

ACT NO. 7147

BILL NO. 28-0183

TWENTY-EIGHT LEGISLATURE OF THE VIRGIN ISLANDS

Regular Session

2009

An Act amending title 22 Virgin Islands Code, to add chapter 66 to enacting the Alternative Markets Act, to facilitate asset-backed securities transactions, to provide for special purpose financial captives, and for related purposes

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Be it enacted by the Legislature of the Virgin Islands:

SECTION 1. Title 22 Virgin Islands Code, is amended to add Chapter 66, to read as follows:

“Chapter 66

Subchapter I. The Alternative Market Act

§ 6601. Definitions

(a) As used in this chapter, unless the context requires otherwise:

(1) "Actuary" means a person qualified as an actuary by examination of the Institute of Actuaries in England or the Faculty of Actuaries in Scotland Casualty Actuarial Society, or the Society of Actuaries in the United States of American or Canada.

(2) "Advisory board" means an ad hoc board of five members appointed by and with full discretion of the SAM, possessing knowledge of technical and complex issues that arise in the asset securitization and, insurance securitization business, which the SAM may use in evaluating the request to form or change the business plan of an applicant or licensed company.

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

(4) "Affiliated person" means an individual or an entity that is related to a parent or owner of an entity by virtue of being: a spouse, father, mother,

child, brother or sister of such individual person; or the owner, parent or affiliated company, with respect to any such person which is an entity.

(5) "Alternative Market" includes any market involving a SPFC or any other securitization entity, including without limitation a Trust.

(6) "Alternative market insurer" means a company that may insure or reinsure the risks of parents, owners, affiliates, and related business, provided the insurance or reinsurance that it writes complies with the laws and regulations of the United States domicile for direct placement of risk, and may directly insure the members of an association which owns the alternative market insurer.

(7) "Auditor" means an individual who sits and successfully passes a financial examination and is inducted into financial charters and societies and has earned the designation as a certified public accountant or similarly recognized definition in various countries and possesses such qualifications in insurance accountancy as the SAM, by written order, approves, and is in good standing with respect to such qualifications.

(8) "Broker" means an individual who places insurance risks with insurers and international reinsurers.

(9) "Consolidated debt to total capital ratio" means the ratio of the sum of:

(A) all debts and hybrid capital instruments including, all borrowings from banks, all senior debt, all subordinated debts, all trust preferred shares, and all other hybrid capital instruments that are not included in the determination of consolidated GAAP net worth issued and outstanding.

(B) total capital, consisting of all debts and hybrid capital instruments as described in paragraph (A) plus owners' equity determined in accordance with GAAP for reporting to the United States Securities and Exchange Commission.

(10) "Consolidated GAAP net worth" means the consolidated owners' equity determined in accordance with GAAP for reporting to the United States Securities and Exchange Commission.

(11) "Department" means the Office of the Lieutenant Governor, Division of Banking and Insurance.

(12) "GAAP" means generally accepted accounting principles.

(13) "Management" means the board of directors, managing board, manager or other individual or individuals vested with overall responsibility for the management of the affairs of the Special Purpose Vehicle and the SPFC,

including the election and appointment of officers or other of those agents to act on behalf of the Special Purpose Vehicle and the SPFC.

(14) "Marketer" means an individual appointed by the SAM who identifies potential companies, develops the market, and is involved in all aspects of marketing Advanced Markets.

(15) "NAIC" means National Association of Insurance Commissioners.

(16) "Owner" of an entity means a person or entity holding title to any portion of the shares, partnership interests, membership interests or other securities of an entity.

(17) "Parent" means any corporation, limited liability company, partnership, other entity or individual that directly or indirectly owns, controls, or holds with power to vote more than fifty percent of the outstanding voting interests of a Securitization Entity or an SPFC captive insurance company or group captive insurance company.

(18) "Principal office" means the chief place of business required to be maintained within the Territory by every entity manager licensed under this chapter and at which the entities or manager's books and records which are prescribed by this chapter are kept permanently. The office of the Qualified Manager will constitute the "principal office" of business.

(19) "Protected cell" means a separate account established and maintained by a protected cell insurance company for one or more participants.

(20) "Protected cell insurance company" means a company that has been approved by the SAM to maintain segregated accounts and to segregate each participant's assets, liabilities, and activities from each other and whose owner meets appropriate capital and surplus requirements and appropriate C & S and reinsurance from each participant.

(21) "Qualified Manager" means an entity formed in the Territory that is owned at least 51 percent by residents of the Territory who possess sufficient experience in the businesses of SPFC transactions, insurance transactions, or other relevant experience as determined by the SAM.

(A) All transactions will be managed by a Qualified Manager.

(B) The officers and employees of the Qualified Manager will not be held personally responsible for actions of the management of the asset securitizations and/or insurance securitizations.

(22) "Regulations" means the regulations promulgated by the SAM pursuant to authority established by this chapter.

(23) "SAM" means the Superintendent of Alternative Markets or the Superintendent's designee. The Director of the Division of Banking and Insurance will serve as the Acting SAM until the SAM position is filled and at any times when the SAM position is otherwise vacant.

(24) "Securitization Entity" means any entity including without limitation a Trust or an SPFC, formed under or pursuant to the laws of the Territory, that purchases portfolios of assets and that uses debt obligations, equity, surplus certificates, surplus notes, funding agreements, derivatives, and other legal forms of financial instruments to transact business.

(25) "Segregated account" means a separate account established and maintained by a protected cell captive insurer:

(A) in which the minimum capital and surplus required under this chapter is provided by one or more persons or entities;

(B) that is formed and licensed under this chapter;

(C) that insures risks of separate participants by contract;

(D) with respect to which one or more of the participants are authorized to act on matters relating to the segregated account; and

(E) that limits each participant's losses through one or more segregated accounts.

(26) "Special purpose financial captive insurance company" or "SPFC" means a captive insurance company that is formed or licensed under this chapter which does not meet the definition of any other type of captive insurance company as defined in Chapter 54, sections 1314(3) or (9) of this title.

(27) "Special Purpose Vehicle (SPV) or Special Purpose Entity (SPE)" means either a trust or a company that is used to house an asset risk either through the purchase of the assets or in synthetic form.

(28) "Superintendent of Alternative Markets" or the "SAM") means the Superintendent of the Division of Alternative Markets and International Reinsurance Section of the Office of the Commissioner of Insurance.

(29) "Territory" means the Territory of the Virgin Islands of the United States of America.

(30) "Treasury rates" means the United States Treasury strips asked yield as published in the Wall Street Journal as of a balance sheet date.

(31) "Trust" means a statutory trust as set up pursuant to the Virgin Islands Statutory Trust Entity Act.

§ 6602. Creation of alternative markets and international reinsurance section

There is established within the Office of the Commissioner of Insurance the Division of Alternative Markets and International Reinsurance. The Commissioner of Insurance, with the advice and consent of the Governor, shall appoint the SAM and determine the SAM's compensation, and the SAM shall report to the Commissioner of Insurance.

§ 6603. Authority of the SAM

(a) The SAM may:

(1) generally supervise the alternative market business being carried on in or from the Territory;

(2) ensure compliance with and enforcement of the laws and regulations relating to the conduct of the alternative market businesses;

(3) examine and prepare reports pursuant to section 6604 of this title from time to time on all matters connected with the alternative market;

(4) summon or subpoena persons to attend a hearing or to testify as a witness, to enforce attendance, and to compel production of books and evidence relevant to an inquiry necessary or appropriate under this chapter;

(5) require examination of witnesses under oath, and to administer oaths;

(6) at all reasonable times have access to and may take copies of all the books, securities, records, and documents of any SPFC, Securitization Entity, manager, agent, adjuster or broker which relate to the alternative market business and any officer, agent or person in charge, possession, custody or control of any of those books, securities, records or documents and to issue fines against any person or entity who refuses or neglects to afford such access;

(7) make an inquiry to any Securitization Entity or its manager relating to the conduct of its business or its financial affairs and to require such Securitization Entity or manager to make prompt and explicit answers and to issue fines against any person or entity which fails or refuses to provide such information and to suspend the license of the person or entity;

(8) issue licenses to Securitization Entities and Managers in accordance with this chapter; and

(9) appoint an advisory board to review all applications for licenses which may be issued under this chapter.

(b) The SAM, or any of the SAM's employees, must not be directly or indirectly:

(1) a shareholder, member, manager or partner in any company or business entity that is licensed under this chapter; or

(2) a shareholder, member, manager or partner in a company or business entity that is authorized under this chapter to act as a manager, agent or broker.

(c) The SAM or any of the SAM's employees who has a conflict of interest as defined in subsection (b) of this section shall recuse himself from addressing any such matter before the Office of the Commissioner of Insurance, Division of Alternative Markets and International Reinsurance.

§ 6604. Registers

The SAM shall keep the following registers:

(a) A register of all licenses issued to Securitization Entities under this chapter, in which must appear:

(1) the name of the Securitization Entity;

(2) the address of the Securitization Entity's principal office within the Territory; the Qualified Manager's office may serve as the principal office of the Securitization Entity;

(3) the details of the Securitization Entity business; and

(4) any and all other information the SAM may consider necessary or appropriate to keep for purposes of this chapter.

(b) A register of all licenses issued under this chapter to managers, intermediaries, brokers and agents, in which must appear the names and addresses of the Securitization Entities for whom they are authorized to act;

(c) A register of the names and addresses of all directors and officers of every Securitization Entity licensed under this chapter; and

(d) A register of all actuaries approved by the SAM to provide actuarial services under this chapter.

§ 6605. Public information and confidential information

(a) Except as provided in paragraphs (1) and (2) of this subsection, information submitted pursuant to the provisions of this chapter is confidential and may not be made public by the SAM or an agent or employee of the SAM, without the written consent of the entity, except that:

(1) information may be discoverable by a party in a civil action or contested case to which the submitting Securitization Entity or SPFC is a party, upon a showing by the party seeking to discover the information that:

(A) the information sought is relevant to and necessary for the furtherance of the action or case;

(B) the information sought is unavailable from other nonconfidential sources or

(C) a subpoena issued by a judicial or administrative law officer of competent jurisdiction has been submitted to the SAM; and

(2) the SAM may disclose the information to the public officer having jurisdiction over asset securitization and insurance securitization in a state or territory if:

(A) the public official agrees in writing to maintain the confidentiality of the information; and

(B) the laws of the state or territory in which the public official serves do not require the information to be confidential.

