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A BILL FOR AN ACT

To enact a set of new sections to title 37 of the Code of the Federated States of Micronesia to establish a Captive Insurance Law for the Federated States of Micronesia, and for other purposes.

BE IT ENACTED BY THE CONGRESS OF THE FEDERATED STATES OF MICRONESIA:

Section 1. Purpose. The purpose of the proposed bill is to create a scheme for the introduction and regulation of a captive insurance industry in the Federated States of Micronesia. The captive insurance industry will complement current and future regulations in the Federated States of Micronesia, such as insurance and income tax for corporations. The captive insurance industry in the Federated States of Micronesia will be regulated by the Insurance Commissioner pursuant to policies established by the Insurance Board.

Section 2. The Code of the Federated States of Micronesia, as amended, is hereby further amended by enacting a new Chapter 10 to title 37 entitled "The Captive Insurance Act of 2006".

Section 3. The Code of the Federated States of Micronesia, as amended, is hereby further amended by enacting a new section 1001 of title 37 to read as follows:

"Section 1001. Definitions. As used in this chapter, unless the context otherwise requires:

(1) "Affiliated Company" means any company in the same corporate system as a parent or member organization by virtue of common ownership, control, operation, or

management.

(2) "Association" means any legal association of individuals, corporations, partnerships, associations, or other entities that own, control, or hold with power to vote all of the outstanding voting securities of the

captive insurance company.

(3) "Captive Insurance Company" means an insurance company formed or licensed under this chapter.

(4) "Commissioner" means the individual appointed as the Insurance Commissioner under this title.

(5) "Domestic captive insurance company" means a captive insurance company organized under the laws of the Federated States of Micronesia.

(6) "Foreign captive insurance company" means a captive insurance company organized under the laws of a jurisdiction other than the Federated States of Micronesia.

(7) "Insurance Manager" means an individual or company which provides insurance expertise to or for captive insurance companies and which has in its bona fide employment a person who is a current member in good standing of the applicable professional body or of some other professional insurance association recognized by the Commissioner for the purpose of providing insurance expertise and has been approved by the Commissioner.

(8) "Member Organization" means any individual, corporation, partnership, association, or other entity that belongs to an association.

(9) "Parent" means a corporation, partnership, other entity, or individual that directly or indirectly owns, controls, or holds with power to vote more than 50% of the outstanding voting securities of a captive insurance company.

(10) "Principal Representative" means any individual or corporation registered and in good standing with the Federated States of Micronesia, operating in or from within the Federated States of Micronesia who, not being a bona fide employee of the captive insurance company, maintains for the captive insurance company full and proper records of the business activities of the captive insurance company."

(11) "Unaffiliated business" means any company:

(a) That is not in the corporate system of a parent and affiliated companies;

(b) That has an existing contractual relationship with a parent or affiliated company; and

(c) Whose risks are managed by a captive insurance company in accordance with this chapter.

Section 4. The Code of the Federated States of Micronesia, as amended, is hereby further amended by enacting a new section 1002 of title 37 to read as follows:

"Section 1002. Determination of class of captive insurance companies. Each captive insurance company formed under this chapter shall be designated and licensed as one of the following classes of captive insurance companies:

(1) A class 1 company shall be a captive insurance company that insures the risks of its parent and affiliated companies or associations;

(2) Additional classes of captive insurance companies may, from time to time, be created by amendment of this chapter.

Section 5. The Code of the Federated States of Micronesia, as amended, is hereby further amended by enacting a new section 1003 of title 37 to read as follows:

"Section 1003. Captive Insurance Company Licensing.

(1) Captive insurance companies shall be licensed in accordance with Chapter 3 of this Title.

(2) In considering whether to license a captive insurance company under this chapter, the Commissioner and Insurance Board shall consider the following factors:

(a) Principal office and principal representative:

(i) The captive insurance company shall maintain a principal place of business within the Federated States of Micronesia; and

(ii) appoint a principal representative that shall be approved by the Commissioner;

iii) hold an annual board of directors meeting in the Federated States of Micronesia. In meeting the quorum requirements for this annual board meeting, only the principal representative is required to be physically present in the Federated States of Micronesia. The remainder of the quorum may be present via telephone;

(iv) The captive insurance company shall maintain in its principal office accurate documents in English of the insurance business and accounting for examination by the Commissioner.

