposure to insurance or reinsurance losses for its own account that is not funded by proceeds from an SPFC securitization that meets the provisions of this subchapter. However, the SPFC may wholly or partially reinsure or retrocede the risks assumed to a third party international reinsurer on terms approved by the SAM.

(g) An SPFC may not:

(1) have any direct obligation to the policyholders or reinsureds of the counterparty;

(2) lend or otherwise invest, or place in custody, trust, or under management any of its assets with, or to borrow money or receive a loan from, other than by issuance of the securities pursuant to an insurance securitization, or advance from, anyone convicted of a felony, anyone who is untrustworthy or of known bad character, or anyone convicted of a criminal offense involving the conversion or misappropriation of fiduciary funds or insurance accounts, theft, deceit, fraud, misrepresentation, or corruption.

§ 1365. Trust agreements for assets held in trust or pledged to secure obligations

(a) Assets of the SPFC held in trust to secure obligations under the SPFC contract must at all times be held in:

(1) cash and cash equivalents;

(2) securities listed by the Securities Valuation Office of the NAIC and qualifying as admitted assets under statutory accounting convention in its state, territory of domicile; or

(3) another form of security acceptable to the SAM.

(b) Assets of the SPFC that are pledged to secure obligations of the SPFC to a counterparty under an SPFC contract must be held in trust and administered by a qualified United States financial institution. The qualified United States financial institution does not control, is not controlled by, or is not under common control with, the SPFC or the counterparty.

(c) The agreement governing this trust must create one or more trust accounts into which all pledged assets must be deposited and held until distributed in accordance with the trust agreement. The pledged assets must be held by the trustee at one of the trustee's offices or branch offices in the United States or the Virgin Islands and may be held in certificated or electronic form.

(d) The provisions for withdrawal by the counterparty of assets from the trust must be clear and unconditional, subject only to the following requirements:

(1) the counterparty has the right to withdraw assets from the trust account at any time, without notice to the SPFC, subject only to written notice to the trustee from the counterparty that funds in the amount requested are due and payable by the SPFC, pursuant to the terms of the SPFC contract.

(2) a statement or document does not need to be presented in order to withdraw assets, but the counterparty may be required to acknowledge receipt of withdrawn assets;

(3) the trust agreement must indicate that it is not subject to any conditions or qualifications outside of the trust agreement;

(4) the trust agreement must not contain references to any other agreements or documents.

(e) The trust agreement must be established for the sole use and benefit of the counterparty at least to the full extent of the obligations of the SPFC to the counterparty under the SPFC contract. If there is more than one counterparty, or more than one SPFC contract with the same counterparty, a separate trust agreement must be entered into with the counterparty and a separate trust account must be maintained for each SPFC contract with the counterparty, unless otherwise approved by the SAM.

(f) The trust agreement must provide for the trustee to:

(1) receive assets and hold all assets in a safe place;

(2) determine that all assets are in a form that the counterparty or the trustee, upon direction by the counterparty, may negotiate, whenever necessary, the assets, without consent or signature from the SPFC or another person or entity;

(3) furnish to the SPFC, the SAM, and the counterparty a statement of all assets in the trust account reported at fair value upon its inception and at intervals no less frequent than the end of each calendar quarter;

(4) notify the SPFC and the counterparty, within ten days, of any deposits to or withdrawals from the trust account;

(5) upon written demand of the counterparty, immediately take the necessary steps to transfer absolutely and unequivocally all right, title, and interest in the assets held in the trust account to the counterparty and deliver physical custody of the assets to the counterparty; and

(6) allow no substitutions or withdrawals of assets from the trust account, except pursuant to the trust agreement or SPFC contract, or as otherwise permitted by the counterparty.

(g) The trust agreement must provide that at least thirty days, but not more than forty five days, before termination of the trust account, written notification of termination must be delivered by the trustee to the counterparty with a copy of the notice provided to the SAM.

(h) In addition to the requirements for the trust as provided in this subchapter, the trust agreement may be made subject to and governed by the laws of any state or territory. The state or territory must be disclosed in the plan of operation filed with and approved by the SAM.

(i) The trust agreement must prohibit invasion of the trust corpus for the purpose of paying compensation to, or reimbursing the expenses of, the trustee.

(j) The trust agreement must provide that the trustee must be liable for its own negligence, willful misconduct, or lack of good faith.

(k) (1) Notwithstanding the provisions of subsection (d)(3) and (4), when a trust agreement is established in conjunction with an SPFC contract, then the trust agreement or SPFC contract, or both, may provide that the counterparty shall undertake to use and apply any amounts drawn upon the trust account, without diminution because of the insolvency of the counterparty or the SPFC, only for one or more of the following purposes:

(A) to pay or reimburse the counterparty for payment of the SPFC's share of premiums to be returned to owners of counterparty's policies covered under the SPFC contract on account of cancellations of the policies under the counterparties policies;

(B) to pay or reimburse the counterparty for payment of the SPFC's share of surrenders, benefits, losses, or other benefits covered and payable pursuant to the provisions of the SPFC contract;

(C) to fund an account with the counterparty in an amount to secure the credit or reduction from liability for reinsurance coverage provided under the SPFC contract; or

(D) to pay any other amounts the counterparty claims are legally and properly due under the SPFC contract.

(2) Any assets deposited into an account of the counterparty pursuant to subparagraph (C) of paragraph (1) or withdrawn by the counterparty pursuant to subparagraph (D) of this paragraph (1) and any interest or other earnings on them, must be held by the counterparty in trust and separate and apart from any general assets of the counterparty, for the sole purpose of funding the payments and reimbursements of the SPFC contract described in subparagraphs (A) through (D) of paragraph (1).

(3) The counterparty shall return to the SPFC amounts withdrawn under subparagraphs (A) through (D) of paragraph (1) in excess of actual amounts required under subparagraphs (A) through (C) of paragraph (1), and in excess of the amounts subsequently determined to be due under subparagraph (D) of paragraph (1), plus interest at a rate not in excess of the prime rate for the

amounts held pursuant to subparagraph (C) of paragraph (1) unless a higher rate of interest has been awarded by a court, and any net costs or expenses, including attorneys' fees, awarded by a court.

(4) If the counterparty has received notification of termination of the trust account, and where the SPFC's entire obligations secured under the specific SPFC contract remain unliquidated and undischarged ten days before the termination date, to withdraw amounts equal to the obligations and deposit the amounts in a separate account, in the name of the counterparty, in a qualified United States financial institution, separate and apart from the counterparty's general assets, to the extent the obligations or liabilities have not been funded by the SPFC, in trust only for those uses and purposes specified in subparagraph (A) of paragraph (1) as may remain executory after the withdrawal and for any period after the termination date until discharged.