(b) The SAM shall post on a website and maintain on line:

(1) a list of all current regulations related to the alternative market;

(2) a current list of all licensed Securitization Entities and managers, along with their principal place of business in the Territory; and

(3) a current list of all licensed actuaries, auditors, insurance managers and intermediaries, and their principal place of business in the Territory.

§ 6606. Revolving fund established

(a) There is established in the Treasury of the Virgin Islands a special account known as the "Alternative Market Revolving Fund" for providing the financial means for the SAM to administer this chapter and for reasonable expenses incurred in promoting the asset securitization and insurance securitization industries in the Territory.

(b) The Fund consists of all fees, fines and other sums collected by the SAM under this chapter as well as sums appropriated to it from time to time from the Legislature. All funds deposited in the Fund remain available until expended. The SAM, the Commissioner of Insurance and the Commissioner of Insurance's designee are the certifying officers for expenditures under the Fund.

(c) The SAM shall have deposited into the Alternative Market Revolving Fund:

(1) all application fees, license fees, renewal fees, assessments and taxes collected by the SAM under this chapter; and

(2) all administrative penalties and fines;

(d) All payments from the Fund for the hiring, training, maintenance of staff and associated expenses, including contractual services as necessary, may be disbursed from the Treasury only upon requests issued by the SAM, after receipt of proper documentation regarding services rendered and expenses incurred or to be incurred.

(e) The interest on the monies on deposit in the Fund must also be deposited into the Fund until the balance in the fund exceeds \$10,000,000. Whenever the balance in the Fund exceeds \$10,000,000, the dollar amount of the balance above \$10,000,000 must be deposited into the General Fund.

§ 6607. License and Registration fees

(a) The following initial license application fees and initial annual license fees, subject to regulation and with full discretion of the SAM, must be charged by and collected by the SAM and deposited in the Alternative Market Revolving Fund:

(1) Annual License Fees:

(A) Qualified Manager: 5% of net revenue (gross revenues less expenses).

(B) A complete list of fees will be posted on the website of the SAM.

(b) The SAM by regulation may set and alter reasonable fees, pursuant to the notice requirements of title 3 Virgin Islands Code, chapter 35.

§ 6608. Licensing; required information and documentation; fee; renewal

(a) The Qualified Manager, intermediary, broker, actuary or auditor when permitted by its articles of incorporation, articles of organization, operating agreement, or charter, may apply to the SAM for a license to do all alternative business.

(b) To conduct asset securitization and insurance securitization business in this Territory, the Qualified Manager, intermediary broker, actuary and auditor shall:

(1) obtain from the SAM a license authorizing it to conduct business in this Territory;

(2) hold at least one board of directors meeting, or in the case of a limited liability company a meeting of the managing board, each year in this Territory;

(3) maintain its principal place of business in this Territory, including books and records; and

(4) appoint a resident agent to accept service of process and to otherwise act on its behalf in this Territory.

(c) Before receiving a license the Qualified Manager, intermediary, broker, actuary, or auditor:

(1) if formed as a corporation or a nonprofit corporation, shall: file with the SAM a certified copy of its articles of incorporation and bylaws, a statement under oath of its treasurer or other authorized officer showing its financial condition, and any other statements or documents required by the SAM; or

(2) if formed as a limited liability company, shall file with the SAM a certified copy of its articles of organization and operating agreement, a statement under oath by its managers showing its financial condition, and any other statements or documents required by the SAM.

§ 6609. Conditions of all licenses

(a) It is a condition of every license issued under this chapter, breach of which renders the license subject to cancellation by the SAM, that:

(1) The Qualified Manager, intermediary, broker, actuary and auditor must be aware of the content of each license application and business plan submitted with the license application, shall monitor for material changes in information submitted with the license application and the changes in the officers of the licensees' business organization and shall immediately notify SAM of:

(A) any material change in the information supplied in or accompanying the application or in the documents submitted with the application of which the licensee is aware; or

(B) the removal from office or the resignation of any director, officer partner or member of the licensee, and the reason for the removal or resignation from office of which the licensee was aware.

(2) No shares or other interest, whether legal or equitable, in the licensee may be issued, transferred or otherwise disposed of and no appointment of a director, officer, partner or member may be made without the prior written consent of the SAM.

(3) The licensee may not without the prior written consent of the SAM:

(A) enter into any merger, amalgamation, consolidation or reorganization;

(B) transfer, other than in the ordinary course of business by way of reinsurance any of its contracts of insurance or the whole or any part of its property, assets or liabilities;

(C) charge or pledge the whole or any part of its assets;

(D) change its name from that set out in its license; or

(E) alter the terms of its articles of incorporation, articles of organization or other instrument of incorporation or formation.

(b) With every application for a license under this chapter, the applicant shall file with the SAM a business plan. The SAM may rely upon the business plan as a condition of issuing a license.

(c) The SAM may approve or deny the requested change to the business plan in its discretion.

(d) All licensed managers shall report to the SAM any and all actual and proposed changes to the business plan of a Securitization Entity.

§ 6610. Adoption of name

The Qualified Manager intermediary, broker, auditor, actuary or any other entity that may be licensed under this chapter may not adopt a name that is the same as, deceptively similar to, or likely to be confused with or mistaken for any other existing business name registered in this Territory or in the state or country in which it will conduct business.

§ 6611. Restriction on payment of dividends; liability

(a) A corporation or other entity may declare and pay dividends or make other distributions in cash or its bonds or its property, including the shares or bonds of other corporations, on its outstanding shares, except when the corporation is insolvent or would thereby be made insolvent, or when the declaration, payment or distribution would be contrary to any restrictions contained in the certificate of incorporation or organizational document.

(b) Dividends may be declared or paid and other distributions may be made out of surplus only, so that the net assets of the corporation or entity remaining after such declaration, payment or distribution at least equal the amount of its stated capital.

(c) Directors of a corporation or managers of an LLC who vote for or concur in any of the following corporate actions are jointly and severally liable to the corporation or LLC for the benefit of its creditors, shareholders or members, to the extent of any injury suffered by such persons, respectively, as a result of such action:

(1) The declaration of any dividend or other distribution to the extent that it is contrary to the provisions of subsections (a) and (b) of this section; and

(2) The distribution of assets to shareholders or members after dissolution of the corporation or LLC without paying or adequately providing for all known liabilities of the corporation or LLC, excluding any claims not filed by creditors within the time limit set in a notice given to creditors.

§6612. Suspension or revocation of license

(a) The license of the Qualified Manager, intermediary broker, actuary and auditor to conduct a business in this Territory may be suspended or revoked by the SAM for:

(1) insolvency or impairment of capital or surplus;

(2) refusal or failure to submit an annual report, or any other report or statement required by law or by lawful order of the SAM;

(3) failure to comply with its own charter, bylaws, or other organizational documents;

(4) failure to submit to examination or any legal obligation relative to an examination;

(5) refusal or failure to pay the cost of examination or fees;

(6) use of methods that, although not otherwise specifically prohibited by law, nevertheless render its operation detrimental or its condition unsound with respect to the public or to its policyholders; or

(7) failure otherwise to comply with laws of this Territory.

§6613. Rules, regulations, and orders

The SAM may promulgate and from time to time amend rules and regulations, and issue such orders relating to Securitization Entities or SPFCs as are necessary to enable the SAM to carry out the provisions of this chapter.

§6614. Formation of protect celled insurance company; establishing protected cells

(a) One or more entities may form a protected cell insurance company under this chapter.

(b) A protected cell insurance company formed or licensed under this chapter may establish and maintain one or more protected cells to insure risks of one or more participants, subject to the following conditions:

(1) each protected cell must be accounted for separately on the books and records of the captive insurance company established pursuant to Chapter 54 of this title or each Securitization Entity or SPFC established pursuant to this chapter 66 to reflect the financial condition and results of operations of the protected cell, net income or loss, dividends or other distributions to participants, and other factors may be provided in the participant contract or required by the SAM;

(2) the assets of a protected cell must not be chargeable with liabilities arising out of any other insurance business the sponsored captive insurance company, established pursuant to Chapter 54 of this Title or each Securitization Entity or SPFC established pursuant to this Chapter 66, may conduct;

(3) no sale, exchange, or other transfer of assets may be made by the captive insurance company established pursuant to Chapter 54 of this title or each Securitization Entity or SPFC established pursuant to this chapter 66 between or among any of its protected cells without the consent of the protected cells;

(4) no sale, exchange, transfer of assets, dividend, or distribution may be made from a protected cell or participant without the SAM's approval and in no event may the approval be given if the sale, exchange, transfer, dividend, or distribution would result in insolvency or impairment with respect to a protected cell;

(5) a protected cell insurance company annually shall file with the SAM such financial reports as the SAM requires which includes, but are not limited to, accounting statements detailing the financial experience of each protected cell;

(6) a protected cell insurance company shall notify the SAM in writing within ten business days of a protected cell that is insolvent or otherwise unable to meet its claim or expense obligations; and

(7) no participant contract may take effect without the SAM's prior written approval, and the addition of each new protected cell and withdrawal of any participant of any existing protected cell constitutes a change in the business plan requiring the SAM's prior written approval.

§6615. Participants in protected cell insurance companies

(a) An association, a corporation, a limited liability company, a partnership, a trust, or other business entity may be a participant in a protected cell insurance company formed or licensed pursuant to this chapter.

(b) The owner may be a participant in a protected cell insurance company.

(c) A participant need not be a shareholder of the protected cell insurance company or an affiliate of the company.

§6616. Terms and conditions for protected cell insurance companies; exception

In the case of a protected cell insurance company:

(a) a protected cell need not be established solely for the purpose of effecting insurance securitizations, but may be established for the purpose of isolating the expenses and claims of a protected cell insurance company participant; and

(b) the protected cell insurance company shall attribute all insurance obligations, assets, and liabilities relating to a participant's risks to the participant's protected cell.

