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Nick Thomas

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Sens. Kearney, Bacon, Faber, Hughes, Peterson, Schaffer

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ACT SUMMARY

- Provides for the operation of captive insurance companies (CIC), including protected cell captive insurance companies (PCIC) and special purpose financial captive insurance companies (SPFC).

Captive insurance companies

- Prescribes what types of insurance a CIC may offer.
- Prescribes the license and application requirements for a CIC and stipulates that documents submitted in relation to these processes are confidential, subject to limited exceptions.
- Requires CICs to pay an application fee and annual renewal fee of \$500.
- Requires CICs to pay fees on premiums collected: 0.35% of net-direct premiums and 0.15% of assumed reinsurance premiums with an annual minimum aggregate fee of \$7,500, and an annual maximum fee of \$250,000.
- Authorizes the Superintendent of Insurance to charge CICs for other costs related to carrying out the Superintendent's CIC regulatory duties.
- Prescribes the factors that the Superintendent must consider when reviewing CIC license applications.

- Establishes minimum levels of assets in excess of liabilities that CICs must maintain: \$250,000 for a CIC and \$500,000 for a PCIC.
- Requires CICs to follow certain conventions in naming.
- Prescribes when a CIC can pay a dividend to shareholders and the notification procedures that the CIC must follow prior to doing so.
- Requires a CIC to make an annual financial statement to the Superintendent.
- Requires a CIC to be audited annually by an independent certified public accountant, and provide a financial report as a supplement to the annual financial statement.
- Submits CICs to financial examination, evaluation, and monitoring by the Superintendent.
- Authorizes the Superintendent to suspend or revoke the license of a CIC under certain circumstances.
- Requires CICs to invest capital according to a prudent person standard.
- Specifies when and how a CIC can make a loan to, or invest in, a parent or affiliated company.
- Prohibits a CIC from being required to join a rating organization.
- Prohibits a CIC from joining or contributing financially to a guaranty fund and from receiving a benefit from such a fund.
- Creates the Captive Insurance Regulation and Supervision Fund and specifies that revenues collected in relation to CICs are to be deposited to the credit of the Fund.
- Requires a self-insuring employer identified by a CIC to pay a contribution to the Self-Insuring Employers' Guaranty Fund.

Protected cell captive insurance companies

- Requires PCICs to pay a fee, in an amount to be specified by the Superintendent, in addition to the annual premium fee required of all CICs.
- Requires PCICs to follow certain naming conventions.
- Specifies the manner in which the assets and liabilities of protected cells are to be accounted.



- Specifies the duties of the officers or managers of a PCIC.
- Authorizes PCICs to securitize interest in their protected cells and specifies when and how dividends on these securities can be paid.
- Prescribes when and how assets may be transferred from one cell of a PCIC to another.
- Prescribes how the assets of one protected cell can be used to satisfy a liability of another cell or the parent company.
- Specifies when and how the assets of a parent company can be used to satisfy a liability of a protected cell.
- Specifies that penalties related to a specific protected cell may only be paid from the assets of that protected cell.
- Requires PCICs to adopt procedures to ensure that the assets and liabilities of protected cells are accounted for separately and to account for any transfer of assets or liabilities between cells.
- Requires a PCIC and its directors to follow certain procedures when entering into contracts and prescribes how liability is to be assigned and dealt with in relation to such contracts.
- Allows a CIC to become a PCIC and allows a PCIC to cease being a PCIC and prescribes the procedure for accomplishing either.
- Allows a protected cell to be transferred from one PCIC to another and prescribes the method for these transfers.
- Enables a PCIC to become a protected cell of another PCIC.
- Enables a protected cell of a PCIC to become an independent organization.
- Prescribes requirements in relation to the liquidation of PCICs and individual protected cells.

Special purpose financial captive insurance companies

- Provides for the general operation of special purpose financial captive insurance companies (SPFCs), which provide reinsurance of life insurance risks of a domestic parent or affiliated company.

- Enables an SPFC to adopt an alternative reserve basis with the approval of the Superintendent.
- Requires the Superintendent to establish a total capital and surplus requirement for SPFCs that are permitted to use an alternative reserve basis.
- Enables an SPFC to enter into an SPFC contract with a counterparty for the provision of insurance or reinsurance of risk.
- Enables an SPFC to issue securities.
- Enables an SPFC and a counterparty to enter into a secondary SPFC contract under which the counterparty is liable for the losses or other obligations that were securitized.
- Provides for the rehabilitation and liquidation of an SPFC.
- Specifies that documents submitted to the Superintendent pursuant to SPFC Law are confidential.
- Enables a counterparty to take credit for reinsurance ceded to an SPFC.

Rules

- Authorizes the Superintendent to adopt rules in relation to the regulation of CICs.

TABLE OF CONTENTS

Overview	5
Captive insurance companies	6
Types of insurance provided	6
License requirements	7
Application for license	7
Confidentiality	8
Application and annual fee	9
Other fees	9
Fees based on premiums collected	9
Charges based on regulatory duties	10
Considering applications	11
Capital and surplus requirements	12
Naming captive insurance companies	13
Dividends	13
CIC annual reports	14
Subject to financial examination	15
Suspension or revocation of a license	15
Investment of capital	16
Loans	16



Rating organizations	16
Guaranty funds	17
Other insurance laws	17
Workers' Compensation Law.....	17
Captive Insurance Regulation and Supervision Fund	18
Foreign CICs.....	18
Protected cell captive insurance companies.....	18
Naming requirements.....	19
Provisions related to protected cells	20
PCIC assets and liabilities.....	20
Duties of director and manager	20
Shares of a PCIC	21
Transfer of assets	21
Ownership of and participation in protected cells.....	21
Liabilities and obligations of protected cells.....	22
Penalties	24
Procedures.....	24
Agreements and contracts	25
Changing status	26
Transfer of protected cells.....	27
Liquidation of PCICs and protected cells.....	30
Special purpose financial captive insurance companies.....	34
Reserves and alternative reserves	34
Total capital and surplus requirement.....	36
General SPFC requirements	37
Issuance of securities.....	38
Secondary SPFC contracts	38
Other agreements	40
SPFC investments.....	40
Rehabilitation and liquidation of SPFCs.....	41
Confidentiality of documents related SPFCs.....	42
SPFCs and credit for reinsurance.....	43
Rules	43
Definitions	44
CIC definitions.....	44
SPFC definitions	45

CONTENT AND OPERATION

Overview

The act permits captive insurance companies (CIC) to operate in Ohio. A captive insurance company is a subsidiary of a parent company that exists for the purpose of providing insurance to the parent company and other affiliated company of the parent company. The act also provides for protected cell captive insurance companies (PCIC) and special purpose financial captive insurance companies (SPFC).

A PCIC is a CIC consisting of separate "cells." Each cell owns particular liabilities and has assets associated with those liabilities. A cell is responsible only for its own



liabilities, i.e., the assets of another cell, or the PCIC's general assets, cannot be used to satisfy the liabilities of a particular cell, except as provided in the act.

An SPFC is a form of a captive insurer where an insurer cedes risk related to life insurance to the captive, either through reinsurance or directly transferring the risk to the SPFC, through what is referred to as an SPFC contract.

Captive insurance companies

A CIC is defined under the act as any insurer that insures only the risks of its parent or the parent's affiliated companies. Under the act, CICs include any PCIC formed or licensed under the provisions of Captive Insurance Company Law.¹

Types of insurance provided

A CIC may offer only the following types of insurance:

- Commercial multiple peril;
- Ocean marine;
- Inland marine;
- Medical malpractice;
- Workers' compensation, to the extent permitted by Ohio law but only for the purpose of indemnification of a self-insuring employer;
- Commercial auto liability;
- Commercial auto physical damage;
- Fidelity;
- Reinsurance of life insurance risks of an Ohio domiciled parent or an affiliated company that is authorized to transact the business of life insurance in Ohio (SPFC only);
- Any other line that the Superintendent, at the Superintendent's sole discretion, permits.²

¹ R.C. 3964.01(B) and (E) and 3964.02(C).

² R.C. 3964.02(A).



The act authorizes any CIC to purchase reinsurance coverage for any risk that the company is permitted to write directly. The act also authorizes any CIC to reinsure any risks insured by its parent company or an affiliated company, as approved by the Superintendent. However, the act prohibits any CIC from issuing insurance policies or certificates, or any other similar documentation, to any person other than its parent or affiliated companies.³

License requirements

The act prescribes the requirements that a CIC must meet in order to be licensed to conduct business in Ohio. A CIC must be organized either under Ohio's General Corporation Law, Nonprofit Corporation Law, or Limited Liability Company Law. A CIC must do all of the following in order to operate in Ohio:

- Obtain a license to do the business of captive insurance in Ohio from the Superintendent of Insurance;
- Hold, in Ohio, at least one meeting a year of the CIC's board of directors;
- Maintain its principal place of business in Ohio;
- Appoint a registered agent to accept service of process and act on the CIC's behalf in Ohio.

