

THE INSURANCE CODE OF 1956 (EXCERPT)
Act 218 of 1956

500.4713 Protected cells; creation and use by SPFC; written approval of commissioner; possession of minimum capitalization; fraudulent purpose not inferred.

Sec. 4713.

(1) This section and section 4715 provide a basis for the creation and use of protected cells by an SPFC. If a conflict occurs between a provision of chapter 46 or chapter 48 and either this section or section 4715, this section and section 4715 control.

(2) An SPFC may establish and maintain 1 or more protected cells with prior written approval of the commissioner and subject to compliance with the applicable provisions of this chapter and the following conditions:

(a) A protected cell shall be established only for the purpose of isolating and identifying the assets and liabilities attributable to the risk ceded to the SPFC by the counterparty pursuant to 1 or more SPFC contracts and the assets and liabilities of the SPFC arising out of the related insurance securitization.

(b) Each protected cell shall be accounted for separately on the books and records of the SPFC to reflect the financial condition and results of operations of the protected cell, including income, gain, expense, or loss; dividends; other distributions to the counterparty for the SPFC contract with each cell; and other items as may be provided in the SPFC contract, insurance securitization transaction documents, plan of operation, or business plan, or as required by the commissioner.

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

(d) All attributions of assets and liabilities between a protected cell and the general account shall be in accordance with the plan of operation submitted to the commissioner. No other attribution of assets or liabilities shall be made by an SPFC between the SPFC's general account and its protected cell or cells. The SPFC shall attribute all insurance obligations, assets, and liabilities relating to an SPFC contract and all obligations, assets, and liabilities of the SPFC arising out of the related insurance securitization transaction to a particular protected cell. The rights, benefits, obligations, and liabilities of any securities attributable to that protected cell, the performance under an SPFC contract and the related securitization transaction, and any tax benefits, losses, refunds, or credits allocated at any point in time pursuant to a tax allocation agreement between the SPFC and the SPFC's counterparty, parent, or affiliated company, as the case may be, including any payments made by or due to be made to the SPFC pursuant to the terms of the tax allocation agreement, shall reflect the insurance obligations, assets, and liabilities relating to the SPFC contract and proceeds of the insurance securitization transaction that are attributed to a particular protected cell.

(e) The assets of a protected cell shall not be chargeable with liabilities arising out of an SPFC contract related to or associated with another protected cell. However, 1 or more SPFC contracts may be attributed to a protected cell so long as those SPFC contracts are intended to be, and ultimately are, part of a single securitization transaction.

(f) A sale, an exchange, or another transfer of assets shall not be made by the SPFC between or among any of its protected cells without the consent of the counterparty and each protected cell.

(g) Except as otherwise contemplated in the SPFC contract or related insurance securitization transaction documents, or both, a dividend or a distribution shall not be made from a protected cell to a counterparty, captive LLC, or parent or affiliated company of the SPFC without the commissioner's approval and shall not be approved if the dividend or distribution would result in insolvency or impairment with respect to a protected cell.

(h) Except as otherwise contemplated in the SPFC contract or related insurance securitization transaction documents, or both, a sale, an exchange, or a transfer of assets shall not be made from a protected cell to a counterparty, captive LLC, or parent or affiliated company of the SPFC if the sale, exchange, or transfer would result in insolvency or impairment with respect to the protected cell.

(i) An SPFC shall pay interest or repay principal or both or make distributions or repayments of any SPFC securities issued by the SPFC or make payments of preferred securities issued to a particular protected cell from assets or cash flows relating to or emerging from the SPFC contract and the insurance securitization transactions that are attributable to that particular protected cell as provided in this chapter or as otherwise approved by the commissioner.

(3) An SPFC contract with or attributable to a protected cell does not take effect without the commissioner's prior written approval. The commissioner may retain legal, financial, and examination services from outside the office to examine and investigate the application for a protected cell, the reasonable cost of which may be charged against the applicant, or the commissioner may use internal resources to examine and investigate the application the reasonable cost of which may be charged against the applicant up to a maximum of \$1,200.00, or may use both retained services and internal resources.

(4) An SPFC utilizing protected cells shall possess minimum capitalization for each protected cell separate and apart from the capitalization required by section 4709. For purposes of determining the capitalization of each protected cell, an SPFC initially shall capitalize and after that time maintain capitalization in each protected cell in the amount and manner required for an SPFC in section 4709.

(5) The establishment of 1 or more protected cells alone does not constitute, and shall not be considered to be, a fraudulent conveyance, an intent by the SPFC to defraud creditors, or the carrying out of business by the SPFC for any other fraudulent purpose.

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