§6617. Tax rates and payment schedules

Each Securitization Entity must be taxed in the same manner as an SPFC pursuant to Section 6670(c), (d), (e) and (f) of Subchapter III of this chapter.

Subchapter II. Asset-Backed Securities Facilitation Act

§6640. Title

This subchapter may be cited as the "Asset-Backed Securities Facilitation Act."

§6641. Intent

It is intended by the Legislature that the term "securitization transaction" must be construed broadly.

§6642. Securitization transaction

(a) Notwithstanding any other provision of law, to the extent set forth in the transaction documents relating to a securitization transaction, including a transaction entered into pursuant to subchapter II of this chapter:

(1) Any property, assets or rights purported to be transferred, in whole or in part, in the securitization transaction are deemed to no longer be the property, assets or rights of the transferor;

(2) A transferor in the securitization transaction, its creditors or, in any insolvency proceeding with respect to the transferor or the transferor's property, a bankruptcy trustee, receiver, debtor, debtor in possession or similar person, to the extent the issue is governed by Virgin Islands law, has no rights, legal or equitable, whatsoever to reacquire, reclaim, recover, repudiate, disaffirm, redeem or re-characterize as property of the transferor any property, assets or rights purported to be transferred, in whole or in part, by the transferor; and

(3) In the event of a bankruptcy, receivership or other insolvency proceeding with respect to the transferor or the transferor's property, to the extent

the issue is governed by Virgin Islands law, such property, assets and rights may not be deemed to be part of the transferor's property, assets, rights or estate.

(b) Nothing contained in this subchapter may be deemed to require any securitization transaction to be treated as a sale for federal or Virgin Islands tax purposes or to preclude the treatment of any securitization transaction as debt for federal or Virgin Islands tax purposes or to change any applicable laws relating to the perfection and priority of security or ownership interests of persons other than the transferor, hypothetical lien creditor or, in the event of a bankruptcy, receivership or other insolvency proceeding with respect to the transferor or its property, a bankruptcy trustee, receiver, debtor, debtor in possession or similar person.

(c) It is not the purpose of this subchapter to change the tax treatment of securitizations that take place pursuant to this subchapter.”

Subchapter III. Special Purpose Financial Captives

§6651. Purpose

This subchapter provides for the creation of Special Purpose Financial Captives (SPFCs) exclusively to facilitate the securitization of one or more risks, as a means of accessing alternative sources of capital and achieving the benefits of securitization. SPFCs are created for the limited purpose of entering into an SPFC contract and insurance securitization transactions and into related agreements to facilitate the accomplishment and execution of those transactions. The creation of SPFCs is intended to achieve greater efficiencies in structuring and executing insurance securitizations, to diversify and broaden insurers' access to sources of capital, to facilitate access for many insurers to insurance securitization and capital markets financing technology, and to further the economic development and expand the interest of the Territory through its captive insurance program.

§6652. Definitions

For purposes of this subchapter, the following definitions apply in addition to the definitions set out in Subchapter I of this chapter:

(a) "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 Court after an opportunity for hearing.

(b) "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 non-management 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 ten percent or more of the voting securities of another person. This presumption may be rebutted by a showing that control does not exist. Notwithstanding

other provisions of this section, for purposes of this subchapter, 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.

(c) "Counterparty" means a person, other than a natural person, which may but need not be the parent or an affiliate of the SFPC that enters into a contract with a SPFC.

(d) "Court" means the Superior Court of the Virgin Islands.

(e) "Fair value" means:

(1) as to cash, the amount of it; and

(2) as to an asset other than cash:

(A) the amount at which that asset could be bought or sold in a current transaction between arms length, willing parties;

(B) the quoted mid-market price for the asset in active markets must be used if available; and

(C) if quoted mid-market prices are not available, a value 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.

(f) "Insolvency" or "insolvent" means that the SPFC or one or more of its protected cells is unable to pay its obligations when they are due, unless those obligations are the subject of a bona fide dispute, or the SAM previously has established by order other criteria for determining the solvency of the SPFC or one or more of its protected cells, in which case the SPFC is insolvent if it fails to meet that criteria.

(g) "Insurance securitization" means a package of related risk transfer instruments, capital market offerings, and facilitating administrative agreements by which proceeds are obtained by an SPFC directly or indirectly through the issuance of securities, which complies with applicable securities law, and which proceeds are held in trust pursuant to the provisions of this subchapter to secure the obligations of the SPFC under one or more SPFC contracts with a counterparty, where investment risk to the holders of these securities is contingent upon the obligations of the SPFC to the counterparty under the SPFC contract in accordance with the transaction terms.

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

(i) "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.

(j) "Permitted investments" means those investments that meet the qualifications pursuant to section 6665 of this subchapter.

(k) "Qualified Manager" means an entity formed in the Territory that is owned at least 51 percent by residents of the Territory who possess sufficient experience in the businesses of SPFC transactions, insurance transactions, or other relevant experience as determined by the SAM, and subject to the regulations promulgated by the SAM.

(l) "Qualified United States financial institution" means, for purposes of meeting the requirements of a trustee as specified in section 6665 of this subchapter, a financial institution that is eligible to act as a fiduciary of a trust, and is:

(1) organized or, in the case of a United States branch or agency office of a foreign banking organization, is licensed under the laws of the United States or the Territory; and

(2) regulated, supervised, and examined by federal, state or Territorial authorities having regulatory authority over banks and trust companies.

(m) "Securities", or in the singular "Security", means those different types of debt obligations, equity, surplus certificates, surplus notes, funding agreements, derivatives, and other legal forms of financial instruments. Security also means any note, stock, treasury stock, bond; debenture; evidence of indebtedness; certificate of interest or participation in any profit-sharing agreement; collateral-trust certificate; reorganization certificate or subscription; transferable share; investment contract, including pyramid promotion which includes any plan or operation for the sale or distribution of property, services, or any other thing of value wherein a person for a consideration is offered an opportunity to obtain a benefit which is based in whole or in part on the inducement, by himself or herself or by others, of additional persons to purchase the same or a similar opportunity; voting-trust certificate; certificate of deposit for a security; certificate of interest of participation in an oil, gas or mining title or lease or in payments out of production under such a title or lease; options on commodities; or, in general, any interest or instrument commonly known as a "security", or any certificate of interest or participation in, temporary or interim certificate, for, receipt for guarantee of, or warrant or right to subscribe to or purchase, any of the foregoing. "Security" does not include any insurance or endowment policy or annuity contract under which an insurance company promises to pay money either in a lump sum or periodically for life or for some other specified period.

(n) "Securities commissioner" means the Lieutenant Governor or the Lieutenant Governor's designee.

(o) "SPFC" or "Special Purpose Financial Captive" means an entity as defined in section 6601(a) (26) of this chapter which has received a license from the SAM for the limited purposes provided for in this subchapter.

(p) "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.

(q) "SPFC securities" means the securities issued by an SPFC.

(r) "Surplus note" means an unsecured subordinated debt obligation deemed to be a surplus certificate and otherwise possessing characteristics consistent with paragraph 3 of the Statement of Statutory Accounting Principles No. 41, as amended, National Association of Insurance Commissioners (NAIC).

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

§6653. Relation to other Title 22 provisions

(a) No provisions of title 22 other than those specifically referenced in this subchapter apply to an SPFC, and those provisions apply only as modified by this subchapter. If a conflict occurs between a provision of title 22 and a provision of this subchapter, the latter controls.

(b) The SAM, by rule, regulation, or order, may exempt an SPFC or its protected cells, on a case by case basis, from provisions of this subchapter that the SAM determines to be inappropriate given the nature of the risks to be insured.

§6654. License to transact business in Territory; contents of application; fees; foreign corporations

(a) An SPFC, when permitted by its organizational documents, may apply to the SAM for a license to transact insurance or reinsurance business as authorized by this subchapter. An SPFC may insure or reinsure only the risks of its counterparty. An SPFC may purchase reinsurance to cede the risks assumed under the SPFC contract as approved by the SAM.

(b) To transact business in this Territory an SPFC shall:

(1) obtain from the SAM a license authorizing it to conduct insurance or reinsurance business, or both, in this Territory;

(2) hold at least one management meeting each year in this Territory;

(3) maintain its principal place of business in this Territory, either directly or through the Qualified Manager;

(4) authorize the Qualified Manager to serve as the SPFC's resident registered agent to accept service of process and to otherwise act on its behalf in this Territory. If the registered agent, with reasonable diligence, is not found at the registered office of the SPFC, the SAM must be an agent of the SPFC upon whom any process, notice, or demand may be served;

(5) provide such documentation of the insurance securitization as requested by the SAM immediately upon closing of the transaction, including:

(A) an opinion of legal counsel with respect to compliance with this subchapter and any other applicable laws as of the effective date of the transaction; and

(B) a statement under oath of its president and secretary, or manager, showing its financial condition; and

(6) provide a complete set of the documentation of the insurance securitization to the SAM shortly following closing of the transaction.