§ 1366. Payment of dividends

(a) An SPFC may not declare or pay dividends in any form to its owners other than in accordance with the insurance securitization transaction agreements, and in no extent may the dividends decrease the capital of the SPFC below two hundred fifty thousand dollars, and, after giving effect to the dividends, the assets of the SPFC, including assets held in trust pursuant to the terms of the insurance securitization, must be sufficient to satisfy the SAM that it can meet its obligations. Approval by the SAM of an ongoing plan for the payment of dividends or other distribution by an SPFC must be conditioned upon the retention, at the time of each payment, of capital or surplus equal to or in excess of amounts specified by, or determined in accordance with formulas approved for the SPFC by the SAM.

(b) The dividends may be declared by the management of the SPFC if the dividends do not violate the provisions of this subchapter or jeopardize the fulfillment of the obligations of the SPFC or the trustee pursuant to the SPFC insurance securitization agreements, the SPFC contract, or any related transaction and other provisions of this subchapter.

§ 1367. Material changes of SPFC'S plan; filing of audit and statement of operations; examination of records

(a) Any material change of the SPFC's plan of operation pursuant to the section 1354, whether or not through an SPFC protected cell, requires prior approval of the SAM, provided however:

(1) if initially approved in the plan of operation, securities subsequently issued to continue the securitization activities of the SPFC either during or after expiration, redemption, or satisfaction, of all of these, of part or all of the securities issued pursuant to initial insurance securitization transactions may not be considered a material change; or

(2) a change and substitution in a counterparty to a swap transaction for an existing insurance securitization as allowed pursuant to the provisions of this subchapter may not be considered a material change if the replacement swap counterparty carries a similar or higher rating to its predecessor with two or more nationally recognized rating agencies, or both.

(b) No later than five months after the fiscal year end of the SPFC, the SPFC shall file with the SAM an audit by a licensed certified public accounting firm of the financial statements of the SPFC and the trust accounts.

(c) Each SPFC shall file by March first, a statement of operations, using either generally accepted accounting principles or, if approved or required by the SAM, statutory accounting principles with useful or necessary modifications or adaptations required or approved or accepted by the SAM for the type of insurance and kinds of insurers to be reported upon, and as supplemented by additional information required by the SAM. The statement of operations must include a statement of income, a balance sheet, and may include a detailed listing of invested assets, including identification of assets held in trust to secure the obligations of the SPFC under the SPFC contract. The SPFC also may include with the filing risk based capital calculations and other adjusted capital calculations to assist the SAM with evaluating the levels of the surplus of the SPFC for the year ending on December thirty first of the previous year. The statements must be prepared on forms required by the SAM. In addition the SAM may require the filing of performance assessments of the SPFC contract.

(d) An SPFC shall maintain its records in this Territory and shall make its records available for examination by the SAM at any time. The SPFC shall keep its books and records in such manner that its financial condition, affairs, and operations can be ascertained and so that the SAM may readily verify its financial statements and determine its compliance with this subchapter.

(e) All original books, records, documents, accounts, and vouchers must be preserved and kept available in this Territory for the purpose of examination and until authority to destroy or otherwise dispose of the records is secured from the SAM. The original records, however, may be kept and maintained outside this Territory if, according to a plan adopted by the management of the SPFC and approved by the SAM, it maintains suitable records instead of it. The books or records may be photographed, reproduced on film, or stored and reproduced electronically.

(f) Nothing contained in this section with respect to an SPFC shall abrogate, limit, or rescind in any way the authority of the Lieutenant Governor.

§ 1368. Examinations by the SAM; confidentiality of examination reports

(a) At least once every three years, and if the SAM determines it to be prudent, the SAM, or his designee, shall visit each SPFC and thoroughly inspect and examine its affairs to ascertain its financial condition, its ability to fulfill its obligations,

and whether it has complied with this subchapter. The SAM upon application, in his discretion, may enlarge the three year period to five years, if an SPFC is subject to a comprehensive annual audit during that period of a scope satisfactory to the SAM by licensed independent auditors approved by the SAM. The expenses and charges of the examination must be paid to the Territory by the company or companies examined, and the department shall issue its warrants for the proper charges incurred in all examinations.

(b) All examination reports, preliminary examination reports or results, working papers, recorded information, documents, and copies of documents produced by, obtained by, or disclosed to the SAM or any other person in the course of an examination made pursuant to the provisions of this section are confidential and are not subject to subpoena and may not be made public by the SAM or an employee or agent of the SAM without the written consent of the company, except to the extent provided in this subsection. Nothing in this subsection prevents the SAM from using this information in furtherance of the SAM's regulatory authority as provided by the provisions of this title. The SAM may grant access to this information to public officers having jurisdiction over the regulation of insurance in another Territory or country, or to law enforcement officers of this Territory, including the Attorney General or Lieutenant Governor or another Territory or agency of the federal government at any time, if the officers receiving the information agree in writing to hold it in a manner consistent with this section.

§ 1369. Expiration of authority granted by the SAM on cessation of business; suspension or revocation of license; penalties; administrative hearing

(a) At the cessation of business of an SPFC following termination or cancellation of an SPFC contract and the redemption of any related securities issued in connection with them, the authority granted by the SAM expires or, in the case of retiring and surviving protected cells, be modified, and the SPFC is no longer authorized to conduct activities unless and until a new or modified license is issued pursuant to a new filing pursuant to the provisions of section 1354 or as agreed by the SAM.

(b) The SAM may suspend or revoke the license of an SPFC for:

- (1) insolvency;
- (2) failure to meet the provisions of section 1356, 1358 or 1370;
- (3) use of methods that, although not otherwise specifically prohibited by law, nevertheless render its operation detrimental or its condition unsound with respect to the public, the holders of the securities, or policyholders of the SPFC;
or
- (4) failure to otherwise comply in any material respect with applicable laws of this Territory.

(c) If the SAM finds, upon examination or other evidence, that an SPFC has committed any of the acts specified in subsection (b), the SAM may impose the penalties

provided under this chapter, if the SAM considers it in the best interest of the public, the holders of the securities, and the policyholders of the SPFC.

(d) Unless the grounds for suspension or revocation relate only to the financial condition or soundness of the SPFC or to a deficiency in its assets, the SAM shall notify the SPFC not less than thirty days before revoking its authority to do business in this Territory and specify in the notice the particulars of the alleged violation of the law or its organizational documents or grounds for revocation and a proper opportunity must be offered the SPFC to be heard before the Superior Court, or an administrative law court if and when established.

§ 1370. Tax rates and payment schedules

(a) An SPFC shall pay to the SAM by March 1 of each year, a tax at the rate of four tenths of one percent on the first \$20,000,000 and three tenths of one percent on each dollar after the first \$20,000,000, subject to a minimum annual tax of five thousand dollars. Taxes are based upon the direct premiums written or contracted for on policies or contracts of insurance, other than reinsurance policies or contracts written by the SPFC, during the year ending December 31 next preceding, after deducting from the direct premiums subject to the tax the amounts paid to insureds as returned premiums which must include dividends on unabsorbed premiums or premium deposits returned or credited to insureds.