Additionally, the person managing the CIC must be an Ohio resident. If the person appointed as the CIC's agent cannot reasonably be found at the CIC's registered office, then the Superintendent assumes the role of agent for the CIC for the purpose of receiving service of processes, notices, or demands.⁴

Application for license

Under the act, a CIC must file with the Superintendent an application for a license to be a CIC and must submit all of the following documents along with its application:

- A certified copy of its articles of incorporation, bylaws, or other organizational document and code of regulations;
- A statement, made under oath by the president and secretary, in a form prescribed by the Superintendent, showing the CIC's financial condition;

³ R.C. 3964.02(B) to (D).

⁴ R.C. 3964.03(A) to (C).



- A statement of the CIC's assets relative to its risks, detailing the amount of assets and their liquidity;
- An account of the adequacy of the expertise, experience, and character of the person or persons who will manage the CIC;
- An account of the loss prevention programs of the persons that the CIC insures;
- Actuarial assumptions and methodologies that will be utilized in calculating reserves;
- Any other information considered necessary by the Superintendent to determine whether the proposed CIC will be able to meet its obligations.⁵

Along with this information, a CIC that offers direct insurance to its parent must submit to the Superintendent for approval a detailed description of the coverages, deductibles, coverage limits, proposed rates or rating plans, documentation from a qualified actuary that demonstrates the actuarial soundness of the proposed rates or rating plans, and any other such information required by the Superintendent.

Any licensed CIC that wishes to make any material change to these characteristics of its insurance products must submit a detailed description of the change to the Superintendent for approval as well as documentation from a qualified actuary that demonstrates the actuarial soundness of the revised rates or rating plans, and any other additional information that the Superintendent may require. The Superintendent may disapprove a filing within 30 days, but if the Superintendent fails to disapprove a filing within the 30-day time period, it is deemed approved. If at any time after the 30-day review period the Superintendent finds that a filing does not demonstrate actuarial soundness, the Superintendent must hold a hearing and the CIC is required to show cause as to why the Superintendent should not issue an order directing the CIC to cease and desist from using the revised rates or rating plans, and to use the rates or rating plans determined appropriate by the Superintendent.⁶

Confidentiality

Documents submitted to the Superintendent related to the application for a license or to material changes in insurance products offered are confidential and are not subject to a public records request made under Ohio's Public Records Law. However,

⁵ R.C. 3964.03(D).

⁶ R.C. 3964.03(G).



such information may be disclosed by the Superintendent if the CIC in question authorizes such a disclosure in writing. Additionally, the documents and information may be discoverable in a civil action in which the company filing the material is a party upon a finding by a court of competent jurisdiction that the information sought is relevant and necessary to the case and the information sought is unavailable from other, nonconfidential sources. Also, the Superintendent may, at the Superintendent's sole discretion, share the required documents with the Chief Deputy Rehabilitator, the Chief Deputy Liquidator, other deputy rehabilitators and liquidators, and any other person employed by, or acting on behalf of the Superintendent pursuant to the related chapters of Ohio Insurance Regulation and Liquidation Law with other local, state, federal, and international regulatory and law enforcement agencies, with local, state, and federal prosecutors, and with the National Association of Insurance Commissioners (NAIC) and its affiliates and subsidiaries, provided that the recipient agrees to maintain the confidential or privileged status of the documents and has authority to do so.⁷

Application and annual fee

Applicants for a license to do the business of a CIC must pay a nonrefundable fee of \$500 for processing the application and must also pay an annual renewal fee of \$500. The act authorizes the Superintendent to retain third-party legal, financial, and examination services at the expense of the applicant. All such fees collected are to be deposited into the Captive Insurance Regulation and Supervision Fund, which is created under the act.⁸

Other fees

Fees based on premiums collected

The act requires CICs to pay fees based on premiums collected. The CIC must pay the fees on or before March 2 each year in the following amounts:

- An amount equal to 0.35% of a CIC's net-direct premiums;
- An amount equal to 0.15% of a CIC's revenue from assumed reinsurance premiums.

These fees are to be calculated on an annual basis, regardless of any multi-year policies or contracts that the CIC might issue or into which the CIC might have entered. In the case of these policies or contracts, fees are to be prorated for the year in question. The act requires a CIC to pay an annual minimum aggregate fee of \$7,500, and an annual

⁷ R.C. 3964.03(H).

⁸ R.C. 3964.03(I) and 3964.15.



maximum fee of \$250,000. All collected fees are to be deposited into the Captive Insurance Regulation and Supervision Fund.⁹

The act stipulates that reinsurance revenue for which the 0.15% fee is charged cannot also be included in calculating the 0.35% direct premium fee. Also, a CIC is not required to pay the 0.15% reinsurance fee on assets received in exchange for the assumption of loss reserves and other liabilities of another insurance company under common ownership and control as the CIC, if the transaction is part of a plan to discontinue the other company and to renew or maintain the business with the CIC to which they were exchanged.¹⁰

Charges based on regulatory duties

The act authorizes the Superintendent to charge a CIC for expenses related to carrying out the Superintendent's duties related to the CIC Law. The Superintendent may charge a CIC for the entire compensation for each day or portion worked by all personnel, including those outside staff hired by the Superintendent, to carry out any of the following duties:

- Conducting examinations, calculated at the rates provided in the Financial Condition Examiners' Handbook published by the National Association of Insurance Commissioners;
- Reviewing and analyzing a company's annual report and any interim financial statements and examination reports of CICs operating in Ohio;
- Evaluating and monitoring, on an ongoing basis, the financial affairs of a CIC;
- Determining and reviewing a CIC's premium franchise fee liability;
- Training and providing continuing education to examiners and analysts.

The Superintendent may also charge a CIC for any of the following expenses:

- Travel and living expenses of all personnel, including those who are not Department of Insurance employees, directly engaged in the conduct of an examination calculated at rates not to exceed the rates provided in the Financial Condition Examiners' Handbook;

⁹ R.C. 3964.13 and 3964.15.

¹⁰ R.C. 3964.13.



- All other incidental expenses incurred by or on behalf of the personnel in the conduct of the examination;
- Other expenses necessarily incurred in carrying out the duties of the Superintendent related to CICs, including the expenses of direct overhead and support staff for the examiners and persons appointed or employed in relation to an examination.¹¹

All amounts collected by the Superintendent are required to be deposited into the Captive Insurance Regulation and Supervision Fund.¹²

The act authorizes the Superintendent to use amounts in the Department of Insurance Operating Fund to cover the expenses of the Captive Insurance Regulation and Supervision Fund.¹³

Considering applications

The act requires the Superintendent to consider all of the following factors in determining whether to approve an application for a license:

- The character, reputation, financial standing, and purposes of the incorporators, or other founders, of the CIC;
- The character, reputation, financial responsibility, experience relating to insurance, and the business qualifications of the CIC's officers and directors;
- The amount of liquidity and assets of the CIC relative to the risks to be assumed;
- The adequacy of the expertise, experience, and character of the person or persons who will manage the CIC;
- The overall soundness of the plan of operation;
- The adequacy of the loss prevention programs of the persons that the CIC insures.¹⁴

¹¹ R.C. 3964.15(B).

¹² R.C. 3964.15(C).

¹³ R.C. 3964.15(D).

¹⁴ R.C. 3964.03(F).

Capital and surplus requirements

The act prohibits the Superintendent from issuing a license to a CIC unless the CIC maintains certain levels of minimum unimpaired paid-in total capital and surplus. A CIC must maintain capital and surplus as follows:

- Generally, not less than \$250,000;
- In the case of a PCIC, not less than \$500,000.¹⁵

The Superintendent may prescribe any additional capital and surplus requirements based upon the type, volume, and nature of insurance business transacted.¹⁶ Capital and surplus may be in the form of any of the following:

- Cash;
- Marketable securities, as approved by the Superintendent;
- For a captive insurer other than an SPFC, irrevocable, unconditional, and automatically renewable letters of credit that are issued or confirmed by a qualified United States financial institution.¹⁷

A United States financial institution is qualified if all of the following apply:

- It is organized under, or, in the case of the United States branch or agency office of a foreign banking organization, is chartered under the laws of the United States or any U.S. state.
- It is regulated, supervised, and examined by federal or state officials that have regulatory authority over banks and trust companies.
- The Superintendent has determined that it meets the standards of financial condition and standing as are necessary and appropriate to ensure that its letters of credit will be of an acceptable quality.¹⁸

¹⁵ R.C. 3964.05(A).

¹⁶ R.C. 3964.05(B).

¹⁷ R.C. 3964.05(C).

¹⁸ R.C. 3964.05(C) and (D).