(c) A complete SPFC application must include the following:

(1) a certified copy of its organizational documents;

(2) evidence of:

(A) the amount and liquidity of its assets relative to the risks to be assumed;

(B) the adequacy of the expertise, experience, and character of the person or persons who manages it;

(C) the overall soundness of its plan of operation;

(D) other factors considered relevant by the SAM in ascertaining whether the proposed SPFC is able to meet its policy obligations; and

(E) the applicant SPFC's financial condition, including the source and form of the minimum capitalization to be contributed to the SPFC;

(3) A plan of operation, consisting of a description of or statement of intent with respect to the contemplated insurance securitization, the SPFC contract, and related transactions, which must include:

(A) draft documentation or, at the discretion of the SAM, a written summary of all material agreements that are entered into to effectuate the SPFC contract and, before effecting such, the insurance

securitization, to include the names of the counterparty, the nature of the risks being assumed, the proposed use of protected cells, if any, and the maximum amounts, purpose, and nature and the interrelationships of the various transactions required to effectuate the insurance securitization;

(B) the source and form of additional capitalization to be contributed to the SPFC;

(C) the proposed investment strategy of the SPFC;

(D) a description of the underwriting, reporting, and claims payment methods by which losses covered by the SPFC contract are reported, accounted for, and settled; and

(E) a pro forma balance sheet and income statement illustrating various stress case scenarios for the performance of the SPFC under the SPFC contract;

(4) Biographical affidavits in NAIC format of all of the prospective SPFC's officers and directors and managers, providing their legal names, any names under which they have or are conducting their affairs, and any affiliations with other persons, together with other biographical information as the SAM may request;

(5) An affidavit from the applicant SPFC verifying:

(A) the applicant SPFC meets the provisions of this subchapter;

(B) the applicant SPFC operates only pursuant to the provisions in this subchapter;

(C) the applicant SPFC's investment strategy reflects and takes into account the liquidity of assets and the reasonable preservation, administration, and asset management of such assets relative to the risks associated with the SPFC contract and the insurance securitization transaction;

(D) the securities proposed to be issued are valid legal obligations that are either properly registered with the Office of the Lieutenant Governor, Division of Banking and Insurance or constitute an exempt security or form part of an exempt transaction under Virgin Islands law; and

(E) unless otherwise exempted by the SAM, the trust agreement, the trusts holding assets that secure the obligations of the SPFC under the SPFC contract, and the SPFC contract with the counterparty in connection with the contemplated insurance securitization are structured pursuant to the provisions in this subchapter; and

(6) Any other statements or documents required by the SAM to evaluate and complete the licensing of the SPFC.

(d) In addition to the information required by subsection (c), and to the provisions of section 6658 of this subchapter, if a protected cell is used, an applicant SPFC shall file with the SAM:

(1) a business plan demonstrating how the applicant accounts for the loss and expense experience of each protected cell at a level of detail found to be sufficient by the SAM, and how it reports the experience to the SAM;

(2) a statement acknowledging that all financial records of the SPFC, including records pertaining to any protected cells, must be made available for inspection or examination by the SAM;

(3) all contracts or sample contracts between the SPFC and any counterparty, related to each protected cell; and

(4) a description of the expenses allocated to each protected cell.

(e) Information submitted pursuant to this subsection is confidential and is subject to section X 2.

(f) Sections Y and Z apply to examinations, investigations, and processing conducted pursuant to the authority of this subchapter.

(g) To transact insurance or reinsurance business in this Territory, an SPFC shall pay to the SAM:

(1) a nonrefundable fee of \$200 for processing its application for license. In addition, the SAM may retain legal, financial, and examination services from outside the Government to examine and investigate the application, the reasonable cost of which may be charged against the applicant, or the SAM may use internal resources to examine and investigate the application for a fee of \$3,000, half of which is payable upon filing of the application and the remainder upon licensure, or both;

(2) a license fee for the year of registration of \$300 and an annual renewal fee of \$300;

(3) an annual review fee of \$2,400 or, if higher, the actual cost as determined by the SAM; and

(4) premium taxes as required by this subchapter.

(h) The SAM may grant a license authorizing the SPFC to transact insurance or reinsurance business as an SPFC in this Territory until March first, at which time the license may be renewed, upon finding that the:

(1) proposed plan of operation provides a reasonable and expected successful operation;

(2) terms of the SPFC contract and related transactions comply with this subchapter;

(3) proposed plan of operation is not hazardous to any counterparty;

(4) commissioner of the state of domicile of each counterparty has notified the SAM in writing or otherwise provided assurance satisfactory to the SAM that it has approved or not disapproved the transaction; and

(5) the license authorizing the SPFC to transact business is limited only to the insurance or reinsurance activities that the SPFC is allowed to conduct pursuant to this subchapter.

(i) In evaluating the expectation of a successful operation, the SAM shall consider, among other factors, whether the proposed SPFC, and its management are of known good character and reasonably believed not to be affiliated, directly or indirectly, through ownership, control, management, reinsurance transactions, or other insurance or business relations, with a person known to have been involved in the improper manipulation of assets, accounts, or reinsurance.

(j) A foreign or alien corporation or limited liability company, upon approval of the SAM, may become a domestic SPFC by complying with all of the provisions of this subchapter and by filing with the Office of the Lieutenant Governor its organizational documents, together with appropriate amendments to it, as may be adopted pursuant to the provisions of this subchapter to bring these organizational documents into compliance with this subchapter. After this is accomplished, the foreign or alien corporation or limited liability company is entitled to the necessary or appropriate certificates or licenses to transact business as an SPFC in this Territory and is subject to the authority and jurisdiction of this Territory. In connection with this redomestication, the SAM may waive any requirements for public hearings. It is not necessary for a corporation or limited liability company redomesticating into this Territory to merge, consolidate, transfer assets, or otherwise engage in another reorganization, other than as specified in this section.

§6655. Organization requirements; privileges and restrictions

(a) An SPFC may be established as a stock corporation, limited liability company, mutual, partnership, trust or other form of organization approved by the SAM.

(b) The SPFC's organizational documents must limit the SPFC's authority to transact the business of insurance or reinsurance to those activities the SPFC conducts to accomplish its purpose as expressed in this subchapter.

(c) The SPFC may not adopt a name that is the same as, deceptively similar to, or likely to be confused with or mistaken for another existing business name registered in this Territory.

(d) An SPFC may not have fewer than three incorporators or organizers of whom not fewer than two must be bona fide residents of this Territory.

(e) Before transmitting its organizational documents to the Office of the Lieutenant Governor, the incorporators or organizers shall petition the SAM to issue a certificate setting forth a finding that the establishment and maintenance of the proposed SPFC promotes the general good of the Territory. In arriving at this finding the SAM shall consider:

(1) the character, reputation, financial standing, and purposes of the incorporators or organizers;

(2) the character, reputation, financial responsibility, insurance experience, and business qualifications of the officers, directors, partners, members, manager, or organizers, as applicable; and

(3) other aspects as the SAM considers advisable.

(f) The organizational documents, the certificate issued pursuant to subsection (e), and the required organization fees must be transmitted to the SAM and the Office of the Lieutenant Governor, Division of Corporations and Trademarks who shall record the relevant organizational documents.

(g) At least one of the members of the management of the SPFC, or the Qualified Manager representing the SPFC must be a resident of this Territory.

(h) An SPFC formed pursuant to the provisions of this subchapter has the privileges of and is subject to the provisions of the Virgin Islands Code, applicable to its formation, as well as the applicable provisions contained in this subchapter. If a conflict occurs between a provision of the applicable law and a provision of this subchapter, the latter controls. Nothing contained in this subsection with respect to an SPFC may abrogate, limit, or rescind in any way the authority of the Office of the Lieutenant Governor, Division of Banking and Insurance.

§ 6656. Capitalization

(a) An SPFC initially shall possess and after that maintain minimum capitalization of not less than \$250,000. All of the minimum initial capitalization must be in cash. All other funds of the SPFC in excess of its minimum initial capitalization must be in the form of cash, cash equivalent, or securities invested as provided in section 6665 of this subchapter and approved by the SAM.

(b) Additional capitalization for the SPFC must be determined, if so required, by the SAM after giving due consideration to the SPFC's business plan, feasibility study, pro-formas, and the nature of the risks being insured or reinsured, which may be prescribed in formulas approved by the SAM.

(c) All of the minimum capitalization must be held in a bank or financial institution licensed and doing business in the Territory.

§6657. Authorized contracts

(a) An SPFC may insure only the risks of a counter party.

(b) An SPFC may not issue a contract for assumption of risk or indemnification of loss other than an SPFC contract. However, the SPFC may cede risks assumed through an SPFC contract to third party international reinsurers through the purchase of reinsurance or retrocession protection on terms approved by the SAM.

(c) An SPFC may enter into contracts and conduct other commercial activities related or incidental to and necessary to fulfill the purposes of the SPFC contract, insurance securitization, and this subchapter. Those activities may include: entering into SPFC contracts; issuing securities of the SPFC in accordance with applicable securities law; complying with the terms of these contracts or securities; entering into trust, swap, tax, administration, reimbursement, or fiscal agent transactions; or complying with trust indenture, reinsurance, or retrocession, and other agreements necessary or incidental to effectuate an insurance securitization in compliance with this subchapter or the plan of operation approved by the SAM.

(d) An SPFC may discount its reserves at discount rates as approved by the SAM.

(e) An SPFC shall file annually an actuarial opinion on reserves provided by an approved and licensed independent actuary.

§6658. Protected cells

(a) This section and section 6659 of this subchapter provide a basis for the creation and use of protected cells by an SPFC as a means of accessing alternative sources of capital, lowering formation and administrative expenses, and generally making insurance securitizations more efficient.

(b) An SPFC may establish and maintain one or more protected cells with prior written approval of the SAM and subject to compliance with the applicable provisions of this subchapter and the following conditions:

(1) A protected cell must be established only for the purpose of insuring or reinsuring risks of one or more SPFC contracts with a counterparty with the intent of facilitating an insurance securitization;

(2) Each protected cell must 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, net income or loss, dividends, or other distributions to the counterparty for the SPFC contract with each cell, and other factors as may be provided in the SPFC contract, insurance securitization transaction documents, plan of operation, or business plan, or as required by the SAM;

(3) 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 may not be, or may not hold itself out to be, a trustee with respect to those protected cell assets of that protected cell account;

(4) All attributions of assets and liabilities between a protected cell and the general account must be in accordance with the plan of operation approved by the SAM. No other attribution of assets or liabilities may 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 the related insurance securitization transaction, including any securities issued by the SPFC as part of the insurance securitization, to a particular protected cell. The rights, benefits, obligations, and liabilities of any securities attributable to that protected cell and the performance under an SPFC contract and the related securitization transaction and any tax benefits, losses, refunds, or credits allocated, or any of them, at any point in time pursuant to a tax allocation agreement between the SPFC and the SPFC's counterparty, parent, or company or group company, or any of them, in common control with them, as the case may be, including any payments made by or due to be made to the SPFC pursuant to the terms of the agreement, must reflect the insurance obligations, assets, and liabilities relating to the SPFC contract and the insurance securitization transaction that are attributed to a particular protected cell;

(5) The assets of a protected cell must not be chargeable with liabilities arising out of an SPFC contract related to or associated with another protected cell. However, one 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;

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

(7) Except as otherwise contemplated in the SPFC contract or related insurance securitization transaction documents, or both, a sale, an exchange, a transfer of assets, a dividend, or a distribution may not be made from a protected cell to a counterparty or parent without the SAM's approval and may not be approved if the sale, exchange, transfer, dividend, or distribution would result in insolvency or impairment with respect to a protected cell; and

(8) An SPFC may pay interest or repay principal, or both, and make distributions or repayments in respect of any securities attributed 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 in accordance with this subchapter or as otherwise approved by the SAM.

