

THE CAPTIVE INSURANCE ACT

FSC Rules made by the Commission under section 93 of the Financial Services Act and sections 10, 12 and 18 of the Captive Insurance Act

PART I

INTERPRETATION

1. Citation

These rules may be cited as the Captive Insurance (Pure Captive Insurance Business) Rules 2016.

2. Interpretation

In these Rules –

"Act" means The Captive Insurance Act 2015;

"auditor" means a person –

- (a) qualified to act as auditor under the Financial Reporting Act 2004; and
- (b) appointed as auditor of a captive insurer with the approval of the Commission under rule 13;

"balance sheet date" has the same meaning as in the Companies Act 2001;

"captive insurer" means a person carrying on pure captive insurance business referred to in the schedule to the Act.

"minimum capital requirement" means such capital that is required to be held by a captive insurer calculated in accordance with these rules;

"substantial shareholder" has the same meaning as in the Companies Act 2001.

"solvency ratio" means the ratio that a captive insurer is required to maintain in accordance with rule 5(2);

3. Application of Rules

These rules shall apply only to a captive insurer who is licensed under the Act or ought to be licensed under the Act and who is conducting pure captive insurance business referred to in the schedule to the Act.

PART II

SOLVENCY REQUIREMENTS

4. Capital and solvency requirements

- (1) For the purposes of the Act and these rules, all values relating to capital and solvency requirements are to be specified in Mauritian rupees or in any other currency acceptable to the Commission.
- (2) A captive insurer shall have and at all times maintain an unimpaired paid up capital of not less than 3 million rupees.
- (3) No person shall be issued with a licence under section 7 of the Act unless he complies with the requirement of paragraph (2).

5. Solvency ratio

- (1) For the purposes of section 10 (8) of the Act, a captive insurer shall comply with the requirements of this rule.
- (2) The solvency ratio shall at all times be at least 100% of the minimum capital requirement.
- (3) Where a captive insurer anticipates that its solvency ratio will fall below 100% of the minimum capital requirement, it shall immediately inform and submit to the Commission, for approval, a contingency plan to restore the solvency ratio.
- (4) The Commission may approve a contingency plan under paragraph (3) on such terms and conditions as it may deem fit.

6. Calculation of the minimum capital requirement

- (1) The minimum capital requirement shall be the sum of the asset capital and the underwriting capital, calculated in accordance with the requirements specified in Part I and Part II of the First Schedule.
- (2) The calculation of the underwriting capital and the asset capital shall be based on –
 - (a) the acceptable ratings specified in Part III of the First Schedule; or
 - (b) any other equivalent ratings from a credit rating agency which is approved by the Commission.

7. Valuation of assets

- (1) The asset value for the purpose of calculating the asset capital of a captive insurer shall be taken at fair value.
- (2) For the purposes of paragraph (1) and of determining the solvency ratio and minimum capital requirement , "fair value" means –
 - (a) in the case of an asset which is listed on the Official List of a securities exchange which is a member of the World Federation of Exchanges and for which a price was quoted on that securities exchange on the date as at which the value is calculated, the price last so quoted;
 - (b) in any other case, the price which could have been obtained upon a sale of the asset between a willing buyer and a willing seller dealing at arm's length, as estimated by the captive insurer; or
 - (c) the Commission's estimate of the assets where the Commission suspects market abuses under sub-paragraph (a) or is not satisfied with the estimate under sub-paragraph (b).

8. Capital available

- (1) The capital available to a captive insurer shall consist of shares issued and paid up, share premium, retained earnings and reserves.
- (2) Notwithstanding paragraph (1) but subject to the prior approval of the Commission, the capital available to a captive insurer may consist of -
 - (a) irrevocable letter of credit; and
 - (b) subordinated loan provided that –
 - (i) the title deed setting out the terms of the subordinated loan explicitly mentions that the loan is legally subordinated to the claims of policyholders and other creditors of the captive insurer;
 - (ii) the subordinated loan is unsecured;
 - (iii) the subordinated loan has an original maturity period of over 5 years;
 - (iv) the subordinated loan may be redeemed before maturity only at the option of the captive insurer and with the prior written approval of the Commission; and

- (v) the subordinated loan shall not, in the event of the winding up of the captive insurer, be repaid until the claims of policyholders and other creditors have been fully satisfied.

9. Admissible assets covering solvency ratio

- (1) Subject to paragraph (2), the captive insurer shall keep and maintain at least 3 million rupees in cash or cash equivalents as share capital.
- (2) Assets covering the solvency ratio may be in the form of any combination of the following –
 - (a) cash;
 - (b) irrevocable letter of credit;
 - (c) investments pursuant to section 11 of the Act;
 - (d) any other security deemed appropriate by the Commission.