(b) An SPFC shall pay to the SAM by March 1 of each year, a tax at the rate of two hundred and twenty five thousandths of one percent on the first \$20,000,000 of assumed reinsurance premium, and one hundred fifty thousandths of one percent on the next \$20,000,000, and fifty thousandths of one percent on the next, \$20,000,000 and twenty five thousandths of one percent of each dollar after that, subject to a minimum annual tax of five thousand dollars. However, no reinsurance tax applies to premiums for risks or portions of risks which are subject to taxation on a direct basis, pursuant to subsection (a). A premium tax is not payable in connection with the receipt of assets in exchange for the assumption of loss reserves and other liabilities of another insurer under common ownership and control if the transaction is part of a plan to discontinue the operations of the other insurer and if the intent of the parties to the transaction is to renew or maintain business with the SPFC.

(c) Each protected cell of the SPFC must be taxed as if it is a separate and distinct SPFC.

(d) The tax provided in this section is the only tax collectible pursuant to the laws of this Territory from an SPFC and no other tax may be levied or collected from an SPFC by the Territory, except taxes on real and personal property used in the production of income.

§ 1371. Conditions for SPFC contract being granted credit for reinsurance treatment or otherwise qualifying as asset or reduction from liability for benefit of counterparty

An SPFC contract meeting the provisions of this subchapter must be granted credit for reinsurance treatment or otherwise qualifies as an asset or a reduction from liability for reinsurance ceded by a domestic insurer to an SPFC as an assuming insurer for the benefit of the counterparty, provided and only to the extent:

- (a) of the fair value of the assets held in trust for, or irrevocable letters of credit issued by a bank chartered by this Territory or a member bank of the Federal Reserve System or as approved by the SAM, for the benefit of the counterparty under the SPFC contract;
- (b) the assets are held in trust pursuant to the provisions of this subchapter;
- (c) the assets are administered in the manner and pursuant to arrangements as provided in this subchapter; and
- (d) the assets are held or invested in one or more of the forms allowed in section 1365.

§ 1372. Conservation, rehabilitation, or liquidation of SPFC

(a) Except as otherwise modified in this section, the terms and conditions set forth in this chapter pertaining to administrative supervision of insurers and the rehabilitation, receiverships, and liquidation of insurers apply in full to SPFCs or each of the SPFC's protected cells, independently, or both, without causing or otherwise effecting a conservation, rehabilitation, receivership, or liquidation of the SPFC or another protected cell.

(b) Notwithstanding any other provision of this chapter, and without causing or otherwise affecting the conservation or rehabilitation of an otherwise solvent protected cell of an SPFC and subject to the provisions of subsection (g)(5) of this section, the SAM may apply by petition to the Superior Court for an order authorizing the SAM to conserve, rehabilitate, or liquidate an SPFC domiciled in this Territory on one or more of the following grounds:

- (1) there has been embezzlement, wrongful sequestration, dissipation, or diversion of the assets of the SPFC intended to be used to pay amounts owed to the counterparty or the holders of SPFC securities; or
- (2) the SPFC is insolvent and the holders of a majority in outstanding principal amount of each class of SPFC securities request or consent to conservation, rehabilitation, or liquidation pursuant to the provisions of this subchapter.

(c) Notwithstanding the provisions of this chapter, the SAM may apply by petition to the Superior Court for an order authorizing the SAM to conserve, rehabilitate, or liquidate one or more of an SPFC's protected cells, independently, without causing or otherwise effecting a conservation, rehabilitation, receivership, or liquidation of the SPFC generally or another of its protected cells, on one or more of the following grounds:

(1) there has been embezzlement, wrongful sequestration, dissipation, or diversion of the assets of the SPFC attributable to the affected protected cell or cells intended to be used to pay amounts owed to the counterparty or the holders of SPFC securities of the affected protected cell or cells; or

(2) the affected protected cell is insolvent and the holders of a majority in outstanding principal amount of each class of SPFC securities attributable to that particular protected cell request or consent to conservation, rehabilitation, or liquidation pursuant to the provisions of this subchapter.

(d) The court may not grant relief provided in subsection (b) or subsection (c) unless, after notice and a hearing, the SAM, who has the burden of proof, establishes by clear and convincing evidence that relief must be granted. The court's order may be made in respect of one or more protected cells by name, rather than the SPFC generally.

(e) Notwithstanding another provision in this chapter, regulations promulgated under this chapter, or another applicable law or regulation, upon any order of conservation, rehabilitation, or liquidation of an SPFC, or one or more of the SPFC's protected cells, the receiver shall manage the assets and liabilities of the SPFC pursuant to the provisions of this subchapter. The receiver shall ensure that the assets linked to one protected cell are not applied to the liabilities linked to another protected cell or to the SPFC generally, unless an asset or liability is linked to more than one protected cell, in which case the receiver shall deal with the asset or liability in accordance with the terms of any relevant governing instrument or contract.

(f) With respect to amounts recoverable under an SPFC contract, the amount recoverable by the receiver must not be reduced or diminished as a result of the entry of an order of conservation, rehabilitation, or liquidation with respect to the counterparty, notwithstanding another provision in the contracts or other documentation governing the SPFC insurance securitization.

(g) Notwithstanding the provisions of this chapter or other laws of this Territory:

(1) an application or petition, or a temporary restraining order or injunction issued pursuant to the provisions of this chapter, with respect to a counterparty does not prohibit the transaction of a business by an SPFC, including any payment by an SPFC made pursuant to an SPFC security, or any action or proceeding against an SPFC or its assets;

(2) the commencement of a summary proceeding or other interim proceeding commenced before a formal delinquency proceeding with respect to

an SPFC, and any order issued by the court does not prohibit the payment by an SPFC made pursuant to an SPFC security or SPFC contract or the SPFC from taking any action required to make the payment;

(3) a receiver of a counterparty may not void a non-fraudulent transfer by a counterparty to an SPFC of money or other property made pursuant to an SPFC contract;

(4) a receiver of an SPFC may not void a non-fraudulent transfer by the SPFC of money or other property made to a counterparty pursuant to an SPFC contract or made to or for the benefit of any holder of an SPFC security on account of the SPFC security; and

(5) the SAM may not seek to have an SPFC with protected cells declared insolvent as long as at least one of the SPFC's protected cells remains solvent, and in the case of such an insolvency, the receiver shall handle SPFC's assets in compliance with subsection (e) and other laws of this Territory.

(h) Subsection (g) does not prohibit the SAM from taking any action permitted under this chapter with respect only to the conservation or rehabilitation of an SPFC with protected cell or cells, provided the SAM would have had sufficient grounds to seek to declare the SPFC insolvent; subject to and without otherwise affecting the provisions of paragraph (5) of subsection (g). In this case, with respect to the solvent protected cell or cells, the SAM may not prohibit payments made by the SPFC pursuant to the SPFC security, SPFC contract, or otherwise made under the insurance securitization transaction that are attributable to these protected cell or cells or prohibit the SPFC from taking any action required to make these payments.