(c) An SPFC contract with or attributable to a protected cell does not take effect without the SAM's prior written approval, and the addition of each new protected cell constitutes a change in the business plan requiring the SAM's prior written approval. The SAM may retain legal, financial, and examination services from outside the Government to examine and investigate the application for a protected cell, the reasonable cost of which may be charged against the applicant, or the SAM 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 twelve thousand dollars, or both.

(d) An SPFC utilizing protected cells initially shall possess minimum capitalization separate and apart from the capitalization of its protected cell or cells in an amount determined by the SAM after giving due consideration of the SPFC's business plan, feasibility study, and pro-formas, including the nature of the risks to be insured or reinsured. 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 6656 of this subchapter.

(e) The establishment of one or more protected cells alone does not constitute, and may not be deemed 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.

§6659. Effect of creation of protected cell; naming; management of assets

(a) (1) The creation of a protected cell does not create, with respect to that protected cell, a legal person separate from the SPFC.

(2) Notwithstanding paragraph (1), a protected cell must have its own distinct name or designation that includes the words "protected cell". The SPFC shall transfer all assets attributable to the protected cell to one or more separately established and identified protected cell accounts bearing the name or designation of that protected cell.

(3) Although it is not a separate legal person, the property of an SPFC in a protected cell is subject to orders of a court by name as it would have been if the protected cell were a separate legal person.

(4) The property of an SPFC in a protected cell must be served in its own name with process in all civil actions or proceedings involving or relating to the activities of that protected cell or a breach by the SPFC of a duty to the protected cell or to a counterparty to a transaction linked or attributed to it by serving the SPFC.

(5) A protected cell exists only at the pleasure of the SPFC. At the cessation of business of a protected cell in accordance with the plan approved by the SAM, the SPFC voluntarily shall close out the protected cell account.

(b) Nothing in this section may be construed to prohibit an SPFC from contracting with, or arranging for, an investment advisor, commodity trading advisor, or

other third party to manage the assets of a protected cell, if all remuneration, expenses, and other compensation of the third party advisor or manager are payable from the assets of that protected cell and not from the assets of other protected cells or the assets of the SPFC's general account, unless approved by the SAM.

(c) Creditors of a protected cell are not entitled to have recourse against the protected cell assets of other protected cells or the assets of the SPFC's general account. If an obligation of an SPFC relates only to the general account, the obligation of the SPFC extends only to that creditor, with respect to that obligation, and is entitled to have recourse only to the assets of the SPFC's general account.

(d) The assets of the protected cell may not be used to pay expenses or claims other than those attributable to the protected cell. Protected cell assets are available only to the SPFC contract counterparty and other creditors of the SPFC that are creditors only with respect to that protected cell and, accordingly, are entitled, in conformity with this subchapter, to have recourse to the protected cell assets attributable to that protected cell and absolutely are protected from the creditors of the SPFC that are not creditors with respect to that protected cell and who, accordingly, are not entitled to have recourse to the protected cell assets attributable to that protected cell. If an obligation of an SPFC to a person or counterparty arises from an SPFC contract or related insurance securitization transaction, or is otherwise incurred, with respect to a protected cell:

(1) that obligation of the SPFC extends only to the protected cell assets attributable to that protected cell, and the person or counterparty, with respect to that obligation, is entitled to have recourse only to the protected cell assets attributable to that protected cell; and

(2) that obligation of the SPFC does not extend to the protected cell assets of another protected cell or the assets of the SPFC's general account, and that person, with respect to that obligation, is not entitled to have recourse to the protected cell assets of another protected cell or the assets of the SPFC's general account. The SPFC's capitalization held separate and apart from the capitalization of its protected cell or cells as required by section 6659 must be available at all times to pay expenses of or claims against the SPFC and may not be used to pay expenses or claims attributable to any protected cell.

(e) Notwithstanding any other provision of law, an SPFC may allow for a security interest in accordance with applicable law to attach to protected cell assets or a protected cell account when in favor of a creditor of the protected cell or to facilitate the insurance securitization, including, without limitation, the issuance of the SPFC contract, to the extent those protected cell assets are not required at all times to support the risk, but without otherwise affecting the discharge of liabilities under the SPFC contract, or as otherwise approved by the SAM.

(f) An SPFC shall establish administrative and accounting procedures necessary to properly identify the one or more protected cells of the SPFC and the protected cell assets and protected cell liabilities to each protected cell. The directors of an SPFC shall keep protected cell assets and protected cell liabilities:

(1) separate and separately identifiable from the assets and liabilities of the SPFC's general account; and

(2) attributable to one protected cell separate and separately identifiable from protected cell assets and protected cell liabilities attributable to other protected cells.

(g) All contracts or other documentation reflecting protected cell liabilities clearly must indicate that only the protected cell assets are available for the satisfaction of those protected cell liabilities. In all SPFC insurance securitizations involving a protected cell, the contracts or other documentation effecting the transaction must contain provisions identifying the protected cell to which the transaction is attributed. In addition, the contracts or other documentation clearly must disclose that the assets of that protected cell, and only those assets, are available to pay the obligations of that protected cell. Notwithstanding the provisions of this subsection and subject to the provisions of this subchapter and another applicable law or regulation, the failure to include this language in the contracts or other documentation may not be used as the sole basis by creditors, insureds or reinsureds, insurers or international reinsurers, or other claimants to circumvent the provisions of this section.

(h) An SPFC with protected cells annually shall file with the SAM accounting statements and financial reports required by this subchapter which, among other things, must:

(1) detail the financial experience of each protected cell and the SPFC separately; and

(2) provide the combined financial experience of the SPFC and all protected cells.

(i) An SPFC with protected cells shall notify the SAM in writing within ten business days of a protected cell's becoming insolvent.

§6660. Issuance of securities

(a) An SPFC may issue securities, including surplus notes and other forms of financial instruments, subject to and in accordance with applicable law, its approved plan of operation, and its organizational documents.

(b) An SPFC, in connection with the issuance of securities, may enter into and perform all of its obligations under any required contracts to facilitate the issuance of these securities.

(c) Subject to the approval of the SAM, an SPFC may lawfully:

(1) account for the proceeds of surplus notes as surplus and not as debt for purposes of statutory accounting;

(2) submit for prior approval of the SAM periodic written requests for payments of interest on and repayments of principal of surplus notes.

(d) The SAM, without otherwise prejudicing the SAM's authority, may approve formulas for an ongoing plan of interest payments or principal repayments, or both, to provide guidance in connection with his ongoing reviews of requests to approve the payments on and principal repayments of the surplus notes.

(e) The obligation to repay principal or interest, or both, on the securities issued by the SPFC must reflect the risk associated with the obligations of the SPFC to the counterparty under the SPFC contract.

§6661. Swap agreements and other forms of asset management agreements

An SPFC may enter into swap agreements, or other forms of asset management agreements, including guaranteed investment contracts, or other transactions that have the objective of leveling timing differences in funding of up-front or ongoing transaction expenses or managing asset, credit, or interest rate risk of the investments in the trust to ensure that the investments are sufficient to assure payment or repayment of the securities, and related interest or principal payments, issued pursuant to an SPFC insurance securitization transaction or the obligations of the SPFC under the SPFC contract.

§6662. Authority to enter into contracts; contents

(a) An SPFC, at any given time, may enter into and effectuate an SPFC contract with a counterparty, if the SPFC contract obligates the SPFC to indemnify the counterparty for losses and that contingent obligations of the SPFC under the SPFC contract are securitized through an SPFC insurance securitization and are funded and secured with assets held in trust for the benefit of the counterparty pursuant to the provisions of this subchapter pursuant to agreements contemplated by this subchapter and invested in a manner that meet the criteria as provided in Section 6665 of this Title.

(b) An SPFC may enter into agreements with affiliated companies and third parties and conduct business necessary to fulfill its obligations and administrative duties incidental to the insurance securitization and the SPFC contract. The agreements may include management and administrative services agreements and other allocation and cost sharing agreements, or swap and asset management agreements, or both, or agreements for other contemplated types of transactions provided in section 6661 of this subchapter.

(c) An SPFC contract must contain provisions that:

(1) require the SPFC to enter into a trust agreement specifying what recoverables or reserves, or both the agreement is to cover and to establish a trust account for the benefit of the counterparty;

(2) stipulate that assets deposited in the trust account must be valued according to their current fair value and must consist only of permitted investments;

(3) require the SPFC, before depositing assets with the trustee, to execute assignments, endorsements in blank, or to transfer legal title to the trustee of all shares, obligations, or any other assets requiring assignments, in order that the counterparty, or the trustee upon the direction of the counterparty, may negotiate whenever necessary the assets without consent or signature from the SPFC or another entity;

(4) require that all settlements of account between the counterparty and the SPFC be made in cash or its equivalent; and

(5) stipulate that the SPFC and the counterparty agree that the assets in the trust account, established pursuant to the provisions of the SPFC contract, may be withdrawn by the counterparty at any time, notwithstanding any other provisions in the SPFC contract, and must be utilized and applied by the counterparty or any successor by operation of law of the counterparty, including, subject to the provisions of section 6672 of this subchapter, but without further limitation, any liquidator, rehabilitator, receiver, or conservator of the counterparty, without diminution because of insolvency on the part of the counterparty or the SPFC, only for the following purposes:

(A) to transfer all of the assets into one or more trust accounts for the benefit of the counterparty pursuant to and in accordance with the terms of the SPFC contract and in compliance with the provisions of this subchapter; and

(B) to pay any other incurred and paid amounts that the counterparty claims are due pursuant to and under the terms of the SPFC contract and in compliance with this subchapter.