Naming captive insurance companies

The act prohibits a CIC from adopting a name that is the same, deceptively similar, or likely to be confused with, or mistaken for, any other existing business name registered in Ohio. Also, the name under which the CIC operates must include the word "captive."¹⁹

Dividends

The act prescribes the process that a CIC must follow if it intends to pay its shareholders a dividend. Prior to paying any dividend or distribution, a CIC must notify the Superintendent for informational purposes on a form provided by the Superintendent. This notification must be submitted to the Superintendent within five days after the CIC's declaration of any dividend or distribution and at least ten calendar days prior to payment of the dividend or distribution. The ten-day period begins on the date that the Superintendent receives the CIC's notification of intent. Thus, a CIC cannot pay a dividend or distribution until at least ten days after the notification of intent is received by the Superintendent.²⁰

The act limits a CIC from paying an extraordinary dividend or making any other extraordinary distribution to its shareholders except in certain circumstances and prescribes when such a dividend or distribution might be made. An extraordinary dividend or distribution includes any dividend or distribution of cash or other property whose fair market value would cause the summed total value of all dividends or distributions made during the preceding 12 months to exceed the greater of either of the following:

- 10% of the insurance company's surplus, as of the immediately preceding December 31;
- The net income of the insurance company for the 12-month period ending on the immediately preceding December 31.²¹

Pro rata distributions of a CIC's own securities to an individual according to that individual's ownership in the company is not considered to be an extraordinary dividend. Also, any dividend or distribution paid from a source other than a CIC's earned surplus is considered to be an extraordinary dividend. The act outright prohibits a CIC from paying an extraordinary dividend or distribution if doing so results in the

¹⁹ R.C. 3964.04.

²⁰ R.C. 3964.06(B).

²¹ R.C. 3964.06(A) and (C)(1).



CIC's unimpaired, total capital and surplus being below the prescribed minimums. For the purposes of determining whether a dividend or distribution is extraordinary, "earned surplus" is defined as being the amount of the company's unassigned funds (i.e., funds not reserved to satisfy liabilities), including net, unrealized capital gains and losses or revaluation of assets, as set forth in the CIC's most recent financial statement submitted to the Superintendent.²²

Any declaration of a CIC's intent to make an extraordinary dividend or distribution must be conditional. Such a declaration confers no rights to shareholders or members of a CIC until 30 days after the Superintendent receives notification of the CIC's intent to make such a dividend or distribution. During this period the Superintendent may either approve or disapprove the dividend. If the Superintendent does not disapprove the dividend or distribution within the 30-day period, the rights are conferred.²³

CIC annual reports

The act prescribes what information that CICs must provide to the Superintendent on an annual basis. On the first day of January, or within 60 days thereafter, the chief financial officer and at least one other executive officer of a CIC, or a majority of the directors of a CIC, must prepare a statement under oath showing the financial condition of the company on the 31st day of the December next preceding. They must deposit this statement in the office of the Superintendent. The statement must include an opinion from a qualified actuary regarding the adequacy of the company's required reserves to make full provision for the company's liabilities, insured or reinsured. The actuary is required to submit to a memorandum detailing support for that opinion. The CIC must report using generally accepted accounting principles, unless some other method of accounting identified in the act is approved or required by the Superintendent for a CIC. The Superintendent is required to adopt by rule the prescribed forms, instructions, and manuals by which CICs must make the required reports, as the Superintendent considers necessary. Annual reports are confidential, but may be required for civil actions or for criminal investigations as previously described under "**Confidentiality**," above. Additionally, CICs are required to prepare at a minimum, internal quarterly financial statements and to make these statements available to the Superintendent upon request. The act stipulates that a CIC is not required to make any annual report except as described above.

²² R.C. 3964.06(C)(2), (D), (E), and (F).

²³ R.C. 3964.06(A).



The act also requires all CICs to have an annual audit by an independent certified public accountant. On or before the first day of June, as a supplement to the annual statement described above, the CIC must file an audited financial report with the Superintendent.²⁴

Subject to financial examination

The act subjects CICs to financial examination, evaluation, and monitoring by the Superintendent. Ohio Insurance Law gives the Superintendent the authority to examine the financial affairs of insurers prior to certifying the insurer. Additionally, the Superintendent is required to conduct these examinations at least once every three years.²⁵ With regard to CICs, the act specifies that records or information collected, as well as any reports produced, pursuant to such examinations are confidential, not subject to subpoena, and may not be made public without the CIC's written consent. However, under the act these confidentiality requirements do not prevent the Superintendent's ability to carry out the Superintendent's regulatory responsibilities under the act. Also, the Superintendent is authorized to share information related to financial examinations with the Chief Deputy Rehabilitator, the Chief Deputy Liquidator, and any other person working for the Superintendent pursuant to relevant sections of Oversight, Rehabilitation, and Liquidation Law; with specified regulatory and law enforcement agents; local, state, and federal prosecutors; and with the National Association of Insurance Commissioners, provided that any such recipient agrees to maintain the confidential status of the information received and has authority to do so.²⁶

Suspension or revocation of a license

The act allows the Superintendent to suspend or revoke the license of any CIC, in accordance with Ohio's Administrative Procedure Act, for any of the following reasons:

- Insolvency or impairment of capital or surplus;
- Failure to meet the act's paid-in capital and surplus requirements;
- Refusal or failure to submit the required annual report or any other report or statement required by law or by lawful order of the Superintendent;
- Failure to comply with the provisions of its own articles, bylaws, code of regulations, or other organizational documents;

²⁴ R.C. 3964.07(A) to (F).

²⁵ R.C. 3964.08(A) and R.C. 3901.07(A), not in the act.

²⁶ R.C. 3964.08(B) and (C).



- Failure to submit to, or pay the cost of, examination, or any legal obligation related to examination, as required by the act;
- Use of practices that, although not otherwise specifically prohibited by law, are determined by the Superintendent to render a CIC's operation detrimental or its condition unsound with respect to the public or to its policyholders;
- Failure to otherwise comply with Ohio law.²⁷

Investment of capital

The act requires the CIC board of directors to determine appropriate investments for the CIC. With respect to all of the CIC's investments, a board is required to adhere to a prudent-person standard of investment, employing a strategy that seeks to preserve the company's capital and that is not overly speculative. A CIC is required to make investments of sufficient value, liquidity, and diversity to assure the CIC's ability to meet its outstanding obligations and is required to file a copy of its investment policy with the Superintendent. If the Superintendent determines that a CIC's investments are insufficient to meet the company's obligations, the Superintendent must notify the CIC in writing that it is required to file a schedule of its proposed investments with the Superintendent.²⁸

Loans

The act prohibits a CIC from making a loan to, or an investment in, its parent company or any affiliated company without prior written approval from the Superintendent. The loans or investments are required to be documented in a manner approved by the Superintendent. CICs are prohibited from making any such loan or investment that violates the act's paid-in capital and surplus requirements.²⁹

Rating organizations

The act prohibits CICs from being required to join a rating organization.³⁰ Rating organizations gather and tabulate information related to risks that an insurer might cover and then set the rates, or the expected cost, of providing a policy for each type of risk. Insurers often share claims data, joining together to become members of a rating

²⁷ R.C. 3964.09.

²⁸ R.C. 3964.10(A) and (B).

²⁹ R.C. 3964.10(C).

³⁰ R.C. 3964.11.

organization to help ensure that the rates they set for policies most accurately reflect the risks of those policies. Insurers that are not members of a rating organization can subscribe to an organization for the purpose of receiving guidance on how to set rates.

Guaranty funds

The act prohibits CICs from joining or contributing financially to any sort of guaranty or insolvency fund in Ohio. Accordingly, CICs are also prohibited from receiving any benefit from such a fund.³¹ A guaranty fund is a fund that exists for the purpose of ensuring that a company's liabilities will be met should the company become insolvent or otherwise unable to meet its liabilities. Members of such a fund make contributions to the fund to receive this guarantee.

Other insurance laws

Generally, CICs are to be governed only by the CIC Law, and other provisions of law related to insurance companies do not apply unless specified in the CIC Law or unless CICs are expressly and statutorily made subject to the other insurance law, or with respect to a line of authority granted to a CIC by the Superintendent, as required in the articles, bylaws, code of regulations, or any other organizational documents as approved by the Superintendent.³² The act expressly makes CICs subject to the Insurers Supervision, Rehabilitation, and Liquidation Act, except as otherwise provided in the act.³³

Workers' Compensation Law

Under the act, any self-insuring employer that is indemnified by a CIC granted a certificate of authority under the Captive Insurance Company Law is required by continuing law to pay a contribution to the Self-Insuring Employers' Guaranty Fund. This fund, pursuant to continuing law, is operated by the Bureau of Workers' Compensation, and it provides for payment of compensation and benefits to employees of the self-insuring employer in order to cover any default in payment by that employer.

Under continuing law, the Administrator of Workers' Compensation is required to annually establish the contributions due from self-insuring employers for the fund at

³¹ R.C. 3964.12.