(b) Application documents: the captive insurance company shall file the following documents with its application for an insurance license with the Commissioner and Insurance Board:

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

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

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

(iv) the adequacy of the loss prevention programs of its insureds; and

(v) such other factors deemed relevant by the Commissioner in ascertaining whether the proposed captive insurance company will be able to meet its policy obligations.

(3) Each captive insurance company shall pay to the Insurance Board a nonrefundable fee of \$500 for examining, investigating, and processing its application for licensing, and the Commissioner is authorized to retain legal, financial and examination services, the reasonable cost of which may be charged against the applicant. In addition, each captive insurance company shall pay a license fee for the year of registration and a renewal fee each year thereafter of \$500.

(4) If the Insurance Board is satisfied that the documents filed by the captive insurance company comply with this title, the Commissioner may grant a license authorizing it to transact insurance business in the Federated States of Micronesia until March 31, of the year of application at which time the license may be renewed."

Section 6. The Code of the Federated States of Micronesia, as amended, is hereby further amended by enacting a new section 1004 of title 37 to read as follows:

"Section 1004. Confidential treatment.

(1) No captive insurance company, or person who, in his past or current position with a captive insurance company has acquired information concerning an insured entity shall disclose such information except:

(a) to an affiliated entity in the usual course of business;

(b) with the written authorization of the policy owner or his legal personal representative;

(c) for the purpose of performing his duties under this Act;

(d) when required to do so by a court in the Federated States of Micronesia;

(e) in order to comply with the provisions of this Act or any other law.

(2) No member of the Insurance Board, the Insurance Commissioner or any employee or agent of the Insurance Board or Commissioner shall disclose to any person any information relating to any captive insurance company that he has acquired in the performance of his duties under this Act except:

(a) for the purpose of the performance of his duties or the exercise of his functions;

(b) when lawfully required to so by any court, or in proceedings for an offense against this title;

(c) with the consent of the person to whom the

information relates;

(d) to the extent that the information is available under any other law or in public documents;

(e) in aggregated or summary form, in such a manner as to prevent any information disclosed from being identified by any person as being related to a particular person, including for statistical purposes;

(f) in confidence to a supervisory authority in the Federated States of Micronesia or any other country so long as the Insurance Board is reasonably satisfied the recipient of the information will maintain confidentiality;

(g) in confidence to advisors from the private sector, international organizations or foreign governments for the purpose of improving the regulatory system and performance of the Insurance Board, so long as the Insurance Board is reasonably satisfied the recipient of the information will maintain confidentiality.

Section 7. The Code of the Federated States of Micronesia, as amended, is hereby further amended by enacting a new section 1005 of title 37 to read as follows:

"Section 1005. Names of Companies. In addition to the requirements of chapter 5 of this title, no captive insurance company shall adopt a name that is the same, deceptively similar, or likely to be confused with or mistaken for any other existing business name registered in the Federated States of Micronesia."

Section 8. The Code of the Federated States of Micronesia, as amended, is hereby further amended by enacting a new section 1006 of title 37 to read as follows:

"Section 1006. Redomestication; approval as domestic captive insurance company. Any foreign captive insurance company may become a domestic captive insurance company by meeting the following requirements:

(1) Compliance with all of the requirements relating to the registration and licensing of a captive insurance

company as stated in this title, and any additional requirements that the Commissioner or Insurance Board may require;

(2) The articles of incorporation or other organizational document shall be amended in compliance with the laws of the Federated States of Micronesia and restated in its entirety before submission to the Commissioner and Insurance Board. Before the amended and restated articles of incorporation and other organizational documents are transmitted to the National Registrar of Corporations, the redomesticating captive insurance company shall petition the Commissioner and Insurance Board to issue a certificate setting forth the Insurance Board's finding that the redomestication and maintenance of the captive insurance company shall promote the general good of the Federated States of Micronesia. In arriving at the finding, the Commissioner and Insurance Board shall consider:

(a) The character, reputation, financial standing, and purposes of the foreign captive insurance company;

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

(c) Any other aspects as the Commissioner and Insurance Board deem advisable;

(3) The following shall be transmitted to the Registrar of Corporations for filing:

(a) Articles of redomestication;

(b) Certificate issued by the Commissioner;

(c) Certificate of good standing duly authenticated by the proper officer of the country under the laws of which the foreign captive insurance company is incorporated; provided that the certificate shall be dated not earlier than forty-five days prior to the filing of the articles of redomestication; and provided

further that if the certificate of good standing is in a foreign language, a translation under oath of the translator shall accompany the certificate;

