

STANDING COMMITTEE REPORT NO. 18-38

RE: C.B. NO. 18-63/R&D

SUBJECT: AMENDMENTS TO SECTIONS 1001, 1002 AND  
1007 OF TITLE 37 OF THE FSM CODE  
REGARDING CLASS IV CAPTIVE INSURANCE

SEPTEMBER 25, 2013

The Honorable Dohsis Halbert  
Speaker, Eighteenth Congress  
Federated States of Micronesia  
Second Regular Session, 2013

Dear Mr. Speaker:

Your Committee on Resources and Development, to which was referred C.B. No. 18-63, entitled:

"A BILL FOR AN ACT TO FURTHER AMEND SECTIONS 1001,  
1002 AND 1007 OF TITLE 37 OF THE CODE OF THE  
FEDERATED STATES OF MICRONESIA, AS AMENDED BY  
PUBLIC LAWS NOS. 15-34 AND 16-17, BY INCLUDING A  
DEFINITION FOR CLASS IV CAPTIVE INSURANCE  
COMPANIES, AND FOR OTHER PURPOSES.",

begs leave to report as follows:

The bill, C.B. No. 18-63, was transmitted to Congress via Presidential Communication No. 18-83 on September 10, 2013, during the Second Regular Session of the Eighteenth Congress. In his communication, the President has indicated that he is transmitting a proposed bill to further amend title 37 of the FSM Code in order to establish class 4 captive insurance.

Your Committee conducted a hearing on C.B. No. 18-63 on Friday, September 20, 2013, commencing at 8:30 a.m. at the Committee hearing room. Senator David W. Panuelo, Chairman of the Standing Committee on Resources and Development chaired the meeting. Other committee members present were Senators Joseph J. Urusemal and Vice Speaker Paliknoa K. Welly. Also in attendance were

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Senators Yosiwo P. George and Tony Otto. Staff Attorney Alik Jackson was also present at the hearing.

April Skilling, the Secretary of Justice, Aaron Warran, Assistant Attorney General, Samari Suta, Registrar of Corporations and Berthold Edmund, Assistant Registrar of Corporations with the Department of Justice; Kasio Mida and Steve Baker, representatives of Micronesian Registrar Advisor, Inc.; and Pelsesar Petrus from the Office of the President were present by invitation.

After welcoming remarks, Chairman Panuelo opened the hearing and gave an opportunity to the witnesses to comment on the bill.

Steve Baker, the President of Micronesian Registrar Advisor, Inc. (MRA), explained to your Committee that the introduction of a new class 4 was suggested by Marubeni, the first Japanese corporation that established a captive insurance in the Federated States of Micronesia.

In a correspondence from Steven Baker to President Mori dated August 28, 2013, Mr. Baker explained that this new class 4 amendment will provide the parent of a class 4 captive an opportunity to further diversify the risk being placed into their captive, while potentially adding additional underwriting income, which they believe will provide additional net income before tax for these captive insurance companies.

During the hearing, Mr. Baker explained that the proposed bill provides the FSM a competitive advantage for those Japanese Corporations that form their captives in the Caribbean, more specifically Bermuda. With the creation of a class 4 captive, the FSM will provide a competitive advantage over Bermuda with the allowance for unaffiliated business set at 30 percent. Also, class 4 captive in the FSM is more conservative than Bermuda on the basis that the minimum capital and surplus will be set at \$5,000,000, instead of \$120,000, which is the minimum capital and surplus benchmark in Bermuda.

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Furthermore, there would be only a very small number of companies that would apply for class 4 captive insurance. Mr. Baker explained that the FSM captive insurance law has always provided that additional classes of captives would be created over time. Therefore, MRA representatives are proposing the amendments to the captive insurance law at this time, and passing these amendments will further enhance the competitive advantage of the captive insurance program over other captive domiciles.