³² R.C. 3964.14(A).

³³ R.C. 3964.14(B).



rates as low as possible, but at rates that will assure sufficient moneys to guarantee the payment of any claims against the fund.³⁴

Captive Insurance Regulation and Supervision Fund

The act creates the Captive Insurance Regulation and Supervision Fund, consisting of revenues received by the Superintendent from fees, fines, penalties, and assessments related to CICs.³⁵

Foreign CICs

A CIC organized under the laws of another state or jurisdiction may become a domestic CIC pursuant to the provisions of the law related to the Redomestication Model Act after complying with all the act's relevant requirements to be a domestic CIC.³⁶

Protected cell captive insurance companies

The act provides for the operation of protected cell captive insurance companies (PCIC). Under the act, a CIC may be organized as a PCIC and may form one or more protected cells to insure or reinsure the risks of one or more participants of the PCIC. If such a company is formed, then the assets and liabilities of each protected cell must be held separately from the assets and liabilities of all other protected cells.³⁷ A participant that is not an insurance agent licensed in Ohio must insure or reinsure only its own risks through a protected cell. However, if the participant is an insurance agent licensed in Ohio, the participant contract must define each risk covered by the contract with fixed and certain terms.³⁸

A PCIC may be organized pursuant to the General Corporation Law, Nonprofit Corporation Law, or the Limited Liability Companies Law. Additionally, a protected cell of a PCIC may be organized pursuant to the same laws as a PCIC.³⁹

A PCIC must, at the time of paying the annual premium fee required of all CICs (see "**Other fees – Fees based on premiums collected**," above) also pay an additional

³⁴ R.C. 4123.351.

³⁵ R.C. 3964.15(A).

³⁶ R.C. 3964.20 by reference to R.C. 3913.40, not in the act.

³⁷ R.C. 3964.17(A), (B), and (C).

³⁸ R.C. 3964.17(A)(4).

³⁹ R.C. 3964.03(A) and 3964.17(D).



annual fee for each protected cell in an amount to be established by the Superintendent.⁴⁰

Each protected cell of a PCIC must be treated as a CIC for purposes of the CIC Law.⁴¹

Unless otherwise permitted by the articles of incorporation, bylaws, code of regulations, or other organizational documents of a PCIC, each protected cell of a PCIC is required to have the same directors, secretary, and registered office as the PCIC.⁴²

The act authorizes a PCIC to provide in its articles of incorporation, bylaws, code of regulations, or other organizational documents that a protected cell be wound up and dissolved upon the occurrence of any of the following events:

- The bankruptcy, death, expulsion, insanity, resignation, or retirement of any participant of the protected cell;
- The happening of some event that is not the expiration of a fixed period of time;
- The expiration of a fixed period of time.⁴³

The act requires that the PCIC's articles of incorporation, bylaws, code of regulations, or other organizational documents prohibit a protected cell from owning shares or membership interests in the PCIC of which it is a part. However, such a document may allow a protected cell to own shares or membership interests in any other protected cell of the PCIC of which it is a part.⁴⁴

Naming requirements

Under the act, the name of a PCIC must include the words "Protected Cell Captive" or the abbreviation "PCC." A PCIC, under the act, is required to assign a distinctive name to each of its protected cells. The name must do all of the following:

- Identify the protected cell as being part of the PCIC;

⁴⁰ R.C. 3964.17(E).

⁴¹ R.C. 3964.17(F).

⁴² R.C. 3964.17(G).

⁴³ R.C. 3964.17(H).

⁴⁴ R.C. 3964.17(I).



- Distinguish the protected cell from any other protected cell of the PCIC;
- Include the words "Protected Cell" or the abbreviation "PC."⁴⁵

Provisions related to protected cells

Under the act, a protected cell has a legal identity separate from that of the PCIC of which it is a part. A protected cell may enter into an agreement with its PCIC or with another protected cell of the same PCIC.⁴⁶

PCIC assets and liabilities

The act requires a PCIC's assets to be either cell assets or general assets. The cell assets are the PCIC's assets held within or on behalf of the PCIC's protected cells. The general assets of a PCIC comprise the assets of the PCIC that are not cell assets.

The liabilities of a PCIC are to be accounted for in a similar manner. The act requires the PCIC's liabilities to be either cell liabilities or general liabilities. Cell liabilities are the PCIC's obligations attributable to a PCIC's protected cells. The general liabilities of a PCIC comprise the PCIC's obligations that are not cell liabilities.

The act requires that each protected cell be accounted for separately on the PCIC's books and records to reflect the financial condition and results of operations of the protected cell, including net income or loss, dividends or other distributions to participants, and such other factors as may be provided by participant contracts or required by the Superintendent.

Each PCIC is required to annually file with the Superintendent financial reports as required by the Superintendent, which must include financial statements detailing the financial experience of each protected cell and a statement regarding the adequacy of reserves kept to make full provision for the liabilities insured by each protected cell.⁴⁷

Duties of director and manager

An officer or manager of a PCIC is required to immediately notify the Superintendent if any protected cell of the PCIC, or the PCIC itself, is trending toward reserves that are inadequate, or if a protected cell or the PCIC becomes insolvent or is otherwise unable to meet its claims or other obligations. The duties of a director of a

⁴⁵ R.C. 3964.17(J) and (K).

⁴⁶ R.C. 3964.17(A)(1) and (L).

⁴⁷ R.C. 3964.17(M) to (P).

PCIC under the CIC Law are in addition to, and not in lieu of, those under other applicable law.⁴⁸

Shares of a PCIC

The act authorizes a PCIC to securitize interest in its protected cells and prescribes the procedure that a PCIC must follow when doing so. The act authorizes a PCIC to create and issue shares in one or more classes or series for one or more protected cells. The proceeds of the issue of shares for a specific protected cell are to be accounted for as part of the assets of that protected cell. The proceeds of the issue of shares that are *not* for a specific protected cell are to be included in the PCIC's general assets.

A PCIC may pay a dividend on protected cell shares of any class or series, regardless of whether a dividend is declared on any other class or series of shares of a protected cell or any other shares of the PCIC. The payment is subject to the dividend requirements discussed under "**Dividends**" above. Dividends may be paid on protected cell shares only from the cell assets of the protected cell that issued the shares and must otherwise be made in accordance with the rights of such shares.⁴⁹

Transfer of assets

The act establishes requirements in relation to the sale, exchange, or other transfer of assets of the protected cells of a PCIC. The act prohibits a PCIC from selling, exchanging, or other transferring of assets between or among any of its protected cells without the written consent of the participants of the protected cell and the Superintendent.

The act also prohibits the sale, exchange, transfer of assets, dividend, or distribution from a protected cell to any person without the Superintendent's prior written approval. The Superintendent is prohibited from approving such an action if it would result in the insolvency or impairment of the protected cell in question.⁵⁰

Ownership of and participation in protected cells

Under the act, owners of a PCIC are not by virtue of being owners of the PCIC, the owners or participants of any protected cell of the PCIC. Likewise, the participants of a protected cell are not automatically the owners of the PCIC in question or

⁴⁸ R.C. 3964.17(Q) and (R).

⁴⁹ R.C. 3964.171.

⁵⁰ R.C. 3964.172.



participants or owners of any other protected cell of the PCIC simply because they are participants in a protected cell.

Protected cell participant contracts are prohibited from taking effect without the Superintendent's prior written approval.

Under the act the addition of a new protected cell or the withdrawal or other transfer of any participant from any existing protected cell, constitutes a change in the strategic business plan of that protected cell, requiring the Superintendent's prior written approval.

The act requires a PCIC to keep a register of the participants of each of its protected cells in addition to keeping a register of its owners or participants.⁵¹

Liabilities and obligations of protected cells

The act establishes certain requirements in relation to the satisfaction of the liabilities or obligations of a protected cell. If a PCIC enters into a transaction with respect to a particular protected cell, or incurs a liability arising from an activity or asset of a particular protected cell, a claim by any person in connection with the transaction or liability extends only to the cell assets of that particular protected cell. If a PCIC enters into a transaction or incurs a liability in its own right and not in respect of the PCIC's protected cells, then a claim by any person or a liability in connection with this type of transaction extends only to the PCIC's general assets.⁵²

With certain exceptions, the act prohibits a PCIC from doing either of the following:

- Satisfying a liability attributable to a particular protected cell of the PCIC from the PCIC's general assets;
- Satisfying a liability, whether attributable to a particular protected cell or not, from the cell assets of another protected cell.

However, a PCIC is permitted to satisfy any liability attributable to a particular protected cell from the PCIC's general assets if both of the following conditions are met:

- The PCIC's articles of incorporation, bylaws, code of regulations, or similar organizational documents allow the company to satisfy the liability.

⁵¹ R.C. 3964.173.

⁵² R.C. 3964.174(A) and (B).