(d) Amendments to the articles of incorporation or other organizational document in compliance with the laws of the Federated States of Micronesia; and

(e) Restatement of the articles of incorporation or other organizational document in its entirety;

(4) The articles of redomestication shall set forth the following:

(a) Name of the corporation;

(b) Date of incorporation and country of incorporation;

(c) Street address of the principal office in the Federated States of Micronesia;

(d) Name of the proposed principal representative;

(e) Names and titles of the officers and directors of the corporation;

(f) A statement that the corporation is moving its domicile from its present country to the Federated States of Micronesia;

(g) A statement that redomestication will occur upon filing the articles of redomestication and that the corporation shall be subject to the laws of the Federated States of Micronesia;

(h) A statement that copies of the articles of incorporation or other organizational documents and any amendments certified by the proper officer of the country under the laws of which the corporation is incorporated are attached; provided that if any of these documents are in a foreign language, a translation under oath of the translator shall accompany these documents; and

(i) Such other documents as may be required by this title or title 36 of the Code of the Federated States of Micronesia and regulations in force pursuant to

those titles.

(5) The domestic captive insurance company shall be entitled to the necessary or appropriate certificates and licenses to do business in the Federated States of Micronesia and shall be subject to the authority and jurisdiction of the Federated States of Micronesia. No captive insurance company redomesticating into the Federated States of Micronesia need merge, consolidate, transfer assets, or otherwise engage in any other reorganization, other than as specified in this section.

(6) Upon redomestication in accordance with this section, the foreign captive insurance company shall become a domestic captive insurance company organized under the laws of the Federated States of Micronesia and shall have all the rights, privileges, immunities, and powers and be subject to all applicable laws, duties, and liabilities of a domestic captive insurance company of the same type. The domestic captive insurance company shall possess all rights that it had prior to the redomestication to the extent permitted by the laws of the Federated States of Micronesia and shall be responsible and liable for all the liabilities and obligations that it was subject to prior to the redomestication. All outstanding policies of the captive insurance company shall remain in full force and effect."

Section 9. The Code of the Federated States of Micronesia, as amended, is hereby further amended by enacting a new section 1007 of title 37 to read as follows:

"Section 1007. Minimum Capital and Surplus Requirements:

(1) No captive insurance company shall be registered and issued a license unless it shall possess and thereafter maintain unimpaired paid-in capital and surplus of:

(a) In the case of a class 1 captive insurance company, not less than US\$100,000

(b) In the case of a class 2 captive insurance company, not less than US\$100,000

(2) The Insurance Board may prescribe additional capital and surplus based upon the type, volume, and nature of insurance business transacted.

(3) Capital and surplus may be in the form of any combination of the following:

(a) Cash, or

(b) letter of credit, or

(c) investments pursuant to section 1013 of this chapter,

(d) or any other security deemed appropriate by the Insurance Board."

Section 10. The Code of the Federated States of Micronesia, as amended, is hereby further amended by enacting a new section 1008 of title 37 to read as follows:

Section 1008. Dividends: No captive insurance company may pay a dividend out of, or other distribution with respect to, capital or surplus without the prior approval of the Commissioner and Insurance Board. A captive insurance company may submit to the Commissioner and Insurance Board for approval, an ongoing plan for the payment of dividends or other distributions which will take into account the retention at the time of each payment, and capital or surplus in excess of amounts specified by, or determined in accordance with formulas approved by the Commissioner and Insurance Board."

Section 11. The Code of the Federated States of Micronesia, as amended, is hereby further amended by enacting a new section 1009 of title 37 to read as follows:

"Section 1009. Formation of Captive Insurance Companies: Captive insurance companies shall be formed pursuant to the requirements of title 36 of the Code of the Federated States of Micronesia and National Corporation's Regulations in force in the Federated States of Micronesia.

Section 12. The Code of the Federated States of Micronesia, as amended, is hereby further amended by enacting a new section 1010 of title 37 to read as follows:

“Section 1010. Reports and Statements:

(1) Captive insurance companies shall not be required to make any annual report or filings except as provided in this chapter.

