

§ 58-10-510. Establishment of protected cells.

(a) A protected cell captive insurance company licensed under this Part may establish and maintain one or more incorporated or unincorporated protected cells, to insure risks of one or more participants, subject to the following conditions:

- (1) A protected cell captive insurance company may establish one or more protected cells if the Commissioner has approved in writing a plan of operation or amendments to a plan of operation submitted by the protected cell captive insurance company with respect to each protected cell. A plan of operation shall include, but is not limited to, the specific business objectives and investment guidelines of the protected cell, provided that the Commissioner may require additional information in the plan of operation.
- (2) Upon the Commissioner's written approval of the plan of operation, the protected cell captive insurance company may attribute insurance obligations with respect to its insurance business to the protected cell in accordance with the approved plan of operation.
- (3) A protected cell shall have its own distinct name or designation that shall include the words "protected cell" or "incorporated cell."
- (4) The protected cell captive insurance company shall transfer all assets attributable to a protected cell to one or more separately established and identified protected cell accounts bearing the name or designation of that protected cell. Protected cell assets must be held in the protected cell accounts for the purpose of satisfying the obligations of that protected cell.
- (5) Repealed by Session Laws 2015-99, s. 1, effective June 19, 2015.
- (6) All attributions of assets and liabilities between a protected cell and the general account shall be in accordance with the plans of operation and participant contracts approved by the Commissioner. Any attribution of assets between the general account and a protected cell shall be in cash or in readily marketable securities with established market values unless otherwise approved by the Commissioner.

(b) The creation of a protected cell does not create, with respect to that protected cell, a legal person separate from the protected cell captive insurance company, unless the protected cell is an incorporated cell. Amounts attributed to a protected cell under this Part, including assets transferred to a protected cell account, are owned by the protected cell. No protected cell captive insurance company shall be, or hold itself out to be, a trustee with respect to those protected cell assets of that protected cell account. Notwithstanding this subsection, the protected cell captive insurance company may allow for a security interest to attach to protected cell assets or a protected cell account when the security interest is in favor of a creditor of the protected cell and otherwise allowed under applicable law.

(c) This Part shall not be construed to prohibit the protected cell captive insurance company from contracting with or arranging for an investment advisor, commodity trading advisor, or other third party to manage the protected cell assets of a protected cell, if all remuneration, expenses, and other compensation of the third-party advisor or manager are payable from the protected cell assets of that protected cell and not from the protected cell assets of other protected cells or the assets of the protected cell captive insurance company's general account.

(d) A protected cell captive insurance company shall establish administrative and accounting procedures necessary to properly identify (i) the one or more protected cells of the protected cell captive insurance company and (ii) the assets and liabilities attributable to each protected cell. The governing board of a protected cell captive insurance company shall keep protected cell assets and liabilities:

- (1) Separate and separately identifiable from the assets and liabilities of the protected cell captive insurance company's general account.
- (2) Attributable to one protected cell separate and separately identifiable from protected cell assets and protected cell liabilities attributable to other protected cells.

If this subsection is violated, then the remedy of tracing is applicable to protected cell assets when commingled with protected cell assets of other protected cells or the assets of the protected cell captive insurance company's general account. The remedy of tracing shall not be construed as an exclusive remedy.

(e) When establishing a protected cell, the protected cell captive insurance company shall attribute to the protected cell assets a value at least equal to the reserves and other insurance liabilities attributed to that protected cell.

(f) Each protected cell shall be accounted for separately on the books and records of the protected cell captive insurance company to reflect (i) the financial condition and results of operations of such protected cell, (ii) net income or loss, (iii) dividends or other distributions to participants, and (iv) such other factors as may be provided in the participant contract or required by the Commissioner.

(g) No asset of a protected cell shall be chargeable with liabilities arising out of any other insurance business the protected cell captive insurance company may conduct.

(h) No sale, exchange, or other transfer of assets shall be made by such protected cell captive insurance company between or among any of its protected cells without the consent of such protected cells.

(i) No sale, exchange, transfer of assets, dividend, or distribution shall be made from a protected cell to a protected cell captive insurance company or participant without the Commissioner's approval. In no event shall the Commissioner's approval be given if the sale, exchange, transfer, dividend, or distribution would result in the insolvency or impairment of a protected cell.