- Satisfying the liability has been approved by two-thirds of the participants of the cell, or if the protected cell has more than one class of participants, two-thirds of each class of participants, unless the organizational document of the PCIC requires a greater percentage.

However, prior to a PCIC satisfying any liability attributable to a particular protected cell from the PCIC's general assets, the directors who authorize the satisfaction of the liability must state as part of the authorization that, having inquired into the affairs and prospects of the PCIC, they have formed an opinion that includes both of the following:

- Immediately following the date on which the liability is proposed to be met by the general assets of the PCIC, the PCIC will be able to discharge its liabilities as they fall due.
- Having regard to the prospects of the PCIC, the intentions of the directors with respect to the management of the PCIC's business, and the amount and character of the financial resources that will, in their view, be available to the company, the PCIC will be able to continue its business and will be able to discharge its liabilities as they fall due for a period of one year immediately following the date on which the liability is proposed to be satisfied by the PCIC's general assets or until the PCIC is dissolved, whichever first occurs.⁵³

A PCIC may satisfy any liability, whether attributable to a particular protected cell or not, from the cell assets of another protected cell if the PCIC is permitted to do so by the articles of incorporation, bylaws, code of regulations, or other organizational documents, as well as the particular agreement, of the protected cell whose assets are proposed to be used to satisfy the liability.

Additionally, in order to satisfy the liability using the assets of a protected cell that is not responsible for the liability, prior to making that satisfaction the directors of the PCIC who authorize the satisfaction of the liability must make a full inquiry into the affairs and prospects of the protected cell whose assets are proposed to be used to satisfy the liability to determine that both of the following are true:

- Immediately following the date on which the liability is proposed to be met by the cell assets of the protected cell in question, the protected cell will be able to discharge its liabilities as they fall due.

⁵³ R.C. 3964.174(C) and (D).

- Having regard to the prospects of the protected cell, the intentions of the directors with respect to the management of the protected cell's business, and the amount and character of the financial resources that will in their view be available to the protected cell in question, the protected cell will be able to continue to carry on business and will be able to discharge its liabilities as they become due or until the protected cell is dissolved, whichever first occurs.

If both are true, the directors are to then make a written authorization stating the outcome of their inquiry and to submit the authorization to the Superintendent for approval prior to satisfying the liability.⁵⁴

A director who makes a statement related to the ability of a protected cell to meet its liabilities in order to facilitate the satisfaction of a liability unrelated to the protected cell in question without having reasonable grounds for the opinion expressed in the statement violates the CIC Law and may be removed by order of the Superintendent.⁵⁵

Penalties

If a PCIC is liable for any penalty, under the CIC Law or otherwise, due to an act or failure to act of a protected cell or an officer or director of a protected cell, then under the act both of the following apply:

- The PCIC must meet the penalty only from the cell assets of the protected cell responsible;
- The penalty is not enforceable in any way against any other assets of the PCIC or assets of any other protected cell.⁵⁶

Procedures

The act requires the directors of a PCIC to establish and maintain, or cause to be established or maintained, procedures to do all of the following:

- Segregate cell assets and liabilities separate and separately identifiable from general assets and liabilities;

⁵⁴ R.C. 3964.174(E).

⁵⁵ R.C. 3964.174(F).

⁵⁶ R.C. 3964.175.

- Segregate cell assets and liabilities of each protected cell separate and separately identifiable from the cell assets and liabilities of any other protected cell;
- Apportion or transfer, where relevant, assets and liabilities between protected cells or between protected cells and the general assets and liabilities of the PCIC.⁵⁷

Agreements and contracts

If a PCIC enters into an agreement with respect to a protected cell of the PCIC, the PCIC directors are required to ensure that both of the following conditions are met:

- The other party to the transaction knows, or ought reasonably to know, that the PCIC is acting with respect to a particular protected cell.
- The minutes of any meeting of directors held with regard to the agreement clearly record the fact that the PCIC was entering into the agreement with respect to the protected cell in question and that the other party to the agreement knows, or reasonably ought to know, this fact.

If a PCIC fails to comply with these requirements, then the PCIC directors are personally liable for the liabilities of the PCIC and the protected cell under the act, matter, deed, agreement, contract, instrument, or arrangement that was executed, regardless of any provisions to the contrary in the protected cell's organizational documents or in any contract with the PCIC or otherwise. Any provision in the organizational document of a CIC or any other contractual provision under which the PCIC may be liable that purports to indemnify the directors of a PCIC despite fraudulent, negligent, reckless, bad faith, or other conduct that would otherwise exempt them from indemnification is void.

However, the PCIC directors under the act have a right of indemnity, in the case of a matter on behalf of or attributable to a protected cell, against the assets of the protected cell, unless the directors were fraudulent, reckless, negligent, or acted in bad faith. The directors have a right of indemnity against the PCIC's general assets, in the case of a matter not on behalf of or attributable to a protected cell.

A court may relieve a director of all or part of the director's personal liability if the director can demonstrate either of the following to the court's satisfaction:

⁵⁷ R.C. 3964.176.

- The director was not aware of the circumstances giving rise to the liability and therefore was not fraudulent, reckless, or negligent and did not act in bad faith.
- The director expressly objected and exercised the rights available to the director, whether by way of voting power or otherwise, to try to prevent the circumstances giving rise to the liability.

If a court relieves a director of all or part of the director's personal liability, the court may order that the liability in question instead be met from the assets of the protected cell or the general assets of the PCIC as the court finds appropriate.

The act specifies that the duties of a director of a PCIC under the CIC Law are in addition to and not in lieu of those under any other applicable law.⁵⁸

Changing status

The act allows a CIC to amend its organizational document and become a PCIC. Such an amendment requires approval by both of the following:

- Holders of two-thirds of the outstanding shares or ownership interests of the CIC, unless a greater amount is required by the CIC's organizational document;
- All the creditors of the CIC.

If the consent of all the creditors of the CIC cannot be obtained, the amendment may be approved by the Superintendent if the Superintendent is satisfied that no creditor will be materially prejudiced by the amendment.

The act also allows a PCIC to amend its organizational document to cease to be a PCIC. Such an amendment requires approval by all of the following:

- The Superintendent;
- Holders of two-thirds of the outstanding shares or ownership interests of the PCIC, unless a greater amount is required by the PCIC's organizational document;
- Two-thirds of the participants of each protected cell;
- All the creditors of the PCIC and its protected cells.

⁵⁸ R.C. 3964.177.

If the consent of all the creditors of the CIC and its protected cells cannot be obtained, the amendment may be approved by the Superintendent upon being satisfied that no creditor will be materially prejudiced by the amendment.

In addition to any other requirement, if a CIC or PCIC seeks to change its status as described above, the company is required to deliver both of the following to the Superintendent:

- A copy of the amendment to its name;
- Evidence satisfactory to the Superintendent that all other appropriate requirements have been met.

If these documents are provided, the Superintendent must issue a license that is appropriate to the amended status of the company. If a company changes its status, the change of status takes effect when the Superintendent issues a new license.⁵⁹

Transfer of protected cells

The act allows for a protected cell to be transferred from one PCIC to another. The two companies between which a protected cell is being transferred are required to enter into a written agreement that sets forth the terms of the transfer.

The Superintendent is required to approve a transfer of a protected cell when all of the following are met:

- The boards of directors of each PCIC involved in the transfer have approved the transfer;
- The transfer agreement is approved by the Superintendent as an arrangement in accordance with the CIC Law;
- The transfer agreement is consented to by at least two thirds of the participants of the protected cell being transferred and all the creditors, if any, of that protected cell.

If the agreement of all the creditors of the cell cannot be obtained, the Superintendent may approve the transfer upon being satisfied that no creditor of the cell will be materially prejudiced by the transfer.

Within 30 days after the Superintendent approves a transfer agreement, the PCIC receiving the protected cell is required to deliver certain documents to the

⁵⁹ R.C. 3964.178.

Superintendent. The first of these is a copy of the executed transfer agreement. The second is a declaration signed by the directors of the PCIC transferring the protected cell stating that each director has reason to believe all of the following:

- The protected cell being transferred is able to discharge its liabilities as they become due;
- There are no creditors of the PCIC from which the cell is being transferred whose interests will be unfairly prejudiced by the transfer;
- The transfer agreement has been approved in accordance with the CIC Law.

If a PCIC fails to deliver these documents within the required 30-day period, the Superintendent may void the transfer.

The Superintendent also may void a transfer and may order the removal of any director who makes a declaration in order to facilitate a transfer without having the grounds to do so. Upon the fulfillment of the requirements related to a transfer, the Superintendent is required to do all of the following:

- Record the transfer of the protected cell;
- Issue to the protected cell a new license;
- Record that the protected cell has ceased to be a protected cell of the PCIC from which it was transferred.

Upon the issuance of the new license pursuant to a transfer, both of the following provisions apply:

- The transferred protected cell ceases to be a protected cell of the PCIC from which it was transferred;
- The protected cell becomes a protected cell of the PCIC to which it has been transferred.