(2) Captive insurance companies shall submit to the Commissioner and Insurance Board the following within three months of the companies fiscal year-end:

(a) A report of its financial condition verified by oath of two of its executive officers;

(b) Audited financial statements prepared according to generally accepted accounting principles or international accounting standards, unless the Commissioner and Insurance Board approves any appropriate or necessary modifications or changes thereof required or approved or accepted by the Commissioner and Insurance Board for the type of insurance and kinds of insurers to be reported upon, and as supplemented by additional information required by the Commissioner and Insurance Board. The audited financial statements shall be completed by a person approved by the Commissioner and Insurance Board who qualifies as an accountant by examination of one of the Institutes of Chartered Accountants, or Japanese Institute of Certified Public Accountants, or American Institute of Certified Public Accountants, or other qualified accountant as recognized by the Commissioner and Insurance Board;

(c) Opinion of loss reserve specialist, regarding reserves for the insurance business underwritten by the captive insurance company. The opinion of loss reserves shall be completed by a person approved by the Commissioner and Insurance Board who is a member of the Institute of Actuaries, or the Institute of Actuaries of Japan, or the American Academy of Actuaries, or other

qualified loss reserve specialist recognized by the Commissioner and Insurance Board;

(d) Any additional reports as prescribed and requested by the Commissioner and Insurance Board."

Section 13. The Code of the Federated States of Micronesia, as amended, is hereby further amended by enacting a new section 1011 of title 37 to read as follows:

"Section 1011. Examinations and Investigations:

(1) At least once in three years, and whenever the Commissioner and Insurance Board determines it to be prudent, the Commissioner shall personally, or by some competent person appointed by the Commissioner and Insurance Board, visit each 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 the provisions of this chapter. The Commissioner and Insurance Board may enlarge the aforesaid three-year period to five years, upon petition by the captive insurance company. The expenses and charges of the examination shall be paid to the Insurance Board by the captive insurance company examined within thirty days of receipt of the Insurance Board's warrants for the proper charges incurred for the examination.

(2) It shall be the duty of the captive insurance company under examination or investigation and any past or present officer, employee or insurance manager of the captive insurance company to produce to the Insurance Board or Insurance Board's representative upon request, all books, records and documents relating to the captive insurance company under examination or investigation which are in its custody or control and otherwise to give to the Insurance Board or Insurance Board's representative all assistance in connection with the investigation which it is reasonably able to give.

(3) All examination reports, preliminary examination

reports or results, working papers, recorded information, documents and copies thereof produced by, obtained by or disclosed to the Insurance Board 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 Commissioner or Insurance Board or an employee or agent of the Commissioner or Insurance Board without the written consent of the company, except to the extent provided in this subsection. Nothing in this subsection shall prevent the Commissioner or Insurance Board from using such information in furtherance of the Commissioner's and Insurance Board's regulatory authority under this title. The Commissioner and Insurance Board may, at their discretion, grant access to such information to public officers having jurisdiction over the regulation of insurance in any other nation, or to law enforcement officers of the Federated States of Micronesia or any other nation so long as such officers receiving the information agree in writing to hold it in a manner consistent with this section."

Section 14. The Code of the Federated States of Micronesia, as amended, is hereby further amended by enacting a new section 1012 of title 37 to read as follows:

"Section 1012. Grounds and procedures for suspension or revocation of license:

(1) The license of a captive insurance company may be suspended or revoked by the Commissioner for any of the following reasons:

(a) Insolvency or impairment of capital or surplus;

(b) Failure to meet the requirements of section 1007 of this title;

(c) Refusal or failure to submit an annual report, as required by this chapter, or any other report or statement required by law or by lawful order of the

Commissioner;

(d) Failure to comply with the provisions of its own charter, bylaws or other organizational document;

(e) Failure to submit to or pay the cost of examination or any legal obligation relative thereto, as required by this chapter;

(f) 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

(g) Failure otherwise to comply with the laws of the Federated States of Micronesia.

(2) If the Insurance Board finds, upon examination, hearing, or other evidence, that any captive insurance company has violated any provision of subsection (1) of this section, the Insurance Board may suspend or revoke such company's license if the Insurance Board deems it in the best interest of the public and the policyholders of such captive insurance company, notwithstanding any other provision of this title.

(3) Appeals from agency action may be made pursuant to Title 17 of the Code of the Federated States of Micronesia."