(j) The protected cell captive insurance company shall attribute all insurance obligations, assets, and liabilities relating to a reinsurance contract entered into with respect to a protected cell to such protected cell. The performance under such reinsurance contract and any tax benefits, losses, refunds, or credits allocated pursuant to a tax allocation agreement to which the protected cell captive insurance company is a party, including any payments made by or due to be made to the protected cell captive insurance company pursuant to the terms of such agreement, shall reflect the insurance obligations, assets, and liabilities relating to the reinsurance contract that are attributed to such protected cell.

(k) In connection with the rehabilitation or liquidation of a protected cell or a protected cell captive insurance company, the assets and liabilities of a protected cell shall, to the extent the Commissioner determines they are separable, at all times be kept separate from and shall not be commingled with those of other protected cells and the protected cell captive insurance company's general account.

(l) Each protected cell captive insurance company shall annually file with the Commissioner such financial reports as required by the Commissioner. Any such financial report shall include without limitation a consolidating schedule detailing the financial experience of each protected cell.

(l1) In lieu of filing a separate Statement of Actuarial Opinion for a protected cell captive insurance company and each protected cell, a protected cell captive insurance company may file a combined Statement of Actuarial Opinion which shall include a statement of actuarial opinion for each protected cell, and the core, if the core is retaining risk. The combined Statement of Actuarial Opinion shall include a supplemental schedule showing the loss and loss expense reserves for each protected cell, and the core, if the core is retaining risk. The loss and loss

expense reserve reported in the supplemental schedule must equal the loss and loss expense reserve amount reported in the audited financial statement and the annual report submitted pursuant to this Part.

(m) Each protected cell captive insurance company shall notify the Commissioner in writing within 10 business days if the protected cell captive insurance company or any of its protected cells are impaired, insolvent, or otherwise unable to meet its claim or expense obligations.

(n) No participant contract shall take effect without the Commissioner's prior written approval. The addition of each new protected cell, the withdrawal of any participant, or the termination of any existing protected cell shall constitute a change in the plan of operation requiring the Commissioner's prior written approval.

(o) If required by the Commissioner, the business written by a protected cell captive insurance company, with respect to each protected cell shall be:

- (1) Fronted by an insurance company approved by the Commissioner.
- (2) Reinsured by a reinsurer approved by the Commissioner.
- (3) Secured by a trust fund in the United States for the benefit of policyholders and claimants, funded by an irrevocable letter of credit, or other arrangement that is acceptable to the Commissioner. The Commissioner may require the protected cell captive insurance company to increase the funding of any security arrangement established under this subdivision. If the form of security is a letter of credit, the letter of credit shall be issued by a bank approved by the Commissioner. A trust maintained pursuant to this subdivision shall be established in a form and upon such terms approved by the Commissioner.

(p) Notwithstanding this Chapter or other laws of this State, and in addition to G.S. 58-10-525, in the event of an insolvency of a protected cell captive insurance company where the Commissioner determines that one or more protected cells remain solvent, the Commissioner may separate such cells from the protected cell captive insurance company and may allow, on application of the protected cell captive insurance company or a protected cell's participant, for the conversion or transfer of such protected cells into one or more new or existing protected cell captive insurance companies, or one or more other captive insurance companies, pursuant to such plan or plans of operation as the Commissioner deems acceptable.

(q) A protected cell of a protected cell captive insurance company may be transferred to another protected cell captive insurance company or may be converted into another captive insurance company upon the approval of a transfer agreement or conversion plan by the Commissioner. All assets and liabilities of the protected cell immediately before the transfer or conversion shall remain the assets and liabilities after the transfer or conversion. All actions and other legal proceedings which were pending by or against the protected cell immediately prior to the transfer or conversion may be continued by or against the protected cell or the captive insurance company into which the protected cell converts.

(r) A protected cell of a protected cell captive insurance company may enter into a contract with its protected cell captive insurance company or with another protected cell of the protected cell captive insurance company that shall be enforceable as if each protected cell of the protected cell captive insurance company were a separate legal entity, even if the protected cell is not organized as an incorporated protected cell. (2013-116, s. 1; 2014-65, s. 16; 2015-99, s. 1; 2016-78, s. 4.1(t); 2022-7, s. 4(g).)