Also, all of the following apply:

- All property and rights to which the protected cell was entitled immediately before the issue of the new license remain the property and rights of the protected cell;

- All liabilities, contracts, debts, and other obligations to which the protected cell was subject immediately before the issue of the new license, remain the liabilities, contracts, debts, and other obligations of the protected cell;
- All actions and other legal proceedings that were pending by or against a protected cell immediately before the issue of the new license may be continued by or against the protected cell.

The operation of the requirements described immediately above are not to be regarded as any of the following:

- A breach of contract or otherwise as a civil wrong;
- A breach of any contractual provision prohibiting, restricting, or regulating the assignment or transfer of rights or liabilities;
- Giving rise to any remedy by a party to a contract or other instrument as an event of default under any contract or other instrument or as causing or permitting the termination of any contract, other instrument, obligation, or relationship.

Except as otherwise provided, a protected cell is not to be transferred if the transfer would be inconsistent with the articles of incorporation, bylaws, code of regulations, or similar organizational document of the protected cell, the PCIC transferring the protected cell, or the PCIC to which the protected cell is to be transferred.⁶⁰

The act enables any insurance company organized under the Domestic Insurance Company Other Than Life Law, and any CIC that is not a PCIC, to become a protected cell of a PCIC if the change in status is approved by the Superintendent.

Also, a protected cell of a PCIC may apply to the Superintendent to be incorporated as an independent insurance company, including a CIC. The application must be approved by two-thirds of the participants of the protected cell or, if the cell has more than one class of participants, two-thirds of each class of participants, unless the organizational document of the protected cell requires a greater percentage. Any participant of a protected cell who objects to this sort of change in status may petition the Superintendent for an order to deny the application on the grounds that the incorporation, or the terms of the incorporation, is unfair to the participant. The petition

⁶⁰ R.C. 3964.179.

must be made within 30 days after an application for such a change in status has been made.

If a protected cell is licensed as an independent legal entity, then all of the following apply:

- All property and rights to which the protected cell was entitled immediately before its licensure as a new entity remain the property and rights of the new entity.
- The protected cell entity remains subject to all criminal and civil liabilities and all contracts, debts, and other obligations to which it was subject immediately before its licensure as a new entity.
- All contracts, debts, and other obligations of the protected cell remain the contracts, debts, and other obligations of the new entity.
- All actions and other legal proceedings that, immediately before the licensure of the protected cell as a new entity, were pending by or against the protected cell may be continued by or against the new entity.

Correspondingly, the operation of the requirements described immediately above must not be regarded as any of the following:

- A breach of contract;
- A breach of any contractual provision prohibiting, restricting, or regulating the assignment or transfer of rights or liabilities;
- Giving rise to any remedy by a party to a contract or other instrument as an event of default under the contract or other instrument or as causing or permitting the termination of any contract, other instrument, obligation, or relationship.⁶¹

Liquidation of PCICs and protected cells

If a PCIC with one or more protected cells is being liquidated, the PCIC may be considered as having no assets and no liabilities only if the PCIC continues to have no protected cells. In the course of liquidating a PCIC, each protected cell is required to be dealt with in one of the following ways:

- Transfer to another PCIC;

⁶¹ R.C. 3964.1710.

- Liquidation;
- Continuation as a separate legal entity or protected cell under the law of another jurisdiction;
- Incorporation, independent of the PCIC;
- Merge with another insurance company.⁶²

If a PCIC is being liquidated, the liquidation does not apply to any protected cell of the PCIC. If a protected cell of a PCIC is being liquidated, the liquidation does not apply to the PCIC in general or any other protected cell of the company.⁶³

A court, upon application of a PCIC that is being liquidated, may determine, in accordance with the CIC Law, if a liability of the PCIC is to be satisfied by its general assets, by the cell assets of a specific protected cell of the PCIC, or by a combination of those assets.⁶⁴

Regardless of any statutory provision or rule of law to the contrary, in the disposition of a PCIC, the liquidator must do both of the following:

- Deal with the PCIC's assets only in accordance with the procedures set out in the relevant CIC Law;
- Apply the PCIC's assets to those entitled to have recourse to them under the relevant CIC Law, in the discharge of the claims of creditors of the PCIC.⁶⁵

A petition for a liquidation or rehabilitation order with respect to a protected cell of a PCIC may be made by any of the following entities:

- The PCIC;
- A majority of the directors of the PCIC;
- Any creditor of that protected cell;
- The Superintendent.

⁶² R.C. 3964.18(A) and (B).

⁶³ R.C. 3964.18(C) and (D).

⁶⁴ R.C. 3964.18(E).

⁶⁵ R.C. 3964.18(F).

Notice of a petition to the court for a liquidation or rehabilitation order with respect to a protected cell of a PCIC is to be served upon all of the following entities:

- The PCIC;
- The Superintendent;
- Such other persons as the court may direct.

A court may make a liquidation or rehabilitation order with respect to a protected cell if, in relation to a PCIC, the court is satisfied that both of the following are met:

- The cell assets attributable to a particular protected cell of the PCIC and the PCIC's general assets, in those cases where creditors of the PCIC with respect to the protected cell are entitled to have recourse to the PCIC's general assets, are, or are likely to be, insufficient to discharge the claims of creditors with respect to that protected cell.
- An order would achieve an orderly closing or rehabilitation of a protected cell, or the distribution of the cell assets to those who have recourse to them.

A liquidation or rehabilitation order may be made with respect to one or more protected cells. Also, a liquidation or rehabilitation order is required to direct that the business and cell assets of, or attributable to, a protected cell be managed by a liquidator or rehabilitator specified in the order for the purpose of accomplishing both of the following:

- The orderly closing or rehabilitation of the business of, or attributable to, the protected cell;
- The distribution of the cell assets, or assets attributable to the protected cell, to those having recourse thereto.⁶⁶

All of the following apply to the liquidator or rehabilitator of a protected cell:

- The liquidator or rehabilitator has all the functions and powers of the directors responsible for the business and cell assets of, or attributable to, the protected cell.

⁶⁶ R.C. 3964.18(G) and (H).

- The liquidator or rehabilitator may at any time apply to the court for directions as to the extent or exercise of any function or power, the liquidation or rehabilitation order to be discharged or varied, or any other order as to any matter occurring during the course of the liquidation or rehabilitation.
- The liquidator or rehabilitator acts as the agent of the protected cell and the PCIC and does not incur personal liability except to the extent that the liquidator or rehabilitator acts fraudulently, recklessly, negligently, or in bad faith, except that where the Superintendent is appointed liquidator or rehabilitator of a protected cell.
- The liquidator or rehabilitator must administer the assets pursuant to these requirements regarding liquidation and the Insurers Supervision, Rehabilitation, and Liquidation Law.

If the Superintendent is appointed liquidator, the laws relating to the responsibilities and duties of the Superintendent when carrying out a liquidation apply to the Superintendent, any deputy liquidator, any employee of the Department of Insurance, any employee appointed by the Superintendent as liquidator, and any employee who serves under the liquidator.⁶⁷

Upon the filing of a petition for a liquidation or rehabilitation order, and during the period of operation of liquidation or rehabilitation, both of the following apply:

- No proceedings are to be instituted or continued by or against the PCIC or the protected cell in respect of which the liquidation or rehabilitation order was made;
- No action is to be taken to enforce any security, nor any action be taken in the execution of a legal process with respect to the business or cell assets of, or attributable to, the protected cell with respect to which the liquidation or rehabilitation order was made, except by leave of the court.⁶⁸

Additionally, under the act during the period of operation of a liquidation or rehabilitation the functions and powers of the directors cease with respect to the business of, or attributable to, any protected cell or cell assets for which the order was made. The liquidator or rehabilitator of the protected cell is entitled to be present at all

⁶⁷ R.C. 3964.18(I).

⁶⁸ R.C. 3964.18(J).

meetings of the PCIC and protected cell in question and to vote at such meetings as if the liquidator or rehabilitator were a director of the PCIC. The act requires the liquidator's or rehabilitator's voting authority to include matters concerning the PCIC's general assets, unless there are no creditors that are entitled to have recourse to the PCIC's general assets.⁶⁹

A court may not discharge a liquidation or rehabilitation order issued unless it appears to the court that the purpose for which the order was made has been achieved, substantially achieved, or is incapable of being achieved. The court, on hearing a petition for the discharge or variation of a liquidation or rehabilitation order, may make any interim order, discharge the order, or continue the liquidation or rehabilitation unchanged. Upon the court issuing an order discharging a liquidation or rehabilitation order for a protected cell on the ground that the purpose for which the order was made had been achieved or substantially achieved, the court may direct that any payment made by the liquidator or rehabilitator to any creditor of the PCIC, with respect to that protected cell, is considered full satisfaction of the liabilities of the PCIC to the creditor with respect to the protected cell. However, such an order or discharge must not be considered a bar to a creditor's claims against the PCIC arising out of the PCIC's general administrative, regulatory, or marketing activities on behalf of the captive cell in question.⁷⁰

Special purpose financial captive insurance companies

The act provides for the operation of SPFCs and SPFC contracts.