Section 15. The Code of the Federated States of Micronesia, as amended, is hereby further amended by enacting a new section 1013 of title 37 to read as follows:

"Section 1013. Legal Investments:

(1) Each captive insurance company shall be allowed to invest any of its funds without limitation in any government obligation issued by and backed by the full faith and credit of the Government of the United States of America or the Government of Japan.

(2) Each captive insurance company shall be allowed to invest in any type of investment subject to a limitation of 10% of total captive insurance company assets in any one issuer, if that investment is rated by one of the

following:

(a) Rating and Investment Information, Inc. rating of BBB or higher;

(b) Moody's rating of Baa3 or higher;

(c) S&P rating of BBB- or higher;

(d) Fitch rating of BBB- or higher;

(3) Other investments as approved by the Insurance Board;

(4) A captive insurance company may make a loan to or an investment in its parent company or affiliates up to 50% of total captive insurance company assets, subject to the approval of the Insurance Board. Any such loan or investment must be evidenced by documentation approved by the Insurance Board. Loans of minimum capital and surplus funds required by section 1007 are prohibited.

(5) The Commissioner and Insurance Board may prohibit or limit any investment that threatens the solvency or liquidity of any such captive insurance company."

Section 16. The Code of the Federated States of Micronesia, as amended, is hereby further amended by enacting a new section 1014 of title 37 to read as follows:

"Section 1014. Reinsurance:

(1) Any captive insurance company may provide reinsurance on risks ceded by any other insurer only upon approval by the Insurance Board.

(2) Any captive insurance company may take credit for reserves on risks ceded to a reinsurer; provided that no captive insurance company shall cede risks without the approval of the Insurance Board.

(3) Any captive insurance company may take credit for the reinsurance of risks or portions of risks ceded to a pool, exchange or association acting as a reinsurer which has been authorized by the Insurance Board. The Insurance Board may require any other documents, financial information or other evidence that such a pool, exchange or association will be able to provide adequate security

for its financial obligations. The Insurance Board may deny authorization or impose any limitations on the activities of a reinsurance pool, exchange or association that, in the Insurance Board's judgment, are necessary and proper to provide adequate security for the ceding captive insurance company and for the protection and consequent benefit of the public at large."

Section 17. The Code of the Federated States of Micronesia, as amended, is hereby further amended by enacting a new section 1015 of title 37 to read as follows:

"Section 1015. Tax on Premium Collected:

(1) Each captive insurance company shall pay into the General Fund of the Federated States of Micronesia on before June 1 of each year, a tax on gross premiums as follows:

(a) .05 percent of gross premiums for insurance written on all risks or property resident, situated or located within the Federated States of Micronesia, and on risks and property situated elsewhere upon which no premium tax is otherwise paid during the year ending on the preceding March 31, less return premiums and less any reinsurance accepted;

(b) The annual maximum aggregate tax on premiums to be paid by a captive insurance company calculated under subsection (a) of this section shall be \$20,000.00.

(2) Two or more captive insurance companies under common ownership and control shall be taxed, as though they were a single captive insurance company.

(a) For the purposes of this section common ownership and control shall mean:

(i) in the case of stock corporations, the direct or indirect ownership of 80 percent or more of the outstanding voting stock of two or more corporations by the same shareholder or shareholders; and

(ii) in the case of mutual corporations, the direct or indirect ownership of 80 percent or more of the

surplus and the voting power of two or more corporations by the same member or members.

(3) Annually, ten percent of the premium tax revenues collected pursuant to this section or \$150,000, whichever is greater shall be transferred to the Insurance Board for the regulation of captive insurance companies under this chapter.

(4) The tax provided for in this section shall be calculated on an annual basis, notwithstanding policies or contracts of insurance or contracts of reinsurance issued on a multiyear basis. In the case of multiyear policies or contracts, the premium shall be prorated for purposes of determining the tax under this section."

Section 18. The Code of the Federated States of Micronesia, as amended, is hereby further amended by enacting a new section 1016 of title 37 to read as follows:

"Section 1016. Regulations: The Insurance Board may establish and from time to time amend such regulations relating to captive insurance companies as are necessary to enable the Insurance Board to carry out the provisions of this chapter." Such regulations shall be made in accordance with title 17, Chapter 1 of the Code of the Federated States of Micronesia.

Section 19. This act shall become law upon approval by the President of the Federated States of Micronesia or upon its becoming law without such approval.

Dated: 7/10/06

Introduced by: /s/ Dohsis Halbert  
Dohsis Halbert