The first proposed amendment in the bill is in subsection 1000(11)(b) of title 37 of the FSM Code. The intent of the proposed amendment is to delete "an existing contractual relationship" and replace with "a business relationship". This amendment will allow each captive to insure risks of a company, which have business relationships with the Parent or Affiliated Companies, although such a company is not in the corporate system of the parent and affiliated company.

The second proposed amendment is in subsection 1001(11)(c) of title 37 of the FSM Code. The intent of the proposed amendment is to specify that a class 4 captive insurance company commercial risks are located outside of the Federated States of Micronesia and do not include homeowners insurance and personal automobile insurance.

The third proposed amendment is in subsection 1001(11)(2)(a) of title 37 of the FSM Code. The intent is that a class 4 captive insurance company only reinsures the risk.

The fourth proposed amendment is in subsection 1002(4) of title 37 of the FSM Code. This proposed amendment is the determination of a class 4 captive insurance company, which shall be a captive insurance company that insures the risks of its parent and affiliated companies or associations or related third-party business or unaffiliated business.

The last proposed amendment is in subsection 1007(3) of title 37 of the FSM Code. This proposed amendment requires the minimum capital and surplus with respect to a class 4 captive insurance

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company, which will be determined based on the type, volume and nature of insurance business being transacted, but shall be at a minimum maintain of \$5,000,000.

Your Committee received a communication from April Dawn M. Skilling, the Secretary of Justice regarding the said bill. Mrs. Skilling had sent suggested amendments to the original C.B. No. 18-63. The purposes of these amendments include: changing "risk" to "commercial risks", to incorporate languages of the existing law that have been mistakenly deleted and some for technical changes in the bill.

Therefore, your Committee recommends the following amendments to the bill as follows:

1. Page 3, line 17, delete "~~Does~~", and insert "Do" in lieu thereof.
2. Page 3, line 21, delete "~~(a)~~" and insert "(d)"; delete "~~The risk~~" and insert "Whose commercial risks".
3. Page 3, between lines 24 and 25, insert the following:  
"(12) 'Related Third-Party Business' means any company or other legal entity:
  - (a) That is not in 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.(13) 'Multiple Corporate Captive Insurance Companies' or "MCC" means one or more corporations organized, or with the intent to organize, as a group of corporate captive insurance companies under the laws of the Federated States of Micronesia:
  - (a) where each member captive insurance company is formed and owned by a different parent company for the purpose of insuring risks of its parent company or related third party businesses respectively; and
  - (b) where all member captive insurance companies are together deemed to constitute a group under the laws of

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the Federated States of Micronesia subject to the following condition:

(i) the core member captive insurance company shall hold 5% or more of the shares of each of the other member captive insurance companies;

(ii) each member captive insurance company shall permit one or more directors from the core member captive insurance company on its board of directors;

(iii) a core member captive insurance company must maintain a minimum paid in capital and surplus of at least \$1,000,000; and

(iv) each member captive insurance company must maintain a minimum paid in capital and surplus of at least \$100,000.

(c) Each member captive insurance company making up an MCC is deemed an individual captive insurance company for purposes of the laws of the Federated States of Micronesia.

(d) The license issued to the core member captive insurance company meeting the capital requirements of subsection (13)(b)(iii) above shall precede issuance of licenses to any of the member captive insurance companies meeting the capital requirements of subsection (13)(b)(iv) above."

4. Page 6, line 5, delete "~~appropriated~~", and insert "appropriate" in lieu thereof.

Your Committee on Resources and Development is in accord with the intent and purpose of C.B. No. 18-63, as amended herein, and recommends its passage on First Reading, and that it be placed on the Calendar for Second and Final Reading in the form attached hereto as C.B. No. 18-63, C.D.1.

Respectfully submitted,

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/s/ David W. Panuelo  
David W. Panuelo, chairman

Victor Gouland, vice chairman

/s/ Tiwiter Aritos  
Tiwiter Aritos, member

/s/ Florencio S. Harper  
Florencio S. Harper, member

/s/ Berney Martin  
Berney Martin, member

Joseph J. Urusemal, member

Paliknoa K. Welly, member