Reserves and alternative reserves

The act requires SPFCs to adhere to the general insurance laws related to reserve valuation, as well as rehabilitation and liquidation, but also makes special provision for SPFCs related to these topics.⁷¹

The act requires SPFCs to follow NAIC's accounting practices and procedures manual, but enables them to use an alternative reserve basis upon authorization by the Superintendent. The act requires the Superintendent to adopt rules that define an acceptable alternative reserve bases.⁷² These rules must be adopted prior to an SPFC

⁶⁹ R.C. 3964.18(K).

⁷⁰ R.C. 3964.18(L).

⁷¹ R.C. 3964.07(G).

⁷² R.C. 3964.03(E).

using such an alternative reserve basis and must ensure that the resulting reserves meet all of the following conditions:

- Quantify the benefits and guarantees, and the funding, associated with the SPFC contracts and their risks at a level of conservatism that reflects conditions that include unfavorable events that have a reasonable probability of occurring during the lifetime of the contracts. For policies or contracts with significant tail risk, the alternative reserve basis must reflect conditions appropriately adverse to quantify the tail risk.
- Incorporate assumptions, risk analysis methods, and financial models and management techniques that are consistent with, but not necessarily identical to, those utilized within the company's overall risk assessment process, while recognizing potential differences in financial reporting structures and any prescribed assumptions or methods;
- Provide margins for uncertainty including adverse deviation and estimation error, such that the greater the uncertainty the larger the margin and resulting reserve.

The act specifies that an alternative reserve basis approved by the Superintendent is to be treated as a public document after the date the alternative reserve basis has been approved, regardless of the application of the Uniform Trade Secrets Act.⁷³

An SPFC must submit to the Superintendent a request for an alternative reserve basis in writing. The request must be affirmed by the company's appointed actuary and must include, at a minimum, the following information:

- The reserves that would be required based on NAIC's accounting practices and procedures manual and the reserves based on the proposed alternative method for calculation and the difference between these two calculations;
- A detailed analysis of the proposed alternative method, explaining why the use of an alternative basis for calculating the reserve is appropriate;
- All assumptions utilized within the proposed alternative method, together with the source of the assumptions, as well as information, satisfactory to the Superintendent, supporting the appropriateness of the assumptions

⁷³ R.C. 3964.03(E)(2).

and analysis and identifying the assumptions that result in the greatest variability in the reserve and how that analysis was used in setting those assumptions;

- A detailed overview of the corporate governance and oversight of the actuarial valuation function;
- Any other information the Superintendent may require to assess the proposed alternative method for approval or disapproval.⁷⁴

The act allows the Superintendent to secure the affirmation of an independent qualified actuary in support of any alternative reserve basis or to assist the Superintendent in the review of a proposed alternative reserve basis. Such an independent actuary would be hired at the expense of the SPFC.⁷⁵

If the Superintendent approves the use of an alternative reserve basis for calculating a reserve, the SPFC and the ceding insurer are each required to include a note in its financial statements disclosing the use of a basis other than NAIC's accounting practices and procedures manual and the difference between the reserve amount determined under the alternative basis and the reserve amount that would have been determined had the company utilized NAIC's accounting practices and procedures manual.⁷⁶

Total capital and surplus requirement

The act requires the Superintendent to establish an acceptable total capital and surplus requirement for each insurance company that cedes risks and obligations to an SPFC. The total capital and surplus requirement must be met at the time the SPFC applies for a license to do the business of captive insurance. The total capital and surplus requirement is to be determined in accordance with a minimum required total capital and surplus methodology that meets both of the following requirements:

- Is consistent with current risk-based capital principles;
- Takes into account all material risks and obligations, as well as the assets, of the insurance company.

⁷⁴ R.C. 3964.03(E)(3).

⁷⁵ R.C. 3964.03(E)(4).

⁷⁶ R.C. 3964.03(E)(5).



An insurance company ceding risks and obligations to an SPFC is required by the act to fully disclose all material risks and obligations, as well as its assets and all affiliated CIC risks and the ceding insurance company must advise the Superintendent whenever there is a material change to such risks, obligations, or assets.⁷⁷

General SPFC requirements

The act prescribes general requirements for SPFCs and their operation and provides that any particular requirement may be waived for a specific SPFC if the Superintendent finds the requirement to be inappropriate for that SPFC and if the SPFC meets the related criteria adopted in rules.⁷⁸

The act prohibits an SPFC from issuing a contract for assumption of risk or indemnification of loss other than an SPFC contract. However, the act enables an SPFC company to cede a risk assumed through an SPFC contract to a third-party reinsurer through the purchase of reinsurance or retrocession protection if approved by the Superintendent.⁷⁹

The act authorizes an SPFC to enter into contracts and conduct other commercial activities related or incidental to and necessary to fulfill the purposes of SPFC contracts, insurance securitization, and the SPFC Law. These activities may include:

- Entering into SPFC contracts;
- Issuing securities of the SPFC in accordance with applicable Securities Law;
- Complying with the terms of SPFC contracts or securities;
- Entering into trust, swap, tax, administration, reimbursement, or fiscal agent transactions;
- Complying with trust indenture, reinsurance, retrocession, and other agreements necessary or incidental to effectuate an insurance securitization in compliance with the SPFC Law and in the required plan of operation.⁸⁰

⁷⁷ R.C. 3964.03(E)(6).

⁷⁸ R.C. 3964.19(B).

⁷⁹ R.C. 3964.19(C)(1).

⁸⁰ R.C. 3964.419(C)(2).

Issuance of securities

The act authorizes an SPFC to issue securities, subject to and in accordance with applicable law, its required plan of operation, and its organizational documents. 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. However, the act stipulates that 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.⁸¹

The act authorizes an SPFC to enter into asset management agreements, including swap agreements, guaranteed investment contracts, or other transactions. Such transactions are to be entered into with the objective of reducing timing differences in the funding of upfront, or ongoing, transaction expenses, or managing asset, credit, prepayment, or interest rate risk of the investments of the SPFC to ensure that the SPFC's investments are sufficient to assure payment or repayment of the securities and related interest or principal payments or the obligations required under an SPFC contract or for any other purpose approved by the Superintendent. However, the act stipulates that such an asset management agreement is not to be entered into by an SPFC unless it has been approved by the Superintendent.⁸²

Secondary SPFC contracts

If an SPFC has entered into an SPFC contract with a counterparty and the SPFC has conducted an insurance securitization that is made up, in part or in whole, of the risks associated with that contract, then the act enables the SPFC to enter into a second contract with the counterparty under which the counterparty is held liable for those losses or other obligations that were securitized. Such obligations may be funded and secured with assets held in trust for the benefit of the counterparty pursuant to such secondary agreements and must be invested according to the Standard Investment Law.⁸³

A secondary SPFC contract entered into must contain all of the following:

- A requirement that the SPFC do either of the following:

⁸¹ R.C. 3964.19(D).

⁸² R.C. 3964.19(E).

⁸³ R.C. 3964.19(F).

- 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 and the security holders;
- Establish such other methods of security acceptable to the Superintendent.
- A stipulation that assets deposited in the trust account will be valued in accordance with their current fair-market value and will consist only of investments permitted under the Standard Investment Law;
- A requirement that, if a trust arrangement is used, then the SPFC, before depositing assets with the trustee, must execute assignments, execute endorsements in blank, or take such actions as are necessary to transfer legal title to the trustee of all assets requiring assignment, 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;
- A stipulation that, if a trust arrangement is used, the SPFC and the counterparty agree that the assets in the trust account established pursuant to the contract meet both of the following:
 - May be withdrawn by the counterparty, or the trustee on its behalf, at any time, but only in accordance with the terms of the contract;
 - Must be utilized and applied by the counterparty, without diminution because of insolvency on the part of the counterparty or the SPFC, only for the purposes set forth in the credit for Ohio Reinsurance Laws and rules. In such a situation, "counterparty" includes any successor of the counterparty by operation of law, including any liquidator, rehabilitator, or receiver of the counterparty.⁸⁴

A secondary 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 if such provisions comply with the credit for Ohio Reinsurance Laws and rules.⁸⁵

⁸⁴ R.C. 3964.19(H).

⁸⁵ R.C. 3964.19(I).

A secondary SPFC contract, meeting the act's requirements, is to be granted credit for reinsurance treatment or otherwise qualify 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 if both of the following apply:

- The assets are held or invested in one or more of the forms allowed under the Standard Investment Law.
- The agreement is in compliance with laws prescribing the terms of a reinsurance agreement.