(i) With the exception of the fulfillment of the obligations under an SPFC contract, and notwithstanding another provision of this subchapter or other laws of this Territory, the assets of an SPFC, including assets held in trust, must not be consolidated with or included in the Territory of a counterparty in any delinquency proceeding against the counterparty pursuant to the provisions of this subchapter for any purpose including, without limitation, distribution to creditors of the counterparty.

§ 1373. Disclosure of information by the SAM

Information submitted pursuant to this subchapter is confidential and may not be made public by the SAM or an agent or employee of the SAM without the prior written consent of the SPFC, except that:

(a) information submitted pursuant to this subchapter is discoverable by a party in a civil action or contested case to which the submitting SPFC is a party, upon a specific finding by the court that:

(1) the SPFC is a necessary party to the action and not joined only for the purposes of evading the confidentiality provisions of this subchapter;

(2) the party seeking the information demonstrates by a clear and convincing standard that the information sought is relevant, material to, and necessary for the prosecution or defense of the claim asserted in the action; and

(3) the information sought is unavailable from other non-confidential sources.

(b) The SAM may disclose the information to the public officer having jurisdiction over the regulation of insurance in another territory or state if:

(1) the public official agrees in writing to maintain the confidentiality of the information; and

(2) the laws of the territory or state in which the public official serves require the information to be confidential.

§ 1374. Standards and criteria applicable in contested case brought by third party and certain actions by the SAM; asset protection

(a) A contested case brought by a third party based on a decision of the SAM pursuant to this subchapter is governed by applicable law of the Territory except that the third party shall:

(1) prove its case by a clear and convincing evidence standard;

(2) demonstrate irreparable harm to the SPFC or its counterparty, or both;

(3) show that there is no other adequate remedy at law; and

(4) post a bond of sufficient surety to protect the interests of the holders of the SPFC securities and policyholders, but it may not be less than fifteen percent of the total amount of the securitized transaction.

(b) If the SAM reverses, amends, or modifies a license previously issued to an SPFC or an order made in connection with a license previously issued to an SPFC, the action must comply with the standards and criteria provided in subsection (a), unless the action in reversing, amending, or modifying the license is in conformance with the provisions of section 1369.

(c) A creditor of a policyholder or a participant of a captive insurance company or segregated account, and a creditor of an affiliated person of any such insurance company or segregated account, may not set aside a transfer of funds by a policyholder or participant to the insurance company in payment of one or more premiums charged on a contract of insurance or participant contract issued by such company or segregated account, unless:

(1) It is determined, in a final order of the Superior Court, that the payment of the premiums constitutes a fraudulent transfer with respect to such creditor under the laws of the Territory; and

(2) Except in cases in which actual fraudulent intent is shown in a hearing before the Superior Court, only to the extent, if any, the amount of such payment is determined by the Superior Court to exceed the market value of the insurance protection afforded to the policyholder or participant under such contract, as at the time of its issuance.

(d) A policy of insurance or participant contract issued by a captive insurance company or segregated account, which policy or contract is expressly stated to be non-assignable:

(1) is void in the event of an attempted assignment; and

(2) is unenforceable by any person other than the original policyholder or contract participant and his, her or its transferees by operation of the law of the Territory and legal representatives.

(e) For the purposes of this section, transferees by operation of the law of the Territory and legal representatives do not include successors by merger or consolidation, successors to a policyholder or participant following a change in control of the policyholder or participant, or trustees in bankruptcy, receivers, liquidators, creditors or committees of creditors.

(f) For purposes of this section, creditor includes a person to whom an obligation is owed and any person who alleges or pursues a claim or cause of action on behalf of or in the name of a creditor.

(g) Where a captive insurance company has purchased reinsurance on any of its obligations under a contract of insurance, the proceeds of the reinsurance must be held or applied to provide the benefits to the insured as specified in the policy issued by the captive insurance company.

§ 1375. Promulgation of regulations

The SAM may promulgate regulations necessary to effectuate the purposes of this subchapter. Regulations promulgated pursuant to this section do not affect an SPFC insurance securitization in effect at the time of the promulgation.

Subchapter Three: Tax Incentive Benefits

§ 1376. Tax Incentive Benefits

Any Captive Insurance Company licensed and regulated by SAM pursuant to Section 1321, is eligible to any tax exemption, tax credit, or tax privilege pursuant to this chapter. Pursuant to the provisions of this chapter, the SAM shall have the power to:

(a) review all applications for tax incentive benefits, and subject to the Governor's approval, issue a Certificate of Eligibility for Tax Incentive Benefits to:

(1) captive insurance and captive reinsurance companies, international reinsurance companies, reinsurance companies, alternative market entities, SPFCs, homeowner's associations and condominium owners associations;

(2) insurance managers, based upon a demonstration of their competence and experience to do so as individuals or firms;

(3) intermediaries and auditors, actuaries, or brokers;

(4) business entities, but not individuals, which provide support for Virgin Islands licensed reinsurers, international reinsurers, alternative market companies, captive insurance companies, and to non- Virgin Islands insurance companies if the services are provided from the Virgin Islands.

(b) Determine compliance of the beneficiary with the provisions of this chapter and the regulations issued under this chapter. The expenses of any investigation by the SAM to determine compliance by any beneficiary must be borne by the beneficiary. The SAM may hold a hearing in which the beneficiary shall show cause why its certificate of tax incentive benefits should not be modified, suspended or revoked.

(c) modify, suspend or revoke a certificate of tax incentive benefits.

(d) In connection with any investigation or hearing required by this chapter or rules and regulations issued this chapter, to subpoena witnesses, records, books, and administer oaths, and inspect properties and facilities with respect to which tax incentive benefits have been granted or applied for;

(e) request and obtain from the Commissioner of Finance and the Director of the Bureau of Audit and Control such auditing services as the SAM considers necessary to the proper administration of this chapter.

(f) prepare and promulgate, in accordance with Title 3, chapter 35 of the Virgin Islands Code, such rules and regulations as may be necessary to implement the provisions of this chapter.

(g) prepare and submit annual reports to the Governor and the Legislature containing data regarding all tax incentive benefits outstanding and the beneficiaries of same;

(h) in addition to the application fee and annual compliance fees, the SAM may also assess against an applicant or beneficiary any extraordinary costs and expenses to process the application or monitor the beneficiary's performance of the conditions in the certificate. The costs and expenses may include, but are not limited to, the services of outside consultants necessitated by the application or compliance investigation.

(i) notify the office of the Lieutenant Governor of any corporation, joint venture, limited liability company, partnership or any other entity which have been approved for tax incentive benefits within sixty days of such approval; as well as prepare and submit an annual listing of all entities which are approved for tax incentive benefits whether they are currently operational or not.