(d) (1) The SPFC contract may contain provisions that give the SPFC the right to seek approval from the counterparty to withdraw from the trust all or part of the assets, or income from them, contained in the trust and to transfer the assets to the SPFC, provided that:

(A) at the time of the withdrawal, the SPFC shall replace the withdrawn assets, excluding any income withdrawn, with other qualified assets having a fair value equal to the fair value of the assets withdrawn and that meet the provisions of section 6665 of this subchapter; and

(B) after the withdrawals and transfer, the fair value of the assets in trust securing the obligations of the SPFC under the SPFC contract is no less than an amount needed to satisfy the funded requirement of the SPFC contract.

(2) The counterparty must be the sole judge as to the application of these provisions but may not unreasonably nor arbitrarily withhold its approval.

§6663. Securities issued by SPFC as insurance contract; underwriters or selling agents as insurance producers

Securities issued by an SPFC pursuant to an insurance securitization may not be considered to be insurance or reinsurance contracts. An investor in these securities or a holder of these securities, by sole means of this investment or holding, may not be considered to be transacting the business of insurance in this Territory. The underwriter's placement or selling agents and their partners, directors, officers, members, managers, employees, agents, representatives, and advisors involved in an insurance securitization pursuant to this subchapter may not be considered to be insurance producers or brokers or conducting business as an insurance or reinsurance company or agency, brokerage, intermediary, advisory, or consulting business only by virtue of their activities in connection with them.

§ 6664. Requirements and guidelines for asset management

In fulfilling its function, the SPFC must adhere to the following requirements and, to the extent of its powers, must ensure that contracts obligating other parties to perform certain functions incident to its operations are substantively and materially consistent with the following requirements and guidelines:

(a) The assets of an SPFC must be preserved and administered by or on behalf of the SPFC to satisfy the liabilities and obligations of the SPFC incident to the insurance securitization and other related agreements;

(b) Assets held by an SPFC in trust must be valued at their fair value;

(c) The proceeds from the sale of securities pursuant to the insurance securitization must be deposited with the trustee to the extent required to secure its obligations under the SPFC contract as provided by this subchapter and must be held or invested by the trustee pursuant to the provisions of Section 6665 of this title and the asset management agreement, if any, filed with the SAM;

(d) Assets of the SPFC, other than those held in trust for the counterparty, and income on trust assets received by the SPFC may be used to pay interest or other consideration on any securities or outstanding debt or other obligation of the SPFC, and nothing in this subchapter may be construed or interpreted to prevent an SPFC from entering into a swap agreement or other asset management transaction that has the effect of hedging or guaranteeing the fixed or floating interest rate returns paid on the assets in trust or required for the securities issued by the SPFC generated from or other consideration or payment flows in the transaction;

(e) In the SPFC insurance securitization, the contracts or other relating documentation must contain provisions identifying the SPFC;

(f) Unless otherwise approved by the SAM, an SPFC may not:

(1) issue or otherwise administer primary insurance policies;

(2) enter into an SPFC contract with a person that is not licensed or otherwise authorized to transact the business of insurance or reinsurance in at least its state, territory or country of domicile; or

(3) assume or retain exposure to insurance or reinsurance losses for its own account that is not funded by proceeds from an SPFC securitization that meets the provisions of this subchapter. However, the SPFC may wholly or partially reinsure or retrocede the risks assumed to a third party international reinsurer on terms approved by the SAM;

(g) An SPFC may not:

(1) have any direct obligation to the policyholders or reinsureds of the counterparty; or

(2) lend or otherwise invest, or place in custody, trust, or under management any of its assets with, or to borrow money or receive a loan from, other than by issuance of the securities pursuant to an insurance securitization, or advance from, anyone convicted of a felony, anyone who is untrustworthy or of known bad character, or anyone convicted of a criminal offense involving the conversion or misappropriation of fiduciary funds or insurance accounts, theft, deceit, fraud, misrepresentation, or corruption.

§ 6665. Trust agreements for assets held in trust or pledged to secure obligations

(a) Assets of the SPFC held in trust to secure obligations under the SPFC contract must at all times be held in:

(1) cash and cash equivalents;

(2) securities listed by the Securities Valuation Office of the NAIC and qualifying as admitted assets under statutory accounting convention in its state, territory of domicile; or

(3) another form of security acceptable to the SAM.

(b) Assets of the SPFC that are pledged to secure obligations of the SPFC to a counterparty under an SPFC contract must be held in trust and administered by a qualified United States financial institution. The qualified United States financial institution does not control, is not controlled by, or is not under common control with, the SPFC or the counterparty.

(c) The agreement governing this trust must create one or more trust accounts into which all pledged assets must be deposited and held until distributed in accordance with the trust agreement. The pledged assets must be held by the trustee at one of the trustee's offices or branch offices in the United States or the Virgin Islands and may be held in certificated or electronic form.

(d) The provisions for withdrawal by the counterparty of assets from the trust must be clear and unconditional, subject only to the following requirements:

(1) the counterparty has the right to withdraw assets from the trust account at any time, without notice to the SPFC, subject only to written notice to the trustee from the counterparty that funds in the amount requested are due and payable by the SPFC, pursuant to the terms of the SPFC contract;

(2) a statement or document does not need to be presented in order to withdraw assets, but the counterparty may be required to acknowledge receipt of withdrawn assets;

(3) the trust agreement must indicate that it is not subject to any conditions or qualifications outside of the trust agreement; and

(4) the trust agreement must not contain references to any other agreements or documents.

(e) The trust agreement must be established for the sole use and benefit of the counterparty at least to the full extent of the obligations of the SPFC to the counterparty under the SPFC contract. If there is more than one counterparty, or more than one SPFC contract with the same counterparty, a separate trust agreement must be entered into with the counterparty and a separate trust account must be maintained for each SPFC contract with the counterparty, unless otherwise approved by the SAM.

(f) The trust agreement must provide for the trustee to:

(1) receive assets and hold all assets in a safe place;

(2) determine that all assets are in a form that the counterparty or the trustee, upon direction by the counterparty, may negotiate, whenever necessary, the assets, without consent or signature from the SPFC or another person or entity;

(3) furnish to the SPFC, the SAM, and the counterparty a statement of all assets in the trust account reported at fair value upon its inception and at intervals no less frequent than the end of each calendar quarter;

(4) notify the SPFC and the counterparty, within ten days, of any deposits to or withdrawals from the trust account;

(5) upon written demand of the counterparty, immediately take the necessary steps to transfer absolutely and unequivocally all right, title, and interest in the assets held in the trust account to the counterparty and deliver physical custody of the assets to the counterparty; and

(6) allow no substitutions or withdrawals of assets from the trust account, except pursuant to the trust agreement or SPFC contract, or as otherwise permitted by the counterparty.

(g) The trust agreement must provide that at least thirty days, but not more than forty five days, before termination of the trust account, written notification of termination must be delivered by the trustee to the counterparty with a copy of the notice provided to the SAM.

(h) In addition to the requirements for the trust as provided in this subchapter, the trust agreement may be made subject to and governed by the laws of any state or territory. The state or territory must be disclosed in the plan of operation filed with and approved by the SAM.

(i) The trust agreement must prohibit invasion of the trust corpus for the purpose of paying compensation to, or reimbursing the expenses of, the trustee.

(j) The trust agreement must provide that the trustee must be liable for its own negligence, willful misconduct, or lack of good faith.

(k)(1) Notwithstanding the provisions of subsection (d)(3) and (4), when a trust agreement is established in conjunction with an SPFC contract, then the trust agreement or SPFC contract, or both, may provide that the counterparty shall undertake to use and apply any amounts drawn upon the trust account, without diminution because of the insolvency of the counterparty or the SPFC, only for one or more of the following purposes:

(A) to pay or reimburse the counterparty for payment of the SPFC's share of premiums to be returned to owners of counterparty's policies covered under the SPFC contract on account of cancellations of the policies under the counterparty's policies;

(B) to pay or reimburse the counterparty for payment of the SPFC's share of surrenders, benefits, losses, or other benefits covered and payable pursuant to the provisions of the SPFC contract;

(C) to fund an account with the counterparty in an amount to secure the credit or reduction from liability for reinsurance coverage provided under the SPFC contract; or

(D) to pay any other amounts the counterparty claims are legally and properly due under the SPFC contract.

(2) Any assets deposited into an account of the counterparty pursuant to subparagraph (C) of paragraph (1) or withdrawn by the counterparty pursuant to subparagraph (D) of paragraph (1) and any interest or other earnings on them, must be held by the counterparty in trust and separate and apart from any general assets of the counterparty, for the sole purpose of funding the payments and reimbursements of the SPFC contract described in subparagraphs (A) through (D) of paragraph (1).

(3) The counterparty shall return to the SPFC amounts withdrawn under subparagraphs (A) through (D) of paragraph (1) in excess of actual amounts required under subparagraphs (A) through (C) of paragraph (1), and in excess of the amounts subsequently determined to be due under subparagraph (D) of paragraph (1), plus interest at a rate not in excess of the prime rate for the amounts held pursuant to subparagraph (C) of paragraph (1) unless a higher rate of interest has been awarded by a court, and any net costs or expenses, including attorneys' fees, awarded by a court.

(4) If the counterparty has received notification of termination of the trust account, and where the SPFC's entire obligations secured under the specific SPFC contract remain unliquidated and undischarged ten days before the termination date, to withdraw amounts equal to the obligations and deposit the amounts in a separate account, in the name of the counterparty, in a qualified United States financial institution, separate and apart from the counterparty's general assets, to the extent the obligations or liabilities have not been funded by the SPFC, in trust only for those uses and purposes specified in subparagraph (A) of paragraph (1) as may remain executory after the withdrawal and for any period after the termination date until discharged.