Also, the act stipulates that a secondary contract is to be granted credit or otherwise qualify as an asset or reduction from liability, for the benefit of the counterparty under the SPFC contract, only to the extent of the value of the assets held in trust for, or letters of credit, that meet the requirements for the investment of the assets of a CIC, or as approved by the Superintendent.⁸⁶

Other agreements

The act also authorizes an SPFC to enter into agreements with affiliated companies and third parties and conduct business necessary to fulfill its obligations and administrative duties incidental to an insurance securitization and a secondary 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.⁸⁷

SPFC investments

The act authorizes the SPFC to make investments that meet the qualifications set forth in the Standard Insurance Law, but the act stipulates that these investments are not subject to any limitations contained in that Law as to invested amounts. However, the act authorizes the Superintendent to prohibit or limit any investment that threatens the solvency or liquidity of an SPFC or that is not made in accordance with the approved plan of operation.⁸⁸

⁸⁶ R.C. 3964.19(J).

⁸⁷ R.C. 3946.19(G).

⁸⁸ R.C. 3964.19(K).

Rehabilitation and liquidation of SPFCs

The act authorizes the Superintendent to apply to the Court of Common Pleas of Franklin County for an order authorizing the Superintendent to rehabilitate or liquidate an SPFC domiciled in Ohio on one or both of the following grounds:

- 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.
- 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 act's provisions.⁸⁹

The act stipulates that a court may give such an order only if, after notice and a hearing, the Superintendent establishes that relief must be granted. Upon any order of rehabilitation or liquidation of an SPFC, the receiver must manage the assets and liabilities of the SPFC in a confidential manner.⁹⁰

With respect to amounts recoverable under an SPFC contract, the amount recoverable by the receiver is not to be reduced or diminished as a result of the entry of an order of conservation, rehabilitation, or liquidation with respect to the counterparty, notwithstanding any provision in the contracts or other documentation governing an SPFC insurance securitization.⁹¹

An application or petition, or a temporary restraining order or injunction issued pursuant to with respect to the Insurers Supervision, Rehabilitation, and Liquidation Law with regard to a counterparty, does not prohibit the transaction of 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.⁹²

The act stipulates that 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

⁸⁹ R.C. 3964.191(A).

⁹⁰ R.C. 3964.191(B) and (C) and 3964.193.

⁹¹ R.C. 3964.191(D).

⁹² R.C. 3964.191(E).



made pursuant to an SPFC security or SPFC contract, and also does not prohibit the SPFC from taking any action required to make such payments.⁹³

Both of the following are to apply with regard to receivers:

- A receiver of a counterparty may not void a nonfraudulent transfer by a counterparty to an SPFC of money or other property made pursuant to an SPFC contract.
- A receiver of an SPFC may not void a nonfraudulent 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.⁹⁴

With the exception of the fulfillment of the obligations under an SPFC contract, the assets of an SPFC, including assets held in trust, are not to be consolidated with or included in the estate of a counterparty in any delinquency proceeding against the counterparty, pursuant to the act's provisions, for any purpose, including distribution to creditors of the counterparty.⁹⁵

Confidentiality of documents related SPFCs

The act requires that documents and information submitted by a company pursuant to SPFC Law to the Superintendent are not subject to public records requests, are confidential, and may not be disclosed by the Superintendent or any employee of the Department of Insurance without the written consent of the company. Such documents and information may be discoverable in a civil action in which the company filing the material is a party upon a finding by a court of competent jurisdiction that the information sought is relevant and necessary to the case, and the information sought is unavailable from other, nonconfidential sources. The Superintendent may, at the Superintendent's sole discretion, share documents that are confidential with the chief deputy rehabilitator, the chief deputy liquidator, other deputy rehabilitators and liquidators, and any other person employed by, or acting on behalf of, the Superintendent pursuant to laws related to the Superintendent's responsibilities, reserve valuation, or rehabilitation and liquidation, with other local, state, federal, and international regulatory and law enforcement agencies, with local, state, and federal prosecutors, and with NAIC and its affiliates and subsidiaries provided that the

⁹³ R.C. 3964.191(F).

⁹⁴ R.C. 3964.191(G).

⁹⁵ R.C. 3964.191(H).



recipient agrees to maintain the confidential or privileged status of the confidential or privileged work paper and has authority to do so.⁹⁶

SPFCs and credit for reinsurance

The act authorizes a counterparty to take credit for reinsurance ceded to an SPFC that is a subsidiary or affiliate of the counterparty if assets at least equal to the reserves are held directly by the ceding counterparty or in trust on behalf of the ceding counterparty, as security for payment of the obligations under the reinsurance contract with the reinsuring SPFC. These valuations must be made using either NAIC's accounting practices and procedures manual or an alternative basis approved by the Superintendent. Such funds must be held in compliance with the standard requirements governing taking credit for reinsurance ceded.⁹⁷

An Ohio domiciled counterparty in recording its investment in an SPFC domiciled in Ohio, is required by the act to value the investment using the SPFC's underlying audited statutory equity reflecting the reserves established either NAIC's accounting practices and procedures manual or an alternative basis approved by the Superintendent.⁹⁸

The act specifies that any change in surplus that may be recognized by any Ohio domiciled ceding counterparty may be recognized in such ceding counterparty's calculation of its investment in a United States insurance subsidiary, controlled and affiliated entity investment, or any of its Ohio domiciled parents' calculations of their investment in a United States insurance subsidiary, controlled, and affiliated entities.⁹⁹

Rules

The act authorizes the Superintendent to adopt rules in accordance with Ohio Administrative Procedure Act as are reasonably necessary for the implementation and operation of the CIC Law.¹⁰⁰

⁹⁶ R.C. 3964.193.

⁹⁷ R.C. 3964.194(A) and (B).

⁹⁸ R.C. 3964.194(C).

⁹⁹ R.C. 3964.194(D).

¹⁰⁰ R.C. 3964.21.



Definitions

CIC definitions

The act also defines the following terms for use in the proposed Ohio CIC Law:

Affiliated company means any company in the same corporate system as a parent, or a member organization by virtue of common ownership, control, operation, or management.

Department means the Department of Insurance.

Parent means a corporation, limited liability company, partnership, other entity, or individual that directly or indirectly owns, controls, or holds, with power to vote, more than 50% of either of the securities of a CIC organized as a stock corporation or membership interests of a CIC organized as a nonprofit corporation or limited liability company.

Participant means an individual, corporation, partnership, limited liability company, and their affiliated entities that insure or reinsure with a protected cell. "Participant" includes an insurance agent licensed in Ohio that accepts a stated percentage of risk on a pro rata basis within a defined category of business underwritten by a licensed insurance company that is domiciled in Ohio and that is affiliated with a PCIC.

Participant contract means a contract by which a PCIC insures or reinsures the risks of a participant.

Protected cell means a CIC that is a part of another CIC, but that has a separate legal identity from the CIC of which it is a part.

Qualified actuary means an individual who is a member of the American Academy of Actuaries and who is qualified to provide such certifications as described in the United States Qualifications Standards promulgated by the American Academy of Actuaries pursuant to the Code of Professional Conduct adopted by the Academy, the Society of Actuaries, the American Society of Pension Professionals and Actuaries, the Casualty Actuarial Society, and the Conference of Consulting Actuaries.

Superintendent means the Superintendent of the Department of Insurance.¹⁰¹

¹⁰¹ R.C. 3964.01 and 3964.17.



SPFC definitions

The act makes the following definitions with regard to SPFCs.

Counterparty means an SPFC's parent or an affiliated entity that is an insurer domiciled in Ohio that cedes life insurance risks to the SPFC pursuant to a special purpose financial captive insurance company contract.

Insolvency or **insolvent** means that the SPFC is unable to pay its obligations when they are due, unless those obligations are the subject of a bona fide dispute.

Insurance securitization means a package of related risk transfer instruments, capital market offerings, and facilitating administrative agreements, for which an SPFC obtains proceeds, either directly or indirectly, through the issuance of securities, where the investment risk to the holders of the securities is contingent upon the obligations of the SPFC to the counterparty under the special purpose financial captive insurance company contract, in accordance with the transaction terms, and pursuant to law. This includes situations where the securitization proceeds are held in trust to secure the obligations of the SPFC under one or more special purpose financial captive insurance company contracts.

Organizational document means the SPFC's articles of incorporation, bylaws, code of regulations, operating agreement, or other foundational documents that establish the SPFC as a legal entity.

Securities means debt obligations, equity investments, surplus certificates, surplus notes, funding agreements, derivatives, and other legal forms of financial instruments.

Special purpose financial captive insurance company contract means a contract between an SPFC and a 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.

Special purpose financial captive insurance company securities means the securities issued by an SPFC.¹⁰²

¹⁰² R.C. 3964.19(A).

HISTORY

ACTION	DATE
Introduced	04-08-13
Reported, H. Insurance	05-15-13
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