10. Technical reserves

A captive insurer shall make adequate technical provisions in its accounts for its underwriting liabilities in respect of its insurance and reinsurance policies, including liabilities for –

- (a) unexpired risks;
- (b) outstanding and incurred claims;
- (c) provisions for claims incurred but not reported; and
- (d) policy benefits which have not become claimable calculated on whatever basis the Commission determines.

11. Investment

- (1) A captive insurer shall invest the assets covering the technical provisions in accordance with the following principles –
 - (a) the assets shall take into account the type of business carried out by the captive insurer, in particular the nature, amount and duration of the expected claims payments, in such a way as to secure the sufficiency, liquidity, security, quality, profitability and matching of its investments;
 - (b) the captive insurer shall ensure that its assets are diversified and adequately spread so as to allow the captive insurer to respond adequately to changing economic circumstances and the captive insurer shall assess the impact of irregular market circumstances on its assets and shall diversify the assets in such a way as to reduce such impact;
 - (c) investments in assets which are not admitted to trading on a regulated securities exchange shall be kept to prudent levels;
 - (d) investments in derivative instruments shall be possible insofar as they contribute to a reduction of investment risks or facilitate efficient portfolio management. They shall be valued on a prudent basis, taking into account the underlying assets, and included in the valuation of the captive insurer's assets. The captive insurer shall also avoid excessive risk exposure to a single counterparty and to other derivative operations;
 - (e) the assets shall be properly diversified in such a way as to avoid excessive reliance on any one particular asset, issuer or group of undertakings and accumulations of risks in the portfolio as a whole; and
 - (f) investments in assets issued by the same issuer or by issuers belonging to the same group shall not expose the undertaking to excessive risk concentration.

12. Loans

- (1) Subject to prior approval of the Commission, a captive insurer may give loans to a related entity.
- (2) The Commission shall only grant an approval under paragraph (1) where the captive insurer is able to demonstrate that the funds remaining after the loan has been deducted are adequate to support the captive insurer's risk profile.
- (3) Subject to paragraph (2), the Commission may approve a loan to a related entity of the captive insurer, on the condition that the loan will be applied from assets in excess of technical reserves with a security margin of 10% and after deduction of the share capital.

- (4) A loan agreement to a related entity shall contain the following characteristics –
- (a) the loan is conducted on an arm's length basis;
 - (b) the loan payment is for a finite period;
 - (c) the loan attracts a commercial rate of interest; and
 - (d) the loan is to be repayable immediately on the instructions of the Commission.

PART III

AUDIT AND REPORTING REQUIREMENTS

SUB PART A

AUDIT

13. Appointment of auditor and actuary

- (1) Subject to this rule, a captive insurer shall appoint and have at all times -
- (a) an auditor; and
 - (b) an actuary.
- (2) Subject to paragraph (5), an appointment made under paragraph (1) shall not be effective except where it is approved by the Commission.
- (3) In making an appointment under paragraph (1), a captive insurer shall consider and state in the resolution making the appointment whether the auditor or the actuary, as the case may be –
- (a) holds the necessary qualifications and competence, has proven experience and adequate resources to perform his functions;
 - (b) is independent of the captive insurer in that he, or in the case of a firm any of his partners, has no relationship with, or interest in the captive insurer, any of its group of companies, nor has any connection with any director or substantial shareholder of the captive insurer, which could reasonably be perceived to materially affect the exercise by him of an independent mind and judgment in the performance of his duties;
 - (c) is fit and proper in accordance with such guidelines as may be issued by the Commission.

- (4) An application for approval under paragraph (2) shall be made in writing and shall be accompanied by a certified copy of the resolution referred to in paragraph (3) or any information and document as the Commission may require.
- (5) Except where it is expressly objected to by the Commission within 15 days of submission of the application made under paragraph (4), the appointment shall be deemed to have been approved and shall become effective.
- (6) In determining its application under paragraph (4), the Commission may take into consideration –
 - (a) any report from the professional organisation of which the proposed appointee is a member, or from a relevant supervisory body; or
 - (b) any matter or information relevant to determine whether the proposed appointee is a fit and proper person.
- (7) Where a captive insurer does not have an auditor or an actuary approved pursuant to this rule, the Commission may make the appointment at the cost of the captive insurer.
- (8) Where an auditor or actuary appointed by a captive insurer is a firm,
 - (a) the firm shall designate a partner as the signing partner who shall, for the purposes of the Act and these rules, without any limitation to the obligations and liabilities of the other partners or associates, have all the duties, responsibilities and obligations of an auditor or actuary as if he were himself appointed;
 - (b) the last approval of the Commission for the appointment of the firm shall not lapse by reason of a change in the membership of the firm provided that at least half of the members, after the change, were members when the appointment of the firm was last approved by the Commission.
- (9) The auditor and actuary of a captive insurer shall have similar duties and the functions as the auditor and actuary of an insurer under sections 43, 44 and 45 of the Insurance Act 2005.