§6666. Payment of dividends

(a) An SPFC may not declare or pay dividends in any form to its owners other than in accordance with the insurance securitization transaction agreements, and in no extent may the dividends decrease the capital of the SPFC below two hundred fifty thousand dollars, and, after giving effect to the dividends, the assets of the SPFC, including assets held in trust pursuant to the terms of the insurance securitization, must be sufficient to satisfy the SAM that it can meet its obligations. Approval by the SAM of an ongoing plan for the payment of dividends or other distribution by an SPFC must be conditioned upon the retention, at the time of each payment, of capital or surplus equal to or in excess of amounts specified by, or determined in accordance with formulas approved for the SPFC by the SAM.

(b) The dividends may be declared by the management of the SPFC if the dividends do not violate the provisions of this subchapter or jeopardize the fulfillment of the obligations of the SPFC or the trustee pursuant to the SPFC insurance securitization agreements, the SPFC contract, or any related transaction and other provisions of this subchapter.

§6667. Material changes of SPFC'S plan; filing of audit and statement of operations; examination of records

(a) Any material change of the SPFC's plan of operation pursuant to the section 6654 of this suchapter, whether or not through an SPFC protected cell, requires prior approval of the SAM, provided however:

(1) if initially approved in the plan of operation, securities subsequently issued to continue the securitization activities of the SPFC either during or after expiration, redemption, or satisfaction, of all of these, of part or all

of the securities issued pursuant to initial insurance securitization transactions may not be considered a material change; or

(2) a change and substitution in a counterparty to a swap transaction for an existing insurance securitization as allowed pursuant to the provisions of this subchapter may not be considered a material change if the replacement swap counterparty carries a similar or higher rating to its predecessor with two or more nationally recognized rating agencies, or both.

(b) No later than five months after the fiscal year end of the SPFC, the SPFC shall file with the SAM an audit by a licensed certified public accounting firm of the financial statements of the SPFC and the trust accounts.

(c) Each SPFC shall file by March first, a statement of operations, using either generally accepted accounting principles or, if approved or required by the SAM, statutory accounting principles with useful or necessary modifications or adaptations required or approved or accepted by the SAM for the type of insurance and kinds of insurers to be reported upon, and as supplemented by additional information required by the SAM. The statement of operations must include a statement of income, a balance sheet, and may include a detailed listing of invested assets, including identification of assets held in trust to secure the obligations of the SPFC under the SPFC contract. The SPFC also may include with the filing risk based capital calculations and other adjusted capital calculations to assist the SAM with evaluating the levels of the surplus of the SPFC for the year ending on December thirty first of the previous year. The statements must be prepared on forms required by the SAM. In addition the SAM may require the filing of performance assessments of the SPFC contract.

(d) An SPFC shall maintain its records in this Territory and shall make its records available for examination by the SAM at any time. The SPFC shall keep its books and records in such manner that its financial condition, affairs, and operations can be ascertained and so that the SAM may readily verify its financial statements and determine its compliance with this subchapter.

(e) All original books, records, documents, accounts, and vouchers must be preserved and kept available in this Territory for the purpose of examination and until authority to destroy or otherwise dispose of the records is secured from the SAM. The original records, however, may be kept and maintained outside this Territory if, according to a plan adopted by the management of the SPFC and approved by the SAM, it maintains suitable records instead of it. The books or records may be photographed, reproduced on film, or stored and reproduced electronically.

(f) Nothing contained in this section with respect to an SPFC shall abrogate, limit, or rescind in any way the authority of the Lieutenant Governor.

§6668. Examinations by the SAM; confidentiality of examination reports

(a) At least once every three years, and if the SAM determines it to be prudent, the SAM, or his designee, shall visit each SPFC and thoroughly inspect and examine its affairs to ascertain its financial condition, its ability to fulfill its obligations,

and whether it has complied with this subchapter. The SAM upon application, in his discretion, may enlarge the three year period to five years, if an SPFC is subject to a comprehensive annual audit during that period of a scope satisfactory to the SAM by licensed independent auditors approved by the SAM. The expenses and charges of the examination must be paid to the Territory by the company or companies examined, and the Department shall issue its warrants for the proper charges incurred in all examinations.

(b) All examination reports, preliminary examination reports or results, working papers, recorded information, documents, and copies of documents produced by, obtained by, or disclosed to the SAM or any other person in the course of an examination made pursuant to the provisions of this section are confidential and are not subject to subpoena and may not be made public by the SAM or an employee or agent of the SAM without the written consent of the company, except to the extent provided in this subsection. Nothing in this subsection prevents the SAM from using this information in furtherance of the SAM's regulatory authority as provided by the provisions of this title. The SAM may grant access to this information to public officers having jurisdiction over the regulation of insurance in another Territory or country, or to law enforcement officers of this Territory, including the Attorney General or Lieutenant Governor or another Territory or agency of the federal government at any time, if the officers receiving the information agree in writing to hold it in a manner consistent with this section.

§6669. Expiration of authority granted by the SAM on cessation of business; suspension or revocation of license; penalties; administrative hearing

(a) At the cessation of business of an SPFC following termination or cancellation of an SPFC contract and the redemption of any related securities issued in connection with them, the authority granted by the SAM expires or, in the case of retiring and surviving protected cells, be modified, and the SPFC is no longer authorized to conduct activities unless and until a new or modified license is issued pursuant to a new filing pursuant to the provisions of section 4 or as agreed by the SAM.

(b) The SAM may suspend or revoke the license of an SPFC for:

(1) insolvency;

(2) failure to meet the provisions of sections 6656, 6658 or 6670 of this subchapter;

(3) use of methods that, although not otherwise specifically prohibited by law, nevertheless render its operation detrimental or its condition unsound with respect to the public, the holders of the securities, or policyholders of the SPFC; or

(4) failure to otherwise comply in any material respect with applicable laws of this Territory.

(c) if the SAM finds, upon examination or other evidence, that an SPFC has committed any of the acts specified in subsection (b), the SAM may impose the penalties

provided under this chapter, if the SAM considers it in the best interest of the public, the holders of the securities, and the policyholders of the SPFC.

(d) Unless the grounds for suspension or revocation relate only to the financial condition or soundness of the SPFC or to a deficiency in its assets, the SAM shall notify the SPFC not less than thirty days before revoking its authority to do business in this Territory and specify in the notice the particulars of the alleged violation of the law or its organizational documents or grounds for revocation and a proper opportunity must be offered the SPFC to be heard before the Superior Court, or an administrative law court if and when established.

§6670. Tax rates and payment schedules

(a) An SPFC shall pay to the SAM by April 15 of each year, a tax at the rate of four tenths of one percent on the first \$20,000,000 and three tenths of one percent on each dollar after the first \$20,000,000, subject to a minimum annual tax of \$5,000 and a maximum annual tax of \$75,000. Taxes are based upon the direct premiums written or contracted for on policies or contracts of insurance, other than reinsurance policies or contracts written by the SPFC, during the year ending December 31 next preceding, after deducting from the direct premiums subject to the tax the amounts paid to insureds as returned premiums which must include dividends on unabsorbed premiums or premium deposits returned or credited to insureds.

(b) An SPFC shall pay to the SAM by April 15 of each year, a tax at the rate of two hundred and twenty five thousandths of one percent on the first \$20,000,000 of assumed reinsurance premium, and one hundred fifty thousandths of one percent on the next \$20,000,000, and fifty thousandths of one percent on the next, \$20,000,000 and twenty five thousandths of one percent of each dollar after that, subject to a minimum annual tax of \$5,000 and a maximum annual tax of \$75,000. However, no reinsurance tax applies to premiums for risks or portions of risks which are subject to taxation on a direct basis, pursuant to subsection (a). A premium tax is not payable in connection with the receipt of assets in exchange for the assumption of loss reserves and other liabilities of another insurer under common ownership and control if the transaction is part of a plan to discontinue the operations of the other insurer and if the intent of the parties to the transaction is to renew or maintain business with the SPFC.

(c) Each protected cell of the SPFC must be taxed as if it is a separate and distinct SPFC.

(d) In addition to the taxes provided under (a) and (b) of this section, each SPFC must be granted a reduction in the income tax liability shown on its income tax return for each taxable year by 90% for such income that meets the requirements of sections 934 and 937(b) of the Internal Revenue Code of 1986, as amended, and any successor provisions to that Code, and the Treasury Regulations promulgated thereunder, as being from Territory sources or effectively connected with the conduct of a trade or business within the Territory.

(e) (1) Every person who receives a payment or allocation subject to the tax imposed by Sections 704, 871(a)(1), 881, 884, or 1446 of the Internal Revenue Code as

applicable in the Territory from an SPFC is exempt from the payment of 100 percent of such tax.

(2) An SPFC is exempt from the requirement to withhold tax pursuant to sections 1441, 1442, and 1446 of the Internal Revenue Code as applicable in the Territory to the extent that such payments are exempt from the tax described in paragraph (1).

(f) An SPFC is exempt from any other taxes imposed by the Territory, including real property used in the business of the SPFC, gross receipts taxes, and excise taxes,

§6671. Conditions for SPFC contract being granted credit for reinsurance treatment or otherwise qualifying as asset or reduction from liability for benefit of counterparty

An SPFC contract meeting the provisions of this subchapter must be granted credit for reinsurance treatment or otherwise qualifies as an asset or a reduction from liability for reinsurance ceded by a domestic insurer to an SPFC as an assuming insurer for the benefit of the counterparty, provided and only to the extent:

(a) of the fair value of the assets held in trust for, or irrevocable letters of credit issued by a bank chartered by this Territory or a member bank of the Federal Reserve System or as approved by the SAM, for the benefit of the counterparty under the SPFC contract;

(b) the assets are held in trust pursuant to the provisions of this subchapter;

(c) the assets are administered in the manner and pursuant to arrangements as provided in this subchapter; and

(d) the assets are held or invested in one or more of the forms allowed in Section 6665 of this Title.

§6672. Conservation, rehabilitation, or liquidation of SPFC

(a) Except as otherwise modified in this section, the terms and conditions set forth in this chapter pertaining to administrative supervision of insurers and the rehabilitation, receiverships, and liquidation of insurers apply in full to SPFCs or each of the SPFC's protected cells, independently, or both, without causing or otherwise effecting a conservation, rehabilitation, receivership, or liquidation of the SPFC or another protected cell.