(j) conduct investigations with respect to all applications for tax incentive benefits;

(k) promote the tax incentive program;

(l) prepare an annual budget for consideration and approval by the Lieutenant Governor;

(m) hire and remove employees of the alternative market and international reinsurance section, subject to the approval of the Lieutenant Governor; and

(n) perform such other acts or functions within its area of responsibility as the SAM may consider necessary in furtherance of the purposes of this chapter.

§ 1377. Contract

Each certificate granting tax incentive benefits issued under this chapter is a contract between the Government of the Virgin Islands and the beneficiary, and the Government may not adopt any legislation impairing or limiting the obligation of such contract.

§ 1378. Qualification

The SAM may not require an applicant to meet qualifications or requirements in excess of those representations made by the applicant to the SAM during the application process as a condition of granting an initial certificate. In order to qualify and remain eligible for tax incentive benefits under this chapter, an applicant must fulfill the following qualifications or requirements:

(a) Invest at least \$10,000, exclusive of inventory in the business related to servicing the insurance industry.

(b) In the case of a partnership, limited liability company, trust or other entity, be a partnership, limited liability company, trust or other entity under the laws of the Virgin Islands with its principal place of business in the Virgin Islands; in the case of a corporation, be either incorporated under the laws of the Virgin Islands with its principal place of business in the Virgin Islands, or under the laws of a state, territory or commonwealth of the United States, and be registered, licensed and qualified to conduct business in the Virgin Islands.

(c) (1) In the case of a Virgin Islands corporation, receive income that is covered by section 934 of the Internal Revenue Code of 1986, as amended, as applicable in the Virgin Islands, and meet the requirement of any other applicable federal or local law, any implementation agreement, as amended from time to time required under federal law, the provisions of this chapter, and any rules and regulations promulgated under such laws of this chapter;

(2) In the case of a partnership, limited liability company, trust or other entity, meet the requirements of any applicable federal or local law, the provisions of this chapter, and any rules and regulations adopted pursuant thereto.

(d) Be the actual investor in the enterprise for which tax incentive benefits are sought, and not a contractor, subcontractor, or other person or corporation acting as an agent or a similar capacity to the investor, provided that corporate affiliates who are actual investors may qualify for benefits.

(e) Employ at least two fulltime persons on a fulltime basis in such enterprise; and all employees in such enterprise must be residents of the Virgin Islands;

(f) Comply with all federal and local laws;

(g) Agree in writing to employ or contract, and to require all contractors retained by it to employ or subcontract for services and purchase goods, materials, and supplies with and from those persons, firms and corporations who are residents of the Virgin Islands, or incorporated under the laws of the Virgin Islands, and who are duly licensed to do business in the Virgin Island and have been so duly licensed for one year or more prior to the initial date of any such employment, contract, subcontract, or purchase. A beneficiary may employ persons who are not Virgin Islands residents at the time of hire provided they relocate to the Virgin Islands at the commencement of employment, and become bona fide residents pursuant to section 932(c) of the Internal Revenue Code of 1986, as amended. Each applicant shall agree in writing to invite competitive bidding, and require all contractors retained by it to invite competitive bidding for all such services, good and materials pursuant to the publications requirement of Title 31, section 236 of the Virgin Islands Code, and to notify each bidder in writing of the name of the successful bidder and amount of its bid. Each applicant shall advise the SAM, in writing, with a copy to the Commissioner of the Department of Licensing and Consumer Affairs when goods and materials are not available under the above-defined Virgin islands sources and demonstrate in writing efforts to obtain such services, good

and materials, and to require contractors or subcontractors retained by the applicant to likewise comply with this requirement;

(h) Meet any time restraints or deadlines imposed by the SAM with respect to the initiation of operations or activity, provided that the SAM may extend any such time restraints or deadlines upon good cause shown by the beneficiary;

(i) Agree in writing to notify the Virgin Islands Employment Service as to the availability of employment by it or its subcontractors, the number of employees required, the occupational classification of such workers, and the applicable wage rate;

(j) Provide educational assistance to residents of the Virgin Islands in an amount and form which is acceptable to the SAM or provide a financial contribution to a fund established by the SAM, except that fifty percent of any such financial contribution must be designated for public school programs and initiatives. As used in this subsection, educational assistance includes all types of educational assistance including but not limited to vocational and other job training programs;

(k) Agree in writing to submit plans for a management-training program for approval by the SAM. The plan must establish a program through which the beneficiary shall have as managers and officers, residents of the Virgin Islands, as defined in this chapter or section 703(e) of title 29. The SAM shall use the beneficiary's organizational chart and job descriptions as the sole guide as to whether a beneficiary's employee is management or non-management. The SAM shall establish, by regulation, the requirements for management training programs as guidance for all beneficiaries and the reasonable number of Virgin Islands residents to be employed by each beneficiary in accordance with the specify normal requirements of the business involved. The SAM shall report annually to the Governor the titles and compensation of all trainees who are placed in management positions by beneficiaries.

(l) The SAM may impose a monetary penalty for delinquent reports as prescribed by law. Any monetary penalty imposed by the SAM pursuant to this section must be deposited into the Territorial Scholarship Fund established pursuant to title 17, section 171, Virgin Islands Code.

(m) provide its employees additional leave from work, other than time applied to their annual leave, to participate and represent the Virgin Islands in athletic and sporting events.

(n) establish and maintain an employee pension benefit plan, as provided under the Employee Retirement Income Security Act, 29 U.S. c. 1001 *et seq.*; and

(o) agree in writing and require all contractors retained by it to purchase all insurance from resident insurance companies, agents, or brokers licensed to operate in the Virgin Islands. If a particular type of insurance is not available in the Virgin Islands, the applicant shall submit to the SAM written certification from the Office of Banking and Insurance that the insurance is unavailable.

§ 1379. Fees; application, compliance

(a) The following fees must be assessed against each applicant or beneficiary pursuant to subchapter two SPFC's for applications submitted: initial application fee is five thousand dollars; the annual compliance fee is five thousand dollars.

(b) All application fees and annual compliance fees collected pursuant to the provisions of this chapter must be deposited into the alternative market and international insurance revolving fund established pursuant to this chapter. Any fee adjustments may be made by the SAM on an annual basis, with the approval of the Governor, and such fee adjustments may not exceed the Consumer Price Index for that year.

§ 1380. Discrimination, hearing, certificate revocation

If after notice and hearing the Commissioner of Labor finds that the beneficiary or any contractor or any other agent of the beneficiary has willfully practiced discrimination in employment based on age, sex, race, national origin or religion, the Commissioner shall certify the finding to the SAM, who shall revoke the beneficiary's certificate without need for further proceedings.