14. Notice of resignation and termination

- (1) A captive insurer shall give to the Commission written notice of the termination of appointment or resignation of its auditor or actuary within 15 days of the termination or resignation.
- (2) Where the termination of appointment or resignation of an auditor or actuary is otherwise than by reason of expiry of his term of office –
 - (a) the notice referred to in paragraph (1) shall specify the reasons for and circumstances of the termination or resignation;
 - (b) the Commission may require the auditor or actuary to give his opinion on the circumstances of the termination or resignation.

15. Termination of appointment by the Commission

- (1) Subject to paragraph (2), the Commission may require a captive insurer to terminate the appointment of an auditor or actuary of a captive insurer, where it has reasons to believe that the person or firm concerned is not fit and proper to hold the office concerned.
- (2) The Commission shall not make a determination under paragraph (1) without giving prior notice of its intention to act in accordance with paragraph (1) and the reasons for so doing, and shall give the captive insurer and the person or firm concerned as auditor or actuary, the opportunity to make representations.

16. Audit and auditor's certificate

- (1) The financial statements of a captive insurer shall be audited by its auditor appointed under these rules.
- (2) The auditor shall, in a certificate relating to the accounts and statements in respect of a balance sheet date of a captive insurer, state whether –
 - (a) the financial statements and other reports to which the certificate relates appear to him to be in accordance with the requirements of the Act, these rules, the relevant Acts and guidelines, and give particulars of any matters that do not appear to him to be in accordance with those requirements;
 - (b) the accounting records of the captive insurer in respect of that year appear to him to have been properly kept and to record and explain correctly the transactions and financial position of the captive insurer, and give particulars of accounting records that appear to him not to have been so kept and of transactions that appear to him not to have been so recorded;

- (c) in respect of that year, he has obtained the information and explanations that he requested;
- (d) he has been denied any information requested under sub paragraph (c), setting out the particulars of information and explanations that he requested but did not obtain;
- (e) he is satisfied that the financial statements and other reports referred to in sub-paragraph (a) agree with the accounting records of the captive insurer and appear to him to represent truly the transactions and financial position of the captive insurer in respect of the balance sheet date to which they relate and, where any of them appear to him to fail to represent the transactions and financial position, give particulars of the failure;
- (f) amounts required by rule 18 (3) to be apportioned, have been equitably apportioned and where they have not been so apportioned give particulars of the failure;
- (g) all management expenses incurred in respect of the captive insurer's business, whether directly or indirectly, have been fully debited in the revenue account or profit and loss account as expenses and, where they have not been so debited, give particulars of the amounts not so debited; and
- (h) every reserve has been calculated in accordance with rule 23, and where they have not been so calculated, give particulars of the failure.

SUB PART B

REPORTING REQUIREMENTS

17. Actuarial Investigation

- (1) A captive insurer shall cause an investigation into its financial position to be made by the captive insurer's actuary as at its balance sheet date.
- (2) An investigation to which paragraph (1) relates shall include a valuation of its underwriting liabilities, and in respect of liabilities incurred but not reported claims and other technical liabilities, including any deficiency in reserving for such liabilities in accordance with these rules.
- (3) The captive insurer shall submit to the Commission a report of the investigation referred to in paragraph (1) prepared by the captive insurer's actuary.
- (4) The report referred to in paragraph (3) shall include –

- (a) a statement of the valuation basis used;
- (b) a statement showing the extent to which account has been taken of the nature and term of the assets available to meet the liabilities valued;
- (c) the actuary's opinion on the value of the assets mentioned in sub-paragraph (b); and
- (d) a statement on whether the pricing of the insurance policies is prudentially sound.

18. Separation of accounts

- (1) A captive insurer carrying on more than one class of insurance business shall keep separate accounts of all receipts and payments in respect of each class of business.
- (2) The Commission may, by notice in writing, require a captive insurer to keep separate accounts of all receipts and payments in respect of a part of any class of insurance business it is conducting.
- (3) Where a single amount received or paid, whether in respect of premiums, investment income, claims, commissions, reinsurance costs, administration costs, taxes or otherwise is received or paid in respect of more than one class of insurance business, and the amount is not otherwise allocable between the different classes, the captive insurer shall, for the purposes of this paragraph, apportion the amount in an equitable manner between the classes of insurance business in respect of which it is received or paid.

19. Returns

For the purposes of section 12(1) (d) of the Act, a captive insurer shall submit, together with its audited financial statements to the Commission, the returns in the forms specified in the Second Schedule.

