AN ACT

To further amend title 37 of the Code of the Federated States of Micronesia by including a definition of a new class 3 Multiple Corporate Captive Insurance Companies and providing for the issuance of captive insurance managing licenses, and for other purposes.

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

Section 1. Section 1001 of title 37 of the Code of the Federated States of Micronesia, as enacted by Public Law No. 14-88, as amended by Public Law No. 15-34, is hereby further amended 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.

(12) 'Related Third-Party Business' means any company or other legal entity:

(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.

(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 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
(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."

Section 2. Section 1002 of title 37 of the Code of the Federated States of Micronesia as enacted by Public Law No. 14-88 and amended by Public Law No. 15-34, is hereby amended 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) A class 2 company shall be a captive insurance company that insures the risks of its parent and affiliated companies or associations and/or related third-party businesses;

(3) A class 3 company shall be a captive insurance company that constitutes part of a Multiple Corporate
1 Captive Insurance Company as defined in section 1001(13)
2 of this chapter.
3
4 (4) Additional classes of captive insurance companies
5 may, from time to time, be created by amendment of this
6 chapter."
7
8 Section 3. Section 1003 of title 37 of the Code of the
9 Federated States of Micronesia, as enacted by Public Law No. 14-
10 88, as amended by Public Law No. 15-34, is hereby further amended
11 to read as follows:
12
13 "Section 1003. Captive Insurance Company Licensing and
14 Captive Insurance Manager’s Licensing.
15 The Commissioner or Insurance Board may issue two types
16 of licenses with respect to the captive insurance
17 industry: one for the captive insurance companies
18 pursuant to subsections 1-5 below; the other for
19 business entities which engage in the business of
20 managing captive insurance companies pursuant to
21 subsections 6-9 below.
22
23 (1) Captive insurance companies shall be licensed in
24 accordance with Chapter 3 of this title.
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26 (2) In considering whether to license a captive
27 insurance company under this chapter, the Commissioner
28 and Insurance Board shall consider the following
29 factors:
30
31 (a) Principal office and principal
representative;

(i) the principal office shall maintain a principal place of business within the Federated States of Micronesia;

(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 insured; 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 or 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 business in the Federated States of Micronesia until March 31, of the year of application at which time the license may be renewed.

(5) No captive insurance company licensed under this
chapter shall be allowed to insure the risks of individual citizens of the Federated States of Micronesia.

(6) The Insurance Commissioner or Insurance Board is authorized to issue a captive insurance manager’s license, which may be signed by the Insurance Commissioner’s or Insurance Board’s authorized designee, and shall issue the same to any applicant that:

(a) has in its bona fide employment a person who is a current member in good standing of an accounting or insurance related professional body or association; or,

(b) has in its bona fide employment a person that has minimum of five years experience in the captive management field.

(7) The applicant shall be issued a captive insurance manager’s license by the Insurance Commissioner or the Insurance Board upon compliance with subsection (6) above without regard to:

(a) whether the applicant has or has not applied for a license with a captive insurance company; or,

(b) whether the applicant is or is not currently managing a domestic captive insurance company.

(8) The captive insurance manager’s license grants the captive insurance manager the authority to work with or manage:
(a) any person or entity intending to form a captive insurance company in the Federated States of Micronesia; or,
(b) any domestic captive insurance company licensed by the Insurance Board.

(9) The captive insurance manager’s license shall be effective for a period of five years from the date of issuance.”

Section 4. Section 1007 of title 37 of the Code of the Federated States of Micronesia, as enacted by Public Law No. 14-88 and amended by Public Law No. 15-34, is hereby further amended 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 has initial paid-in capital of $1,000,000 and thereafter maintains a minimum capital and surplus of $100,000; provided however with respect to multiple corporate captive insurance companies the core member captive insurance company shall maintain a minimum paid in capital and surplus of $1,000,000 and each member corporate captive insurance company shall maintain a minimum paid in capital and surplus of $100,000.

(2) The Commissioner 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
(b) letter of credit,
(c) investments pursuant to section 1013 of this chapter, or
(d) any other security deemed appropriated by the Commissioner.”

Section 5. Section 1010 of title 37 of the Code of the Federated States of Micronesia, as enacted by Public Law No. 14-88, is hereby further amended 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 six 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.

(e) Notwithstanding any other provision of this section, in the case of Multiple Corporate Captive Insurance Companies, the core member captive insurance company shall provide the reports, financial statements and opinions required by subsections (2)(a), (b), (c) and (d) above with respect to itself and its members shall not be required to separately report, provide financial statements or opinion."

Section 6. This act shall become law upon approval by the President of the Federated States of Micronesia or upon its becoming law without such approval.

December 11, 2009

/s/ Manny Mori
Manny Mori
President
Federated States of Micronesia