§ 1381. Employment of residents by Service Providers; temporary permits

(a) If a Service Provider for a beneficiary has four or more employees, eighty percent of all persons employed by the Service Provider under this chapter must be residents of the Virgin Islands; but after the third year of operation, a Service Provider shall be required to have at least twenty percent of its management, supervisory or technical positions filled by residents of the Virgin Islands unless granted a waiver by the SAM.

(b) A waiver may be granted only when:

(1) the Commissioner of Labor has certified that:

(A) he has not been able to recruit individuals to fill the positions; or

(B) he has not been able to train individuals to fill the positions;
or

(C) the beneficiary has demonstrated to the Commissioner of Labor that the beneficiary's training program has failed to provide the individuals capable of filling the positions and that the beneficiary has made a public effort to recruit personnel for the positions; or

(2) when the SAM has made a finding that the economic position of the beneficiary is such that the beneficiary cannot comply with the requirement without further erosion of its financial position or that the beneficiary cannot comply for such other practical reasons that the SAM has established by its rules and regulations.

§ 1382. Powers and duties of the Commissioner of Labor

(a) The Commissioner of Labor shall appoint a qualified and responsible employee of the Department of Labor to administer, supervise and enforce or cause to be enforced the provisions of sections 1381 and 1383, and in this connection may promulgate necessary rules and regulations, conduct such investigations and institute such remedial action as may be required.

(b) Any beneficiary applying for permission to hire nonresidents in accordance with subsection (c)(2) shall submit a specification of the number nonresident workers required and their occupational classifications and wage rates to the Commissioner of Labor for review prior to any grant of permission to hire a nonresident. Upon receiving the information and material, the Commissioner shall:

(1) promptly supply the information and material to all labor unions operating in the Virgin Islands;

(2) at the expense of the beneficiary, give public notice of such employment opportunity; and

(3) assist the beneficiary in the recruitment of residents.

(c) The Commissioner of Labor shall provide an evaluation of those residents available in the labor market with the necessary skills suitable for employment by the beneficiary. All beneficiaries employing nonresidents shall annually prepare and file with the Commissioner of Labor a complete roster of all nonresidents and a detailed description of the positions held by such nonresidents. The Commissioner of Labor shall promulgate specific rules and regulations governing compliance with these requirements.

(d) A beneficiary may not employ a person who is not a resident of the Virgin Islands unless:

(1) after hiring the nonresident, at least eighty percent (80%) of the beneficiary's employees are residents of the Virgin Islands; or

(2) the Department of Labor has certified that:

(A) the beneficiary requested the Department of Labor's assistance in filling the vacancy; and

(B) the Department of Labor was unable, within ten working days after the beneficiary's request, to refer any qualified applicants to the beneficiary for employment.

(e) The Commissioner of Labor shall report all violations of the resident employment provisions of this chapter to the SAM.

1382a. Advisory Board

The advisory board shall perform the duties specified by regulation promulgated pursuant to section 1341 and as directed by the SAM as it relates to the review of applications pursuant to section 1316(a)(9).

§ 1383. Training of employees

(a) Any applicant for tax incentive benefits, pursuant to section 1381, proposing to employ persons who are not residents of the Virgin Islands shall, at the time of filing his application for benefits, submit to the SAM a comprehensive plan for the establishment and conduct of an occupational training program for the purpose of adequately training resident employees in the skills necessary for employment by the applicant. The training program must be approved and monitored pursuant to rules and regulations promulgated by the SAM.

(b) An employee who is engaged in training pursuant to this chapter shall receive at least the minimum wage prescribed by law for trainees or apprentices.

(c) Any beneficiary who employs one or more persons who are not residents of the Virgin Islands, other than a beneficiary who contributes to the Territorial Scholarship Fund in accordance with this chapter, shall establish or subsidize a training program in conformity with the comprehensive plan required under subsection (a) of this section, and shall maintain the program so long as any person who is not a resident of the Virgin Islands is employed by the beneficiary.

§ 1384. Tax exemptions

(a) Each service provider applicant granted a tax incentive benefit certificate, pursuant to section 1381, is exempt from payment of the following taxes:

(1) taxes on real property to the extent that property is used in the business for which the tax incentive benefit certificate has been granted.

(2) gross receipt taxes, except that this exemption does not apply to the gross receipts of businesses operated by a concession or rental agreement on the premises of beneficiaries, for which businesses separate licenses are required or which, as determined by the SAM, are not ordinarily related to, or do not constitute an essential part of, the operation of the beneficiary, and which

businesses are not otherwise eligible for tax incentive benefits as a distinct enterprise.

(3) all excise taxes on building materials, tools, pipes, pumps, conveyor belts or other appliances materials and supplies necessary for the use in the construction, alteration, reconstruction or extension of the physical plant or facilities of the applicant.

(b) Each approved captive insurance or alternative market insurer or international reinsurer eligible for tax incentive benefits provided under this chapter must be granted one hundred percent benefits for a period of ten years if it remains in compliance with all the requirements of this chapter. Applicants may receive a renewal of benefits for ten years if they remain in compliance with all the requirements of this chapter for their initial benefit period.

(c) Tax exemptions and benefits may granted under this section only if the applicant granted a tax incentive benefit certificate can provide certification from the Bureau of Internal Revenue and the Department of Finance that the applicant has filed and paid all taxes, penalties and interest, and from the Office of the Lieutenant Governor that the applicant has filed its required annual report or has satisfactorily made agreement to pay the taxes or file the required reports.

§ 1385. Income tax reduction; benefit options

(a) Each applicant granted a tax incentive benefit certificate shall have its income tax liability for income derived from the business for which the certificate is granted, and income from investments described in this section reduced on a current basis, as provided in this section.

(1) All exemptions granted under section 1384 must be made available to the applicant .

(2) The option to choose the term and percentage of its tax exemptions granted under section (b) below must be made available to the applicant.

(3) An applicant may obtain tax benefits only commencing with the first day of the applicant's taxable year for income tax purposes, or commencing one day after the due date for the payment of an installment of estimated taxes by the applicant. If no payment of an installment of estimated income taxes by the applicant is due, then the date of commencement of the benefits under this section shall be the due date of such a payment if one were due by the applicant.

(b) A service provider applicant is entitled to:

(1) reduce the amount of each payment of estimated income tax by ninety percent if its principal place of business is located on St Thomas or St. John, and ninety five percent if its principal place of business is located within the

town limits of Christiansted, St. Croix as defined by the Christiansted Town Limits map recorded in the Cadastral Section of the Office of the Tax Assessor, and by one hundred percent for a period of five years, at which time the beneficiary must apply for renewal, if the principal place of business is located within the town limits of Frederiksted, St. Croix as defined by the Frederiksted Town Limits map recorded in the Cadastral section of the Office of the Tax Assessor; and

(2) reduce its income tax liability shown on its income tax return for the taxable year by ninety percent if its principal place of business is located on St. Thomas or St. John, and ninety-five percent if its principal place of business is located within the town limits of Christiansted, St. Croix as defined by the Christiansted Town Limits map recorded in the Cadastral section of the Office of the Tax Assessor, and by one hundred percent for a period of five years, at which time the beneficiary must apply for renewal, if the principal place of business is located within the town limits of Frederiksted, St. Croix as defined by the Frederiksted Town Limits map recorded in the Cadastral section of the Office of the Tax Assessor for each of the years specified in the tax incentive benefit certificate or renewal thereof, and in the case of estimated income taxes, such reduction must be prorated over the quarterly payments due, or constructively due by the applicant, or in the case of the determination of its income tax liability, by the entire amount of the subsidy thus constructively calculated.