20. Submission and publication

- (1) A copy of every audited financial statements, certificate, report or returns required to be prepared under the Act or rules 16, 17 or 19 shall be signed by two directors or two officers holding a similar function, by the auditor and the actuary as the case may be, and shall be submitted to the Commission within the timeframe provided in section 12 (1) of the Act.
- (2) A captive insurer shall within 21 days submit to the Commission a certified copy of every report on its affairs made to its shareholders or policyholders.
- (3) No captive insurer shall publish in Mauritius or elsewhere any return certificate, report or statement required under the Act in a form other than that in which it has been submitted to the Commission, but nothing in this paragraph shall prevent a captive insurer from publishing a true and accurate abstract from such return or statement for the purpose of publicity and a copy of which is submitted to the Commission.

21. Examination of returns

Without prejudice to its powers under the relevant Acts, where it appears to the Commission that any financial statements, certificate, return or report submitted or communicated under this Part is inaccurate or incomplete in any respect, the Commission may –

- (a) require further information, which shall be certified if the Commission so directs, from the captive insurer or from such auditor, actuary or other person as it may consider necessary;
- (b) require the captive insurer to submit any document for examination by the Commission at its registered office, or its principal place of business, in Mauritius, or to supply any statement;
- (c) examine any officer of the captive insurer in relation to the return or report; and
- (d) reject the statement, certificate, return or report unless such further information as may be required by the Commission is furnished within such period as it may specify, and if the Commission declines under these rules to accept any return or report, the captive insurer shall be deemed to have failed to comply with the requirements of this Part .

22. Certificate of solvency

- (1) For the purposes of section 12 (1) (b) of the Act, a captive insurer shall submit a certificate of solvency in accordance with the form provided in the Third Schedule.
- (2) The certificate under paragraph (1) shall be accompanied by relevant calculations in accordance with these rules.

PART IV

MISCELLANEOUS

23. Valuation of reserve

Every reserve or provision referred to in these rules shall be calculated in accordance with internationally approved methods, and the methods adopted for the purpose shall be disclosed to the Commission, including any change in the methods.

24. Commencement

These rules shall be deemed to have come into operation on ----- .

Made by the Financial Services Commission on ----- .

FIRST SCHEDULE

[rule 6]

PART I

CALCULATION OF ASSET CAPITAL

Asset capital shall be calculated by taking into consideration the required margin

	Applicable factors	Required margin
a)	cash, short term deposits and receivables outstanding for less than 12 months	0%
b)	money market placements (collective investment schemes), government and semi-government bonds	1%
c)	term deposits over 12 months, premium receivables outstanding for more than one year, intragroup loans	2%
d)	non-premium receivables outstanding for more than 12 months, bond funds, corporate bonds with acceptable rating and asset-backed securities with acceptable rating	4%
e)	corporate bonds rated below acceptable rating or unrated, and asset-backed securities rated below acceptable rating or unrated, property, listed equities	8%
f)	intangible assets	100%
g)	assets not listed under this Schedule	17% , or such other amount as may be approved by the Commission.

Note to table:

Where information is not available to determine the redemption or maturity of an asset, or the asset falls in more than one category, the captive insurer shall use the category with the highest capital factors for that asset.

PART II

CALCULATION OF UNDERWRITING CAPITAL

Underwriting capital shall be calculated by retaining 10% of the higher of:

- (a) gross written premium or earned premium, whichever is higher, minus approved ceded premiums; and
- (b) gross outstanding claim liability including incurred but not reported claims minus approved reinsurers' share in technical provisions.

PART III

ACCEPTABLE RATINGS FOR THE CALCULATION OF ASSET CAPITAL AND UNDERWRITING CAPITAL

Acceptable ratings shall be equal to or above rating tiers as provided in the table hereunder:

Credit rating agencies	Credit rating tiers
Standard & Poor's	BBB
Moody's Investors Service	Baa
AM Best	B-
Fitch Ratings	BBB
Global Credit Rating International Claims Paying Ability	BBB
CARE Rating Claims Paying Ability	BBB

SECOND SCHEDULE
[rule 19]

REFER TO FORMS IN EXCEL SHEET

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THIRD SCHEDULE
[rule 22]

Certificate of solvency of an insurer who carries on Captive Insurance Business

We hereby certify that to the best of our knowledge and belief, the solvency ratio is at least 100% (calculated in accordance with these rules made under the Captive Insurance Act).

Director
(Officer holding similar functions)
Name and Signature
Dated this:

Director
(Officer holding similar functions)
Name and Signature
Dated this:

Auditor
Name and Signature
Dated this:

Actuary
Name and Signature
Dated this: