

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

500.4701 Definitions.

Sec. 4701. As used in this chapter:

(a) "Affiliated company" means a company in the same corporate system as a parent, by virtue of common ownership, control, operation, or management.

(b) "Captive LLC" means a limited liability company established under the Michigan limited liability company act, 1993 PA 23, MCL 450.4101 to 450.5200, or a comparable law of another state, including the District of Columbia, by a parent, counterparty, affiliated company, or SPFC for the purpose of issuing SPFC securities, entering an SPFC contract with a counterparty, or otherwise facilitating an insurance securitization.

(c) "Contested case" means a proceeding in which the legal rights, duties, obligations, or privileges of a party are required by law to be determined by the circuit court after an opportunity for hearing.

(d) "Control" including the terms "controlling", "controlled by", and "under common control with" means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract other than a commercial contract for goods or nonmanagement services, or otherwise, unless the power is the result of an official position with or corporate office held by the person. Control is presumed to exist if a person, directly or indirectly, owns, controls, holds with the power to vote, or holds proxies representing 10% or more of the voting securities of another person. This presumption may be rebutted by a showing that control does not exist. However, for purposes of this chapter, the fact that an SPFC exclusively provides reinsurance to a ceding insurer under an SPFC contract is not by itself sufficient grounds for a finding that the SPFC and ceding insurer are under common control.

(e) "Counterparty" means an SPFC's parent or affiliated company, or, subject to the prior approval of the director, a nonaffiliated company as ceding insurer to the SPFC contract.

(f) "Fair value" means the following:

(i) For cash, the amount of the cash.

(ii) For an asset other than cash, the amount at which the asset could be bought or sold in a current transaction between arm's length, willing parties. If available, the quoted mid-market price for the asset in active markets must be used; and if quoted mid-market prices are not available, a value must be determined using the best information available considering values of similar assets and other valuation methods, such as present value of future cash flows, historical value of the same or similar assets, or comparison to values of other asset classes, the value of which have been historically related to the subject asset.

(g) "Foreign captive" means a captive insurer formed under the laws of the District of Columbia or a state, commonwealth, territory, or possession of the United States other than this state.

(h) "Insolvency" or "insolvent" means 1 or more of the following:

(i) That the SPFC is unable to pay its obligations within 30 days after they are due, unless those obligations are the subject of a bona fide dispute.

(ii) That the admitted assets of the SPFC do not exceed liabilities plus minimum capital and surplus for a period of time in excess of 30 days.

(iii) That the Ingham County circuit court has issued an order as provided for in section 8113, 8117, or 8120 in connection with a delinquency proceeding under chapter 81 instituted against the SPFC.

(i) "Insurance securitization" means a package of related risk transfer instruments, capital market offerings, and facilitating administrative agreements by which all of the following apply:

(i) The proceeds of the sale of SPFC securities are obtained, in a transaction that complies with applicable securities laws, by an SPFC directly through the issuance of the SPFC securities by the SPFC or indirectly through the issuance of preferred securities by the SPFC in exchange for some or all of the proceeds of the sale of SPFC securities by the SPFC's parent, an affiliated company of the SPFC, a counterparty, or a captive LLC.

(ii) The proceeds of the issuance of the SPFC securities secure the obligations of the SPFC under 1 or more SPFC contracts with a counterparty.

(iii) The obligation to the holders of the SPFC securities is secured by assets obtained with proceeds of the SPFC securities in accordance with the transaction terms.

(j) "Irrevocable letter of credit" means a letter of credit that meets the description in section 1105(c).

(k) "Management" means the board of directors, managing board, or other individual or individuals vested with overall responsibility for the management of the affairs of the SPFC, including the election and appointment of officers or other agents to act on behalf of the SPFC.

(l) "Office" means the department.

(m) "Organizational document" means the SPFC's articles of incorporation, articles of organization, bylaws, operating agreement, or other foundational documents that establish the SPFC as a legal entity or prescribes its existence.

(n) "Parent" means a corporation, limited liability company, partnership, or individual that directly or indirectly owns, controls, or holds with power to vote more than 50% of the outstanding voting securities of an SPFC.

(o) "Permitted investments" means those investments that meet the qualifications in section 4727(1).

(p) "Preferred securities" means securities, whether stock or debt, issued by an SPFC to the issuer of the SPFC securities in exchange for some or all of the proceeds of the issuance of the SPFC securities.

(q) "Protected cell" means a segregated account established and maintained by an SPFC for 1 or more SPFC contracts that are part of a single securitization transaction as further provided for in chapter 48.

(r) "Qualified United States financial institution" means that term as defined in section 1101.

(s) "Reserves" means that term as used in chapter 8.

(t) "Safe, reliable, and entitled to public confidence" means that term as defined in section 116.

(u) "Securities" means those different types of debt obligations, equity, surplus certificates, surplus notes, funding agreements, derivatives, and other legal forms of financial instruments.

(v) "Securities commissioner" means the securities administrator in the department of licensing and regulatory affairs.

(w) "SPFC" or "special purpose financial captive" means a captive insurance company, a captive LLC, or a company otherwise qualified as an authorized insurer that has received a limited certificate of authority from the director for the purposes provided for in this chapter.

(x) "SPFC contract" means a contract between the SPFC and the 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.

(y) "SPFC securities" means the securities issued pursuant to an insurance securitization, the proceeds of which are used in the manner described in subdivision (i).

(z) "Surplus note" means an unsecured subordinated debt obligation possessing characteristics consistent with accounting practices and procedures designated by the director.

(aa) "Third party" means a person unrelated to an SPFC or its counterparty, or both, that has been aggrieved by a decision of a director regarding that SPFC or its activities.

History: Add. 2008, Act 29, Imd. Eff. Mar. 13, 2008;—Am. 2016, Act 276, Imd. Eff. July 1, 2016.

Compiler's note: For references to office of financial and insurance regulation to be deemed as department of insurance and financial services, and abolishment of office of financial and insurance regulation, see E.R.O. No. 2013-1, compiled at MCL 550.991.

For references to commissioner of office of financial and insurance regulation to be deemed as references to director of department of insurance and financial services, and abolishment of office of commissioner of office of financial and insurance regulation, see E.R.O. No. 2013-1, compiled at MCL 550.991.

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