(c) The reduction of income tax liability on a current basis of, or the reduction of income taxes otherwise payable by, applicants entitled to such reduction is applicable with respect to all of the computations, assessments, and collection of such income taxes, as provided by the 1954 Internal Revenue Code, as amended, and with respect to the payment of estimated income taxes as provided by sections 6105, 6153, 6154 and 6201 of the 1954 Internal Revenue Code, as amended.

(d) A corporation that is organized under the laws of the Virgin Islands, a corporation that is organized under the laws of the United States, or one of the states, territories or commonwealths, whose principal office is located in the Virgin Islands is presumed to be continually domiciled in the Virgin Islands for purposes of this section, unless it is established that such domicile has been superseded by a new domicile.

(e) This section applies only to corporations, and explicitly does not apply to limited liability corporations, shareholders, members, partners, trusts, individuals or other direct or indirect owners of corporations or other entities.

§ 1386. Special provisions or limitations

(a) Applicants for benefits under section 1385 must be granted an additional five years of tax exemption on the initial term of benefits and subsidy at one hundred percent of benefits if the principal place of business of the applicant is located within the town limits of Frederiksted, St. Croix as defined on the Frederiksted Town Limits map recorded in the Office of the Tax Assessor.

(b) An applicant granted benefits under this chapter must be allowed the option, to be exercised prior to the issuance of the tax incentive benefit certificate, of determining when any or all of the benefits commence, if all of the benefits commence at some point during the first five years of operation of the beneficiary's enterprise.

(c) If the beneficiary owns and operates more than one enterprise in the Virgin Islands, benefits granted under this chapter apply only to those specified in the tax incentive benefit certificate.

(d) With respect to a corporation, the SAM shall review the ownership structure, or the proposed ownership structure, and may, upon review of the applicant's business plan or amended business plan, and consistent with the basis purposes and objectives of this chapter, limit the number of shareholders. No individuals or entities other than corporations, including entities which are disregarded for income tax purposes, may claim benefits under this chapter.

§ 1387. Certificate modifications, extension or renewals

(a) Upon proper application or reapplication, and in compliance with all other relevant provisions of this chapter pertaining to the grant of initial benefits, as determined and required by the SAM, any recipient of tax incentive benefits granted pursuant to this chapter may be granted an extension, modification or renewal of those benefits subject to the conditions stated herein.

(1) benefits must be granted pursuant to the provision of this chapter only, and not pursuant to the provisions of any previous law.

(2) the Commissioner of Labor shall certify the applicant's compliance with all labor laws, rules and regulations prior to any extension, modification or renewal of benefits.

(3) all benefits granted under this section are subject to the approval of the Governor.

(b) Certificate extensions, modifications or renewals are for a period approved by the SAM, however, no extension, modification or renewal of any exemption or subsidy benefit may exceed an aggregate duration of more than five years at ninety percent of benefits, or ten years at forty percent of benefits, or proportionate gradations thereof at the applicant's option.

(c) The SAM may not grant any extension or modification of benefits under an existing certificate or grant a new certificate unless it is determined at the time of the application or reapplication for same that the industry or business of the applicant is deserving of the benefits applied for and that it will or continues to promote economic development of the Virgin Islands. The SAM may not grant any extension or modification under an existing certificate if that industry or business is expanded as a

result of a merger of a similar business or acquisition of an existing business. In making the determination of whether the applicant is deserving of benefits and whether the business promotes economic development, the SAM shall consider the following:

(1) the amount of additional investment utilized in improving or expanding existing equipment or facilities;

(2) the increase in employment of Virgin Islands residents and the progressive nature, or lack thereof, of the applicant's employment practices in general, including the scope and effectiveness of employee training programs designed to qualify Virgin Islands residents for employment or promotion within the applicant's industry or business;

(3) whether the industry or business continues to be compatible with the ecology of the Virgin Islands;

(4) such other criteria as are required to be applied in determining qualification for the initial tax incentive benefit certificate under this chapter as are appropriate, as determined by the SAM.

(d) Notwithstanding the other provisions of this section, it is specifically contemplated that this section may be used to permit the granting of exemption and subsidy benefits for the continuation or reopening of businesses or industries that have previously enjoyed such benefits but which the SAM determines to be of particular importance to the economy of the Virgin Islands and finds could not otherwise continue or reopen.

§ 1388. Reserved

§ 1389. Action by the Governor and the SAM

(a) Upon receipt of a finding by the SAM that tax incentive benefits should be granted, the Governor shall proceed with a determination of whether to approve or disapprove the SAM's finding.

(b) If the Governor approves the SAM's finding, the Governor shall certify the approval to the SAM, who shall then proceed to issue the appropriate certificate.

(c) If the Governor disapproves the SAM's finding, the Governor shall certify the disapproval to the SAM, accompanied by specific reasons for the disapproval, and at the Governor's discretion, specifying changes to the proposal which would likely lead to his more favorable consideration of a future benefit application. The SAM shall then forward a copy of the Governor's disapproval and accompanying comments to the applicant, which copy constitutes official notice of denial of benefits.

(d) If, after 60 calendar days, excluding Sundays and holidays, have elapsed from the date of receipt of the SAM's findings, the Governor has neither approved nor

disapproved the issuance of a tax incentive benefit certificate, the issuance of the certificate must be deemed approved, and the SAM shall issue the appropriate certificate.

§ 1390. Contents of certificate

(a) A tax incentive benefit certificate must be issued by the SAM in the name of the Government of the Virgin Islands and must bear the signature of the SAM. The certificate must specify all of the following:

(1) in the case of a non-publicly owned corporation, the names and addresses of all of the shareholders;

(2) the line or lines of businesses for which benefits have been granted;

(3) the date by which the required financial investment was completed by the beneficiary;

(4) the date or dates upon which benefits commence, which date may be retroactive to the first date of investment by the beneficiary in the industry or business granted in the certificate, but such date may not be before the effective date of this chapter.

(5) the specific commencement and termination dates for the benefits granted under the certificate;

(6) such other conditions as the SAM considers appropriate, not inconsistent with the provisions of this chapter or regulations promulgated hereunder.

(b) In addition to the foregoing, the certificate must contain a recital that it is conditioned upon the performance and observance of same by the beneficiary within a period of time specified, and upon the final determination of the Secretary of the Treasury of the United States or his delegate, of compliance with the requirement of Internal Revenue Code sections 934 or 936. Upon failure of the beneficiary to perform or observe the conditions as required by the SAM within the specified period or any extension thereof granted for good cause shown to the SAM, the certificate is of no force and effect, and the beneficiary shall pay or refund as the case may be to the Government of the Virgin Islands the amount of any benefit actually received under the certificate. Upon a final determination by the Secretary of the Treasury of the United States or his delegate that the beneficiary has not complied with the requirements of Internal Revenue Code section 934 or 936, the beneficiary shall pay or refund, as the case may be, to the Government of the Virgin Islands, the amount of any subsidy benefits, based on income tax liability, actually received, or the amount of the reduction of income tax liability on a current basis for all the years of non-compliance.

§ 1391. Transferability of certificates

A tax incentive benefit certificate granted under the provisions of this chapter may be transferred, for the unexpired portion of the term of the certificate to another corporation which succeeds the beneficiary in carrying on or in operating the industry or business for which the certificate is granted, upon determination of the SAM that such corporation is otherwise qualified to receive such benefits and provided the industry or business activity with respect to which the certificate was granted is continued by the corporation. Thereafter the transferor of the certificate loses all tax incentive benefits under this chapter and is subject to the tax laws of the Virgin Islands.

§ 1392. Revocation, suspension or modification of certificate

Subject to the approval of the Governor, a tax incentive benefit certificate granted in accordance with this chapter may be revoked, suspended or modified by the SAM, after due notice, public hearing, and written findings by the SAM that:

(a) the beneficiary has failed to maintain compliance with the requirements of this chapter or any regulation hereunder;

(b) upon finding submitted to the SAM by the Lieutenant Governor or the Attorney General of the Virgin Islands that the corporation:

(1) has been dissolved;

(2) has filed, or there has been filed against the corporation, a petition in bankruptcy which has been approved; or

(c) the beneficiary has failed to file an annual report of ownership as required by this chapter; or

(d) an officer, shareholder or director acting on behalf of the corporation has been convicted of a felony connected with the operation of the beneficiary's business or industry; or

(e) an officer, shareholder or director acting on behalf of the corporation has given or offered, or caused to be given or offered a bribe, or any money, property, or value of any kind or any promise or agreement therefore to a public officer, or to a person executing any of the functions of a public office, or to a person elected, appointed or designated to thereafter execute the same, with intent to influence him with respect to any act, decision, vote, opinion, or other proceeding in the exercise of the powers or functions which he has or may have pertaining in any way to the tax incentive benefit program. In addition to the fine and imprisonment provided in title 14, section 406 of the Virgin Islands Code for this offense, any benefit granted or obtained as a result of such act, decision, vote, opinion or other proceeding is void as to the briber and recoverable from the briber as the circumstances of the particular case may dictate.

§ 1393. Penalties for violations

(a) The SAM shall promulgate a schedule of fines for violation of any provision of this chapter and the beneficiary's certificate within ninety days of the effective date of this chapter and submit the schedule of fines to the Governor for approval.

(b) If any beneficiary violates any provision of this chapter, any rule or regulation promulgated hereunder, or any provision of the tax incentive benefit certificate, or fails or refuses to perform any duty, requirement or lawful order made by the SAM, such beneficiary, after notice and an opportunity to be heard, must be fined in accordance with the schedule of fines under subsection (a) of this section. These fines must be deposited into the Alternative Market and International Insurance Revolving Fund. In construing and enforcing the provisions of this section, the act, omission or failure of any officer, agent or person acting for or employed by any beneficiary in every case is deemed an act, omission or failure of such beneficiary.

(c) The Attorney General of the Virgin Islands shall, at the request of the SAM, bring appropriate action to compel adherence to, or enjoin any violation of lawful orders of the SAM issued pursuant to this chapter, and to recover in the name of the Government of the Virgin Islands the penalties provided herein.

§ 1394. Appeals

Any applicant or beneficiary aggrieved by any action of the SAM or the Governor under the provisions of this chapter is entitled to judicial review of the action by appealing to the Superior Court under the applicable writ of review provisions within thirty days after a final decision by the SAM or Governor.

§ 1395. False or fraudulent statements or representations

Any applicant or beneficiary who willfully makes any false or fraudulent statement or representation as to any fact required or appropriate to the determination of the qualifications of eligibility of such applicant or beneficiary for benefits under this chapter, or for the continuation or extension of benefits or who willfully makes or presents any claim for benefits under this chapter knowing such claim to be false, fictitious or fraudulent, must be fine not more than \$25,000 or imprisoned no more than two years, or both fined and imprisoned. In addition to the foregoing, any benefits previously granted under this chapter to such applicant or beneficiary are automatically revoked, without necessity for the procedures established in this chapter; all taxes that were otherwise due and payable by such applicant or beneficiary, but for the tax exemption benefits granted, become due and payable, and such taxes must be assessed and collected in accordance with the provisions of applicable tax laws in force for such date or dates.

SECTION 2. Title 22 Virgin Islands Code, chapter 55 is repealed.

SECTION 3. (a) Captive insurance and reinsurance companies and international insurance support businesses licensed under former chapter 55 of title 22 of the Virgin Islands Code on the effective date of this Act are exempt from the payment of the annual captive reinsurance taxes established in title 22 Virgin Islands Code section 1340, as added by this Act, for three years after the effective date of this Act.

(b) For three years after the effective date of this Act, captive insurance and reinsurance companies and international insurance support businesses licensed under former chapter 55 of title 22 of the Virgin Islands Code on the effective date of this Act may receive exemptions from income taxes pursuant to 13 V.I.C., § 855 and gross receipt taxes pursuant to 13 V.I.C., §856.”

SECTION 4. All fees established in title 22 Virgin Islands Code, section 1320 as added by this Act, are waived for three years for any company that was licensed under title 22 Virgin Islands Code, chapter 55 and whose license is in effect on the effective date of this Act.

SECTION 5. All fees established in title 22 Virgin Islands Code, section 1320.

SECTION 6. This Act becomes effective January 15, 2009.

Thus passed by the Legislature of the Virgin Islands on September 18, 2008.

Witnessed our Hands and Seal of the Legislature of the Virgin Islands this 30th Day of September, A.D., 2008.




Usie R. Richards
President

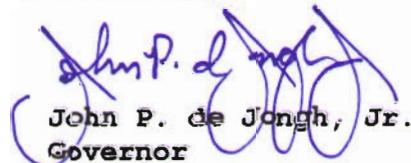


Shawn-Michael Malone
Acting Legislative Secretary

Bill No. 27-0203 is hereby approved.

Witness my hand and the Seal of the Government of the United States Virgin Islands at Charlotte Amalie, St. Thomas, this 11th day of October, A.D., 2008.




John P. de Jongh, Jr.
Governor