(b) Notwithstanding any other provision of this chapter, and without causing or otherwise affecting the conservation or rehabilitation of an otherwise solvent protected cell of an SPFC and subject to the provisions of subsection (g)(5) of this section, the SAM may apply by petition to the Superior Court for an order authorizing the SAM to conserve, rehabilitate, or liquidate an SPFC domiciled in this Territory on one or more of the following grounds:

(1) there has been embezzlement, wrongful sequestration, dissipation, or diversion of the assets of the SPFC intended to be used to pay amounts owed to the counterparty or the holders of SPFC securities; or

(2) the SPFC is insolvent and the holders of a majority in outstanding principal amount of each class of SPFC securities request or consent to conservation, rehabilitation, or liquidation pursuant to the provisions of this subchapter.

(c) Notwithstanding the provisions of this chapter, the SAM may apply by petition to the Superior Court for an order authorizing the SAM to conserve, rehabilitate, or liquidate one or more of an SPFC's protected cells, independently, without causing or otherwise effecting a conservation, rehabilitation, receivership, or liquidation of the SPFC generally or another of its protected cells, on one or more of the following grounds:

(1) there has been embezzlement, wrongful sequestration, dissipation, or diversion of the assets of the SPFC attributable to the affected protected cell or cells intended to be used to pay amounts owed to the counterparty or the holders of SPFC securities of the affected protected cell or cells; or

(2) the affected protected cell is insolvent and the holders of a majority in outstanding principal amount of each class of SPFC securities attributable to that particular protected cell request or consent to conservation, rehabilitation, or liquidation pursuant to the provisions of this subchapter.

(d) The court may not grant relief provided in subsection (b) or subsection (c) unless, after notice and a hearing, the SAM, who has the burden of proof, establishes by clear and convincing evidence that relief must be granted. The court's order may be made in respect of one or more protected cells by name, rather than the SPFC generally.

(e) Notwithstanding another provision in this chapter, regulations promulgated under this chapter, or another applicable law or regulation, upon any order of conservation, rehabilitation, or liquidation of an SPFC, or one or more of the SPFC's protected cells, the receiver shall manage the assets and liabilities of the SPFC pursuant to the provisions of this subchapter. The receiver shall ensure that the assets linked to one protected cell are not applied to the liabilities linked to another protected cell or to the SPFC generally, unless an asset or liability is linked to more than one protected cell, in which case the receiver shall deal with the asset or liability in accordance with the terms of any relevant governing instrument or contract.

(f) With respect to amounts recoverable under an SPFC contract, the amount recoverable by the receiver must not be reduced or diminished as a result of the entry of an order of conservation, rehabilitation, or liquidation with respect to the counterparty, notwithstanding another provision in the contracts or other documentation governing the SPFC insurance securitization.

(g) Notwithstanding the provisions of this chapter or other laws of this Territory:

(1) an application or petition, or a temporary restraining order or injunction issued pursuant to the provisions of this chapter, with respect to a counterparty does not prohibit the transaction of a business by an SPFC, including any payment by an SPFC made pursuant to an SPFC security, or any action or proceeding against an SPFC or its assets;

(2) the commencement of a summary proceeding or other interim proceeding commenced before a formal delinquency proceeding with respect to an SPFC, and any order issued by the court does not prohibit the payment by an SPFC made pursuant to an SPFC security or SPFC contract or the SPFC from taking any action required to make the payment;

(3) a receiver of a counterparty may not void a non-fraudulent transfer by a counterparty to an SPFC of money or other property made pursuant to an SPFC contract;

(4) a receiver of an SPFC may not void a non-fraudulent transfer by the SPFC of money or other property made to a counterparty pursuant to an SPFC contract or made to or for the benefit of any holder of an SPFC security on account of the SPFC security; and

(5) the SAM may not seek to have an SPFC with protected cells declared insolvent as long as at least one of the SPFC's protected cells remains solvent, and in the case of such an insolvency, the receiver shall handle SPFC's assets in compliance with subsection (e) and other laws of this Territory.

(h) Subsection (g) does not prohibit the SAM from taking any action permitted under this chapter with respect only to the conservation or rehabilitation of an SPFC with protected cell or cells, if the SAM would have had sufficient grounds to seek to declare the SPFC insolvent; subject to and without otherwise affecting the provisions of paragraph (5) of subsection (g). In this case, with respect to the solvent protected cell or cells, the SAM may not prohibit payments made by the SPFC pursuant to the SPFC security, SPFC contract, or otherwise made under the insurance securitization transaction that are attributable to these protected cell or cells or prohibit the SPFC from taking any action required to make these payments.

(i) With the exception of the fulfillment of the obligations under an SPFC contract, and notwithstanding another provision of this subchapter or other laws of this Territory, the assets of an SPFC, including assets held in trust, must not be consolidated with or included in the Territory of a counterparty in any delinquency proceeding against the counterparty pursuant to the provisions of this subchapter for any purpose including, without limitation, distribution to creditors of the counterparty.

§6673. Disclosure of information by the SAM

Information submitted pursuant to this subchapter is confidential and may not be made public by the SAM or an agent or employee of the SAM without the prior written consent of the SPFC, except that:

(a) information submitted pursuant to this subchapter is discoverable by a party in a civil action or contested case to which the submitting SPFC is a party, upon a specific finding by the court that:

(1) the SPFC is a necessary party to the action and not joined only for the purposes of evading the confidentiality provisions of this subchapter;

(2) the party seeking the information demonstrates by a clear and convincing standard that the information sought is relevant, material to, and necessary for the prosecution or defense of the claim asserted in the action; and

(3) the information sought is unavailable from other non-confidential sources.

(b) The SAM may disclose the information to the public officer having jurisdiction over the regulation of insurance in another territory or state if:

(1) the public official agrees in writing to maintain the confidentiality of the information; and

(2) the laws of the territory or state in which the public official serves require the information to be confidential.

§6674. Standards and criteria applicable in contested case brought by third party and certain actions by the SAM; asset protection

(a) A contested case brought by a third party based on a decision of the SAM pursuant to this subchapter is governed by applicable law of the Territory except that the third party shall:

(1) prove its case by a clear and convincing evidence standard;

(2) demonstrate irreparable harm to the SPFC or its counterparty, or both;

(3) show that there is no other adequate remedy at law; and

(4) post a bond of sufficient surety to protect the interests of the holders of the SPFC securities and policyholders, but it may not be less than fifteen percent of the total amount of the securitized transaction.

(b) If the SAM reverses, amends, or modifies a license previously issued to an SPFC or an order made in connection with a license previously issued to an SPFC, the action must comply with the standards and criteria provided in subsection (a), unless the action in reversing, amending, or modifying the license is in conformance with the provisions of section 19.

(c) A creditor of a policyholder or a participant of a captive insurance company or segregated account, and a creditor of an affiliated person of any such

insurance company or segregated account, may not set aside a transfer of funds by a policyholder or participant to the insurance company in payment of one or more premiums charged on a contract of insurance or participant contract issued by such company or segregated account, unless:

(1) It is determined, in a final order of the Superior Court, that the payment of the premiums constitutes a fraudulent transfer with respect to such creditor under the laws of the Territory; and

(2) Except in cases in which actual fraudulent intent is shown in a hearing before the Superior Court, only to the extent, if any, the amount of such payment is determined by the Superior Court to exceed the market value of the insurance protection afforded to the policyholder or participant under such contract, as at the time of its issuance.

(d) A policy of insurance or participant contract issued by a captive insurance company or segregated account, which policy or contract is expressly stated to be nonassignable:

(1) is void in the event of an attempted assignment; and

(2) is unenforceable by any person other than the original policyholder or contract participant and his, her or its transferees by operation of the law of the Territory and legal representatives.

(e) For the purposes of this section, transferees by operation of the law of the Territory and legal representatives do not include successors by merger or consolidation, successors to a policyholder or participant following a change in control of the policyholder or participant, or trustees in bankruptcy, receivers, liquidators, creditors or committees of creditors.

(f) For purposes of this section, creditor includes a person to whom an obligation is owed and any person who alleges or pursues a claim or cause of action on behalf of or in the name of a creditor.

(g) Where a captive insurance company has purchased reinsurance on any of its obligations under a contract of insurance, the proceeds of the reinsurance must be held or applied to provide

§6675. Promulgation of regulations

The SAM may, in accordance with Title 3, Chapter 35, Virgin Islands Code, promulgate regulations necessary to effectuate the purposes of this subchapter. Regulations promulgated pursuant to this section do not affect an SPFC insurance securitization in effect at the time of the promulgation.”

SECTION 2. Title 22 Virgin Islands Code, chapter 54, subchapter 1 is amended in the following instances:

(a) Section 1316(a) is amended by striking “the alternative market and” or “the alternative market or” wherever they may appear; and

(b) Section 1318(b)(1), section 1319 and section 1320(a) are amended by striking “the alternative market and”.

(c) Section 1319 is amended by deleting “Alternative Market and”.

SECTION 3. Title 22 Virgin Islands Code, chapter 54, Subchapter II is repealed.

Thus passed by the Legislature of the Virgin Islands on December 22, 2009.

Witness our Hands and Seal of the Legislature of the Virgin Islands this 19 Day of January, A.D., 2010.



Handwritten signature of Louis Patrick Hill in cursive.

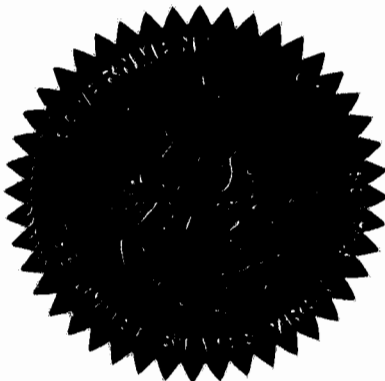
Louis Patrick Hill
President

Handwritten signature of Samuel Sanes in cursive.

Sammuel Sanes
Legislative Secretary

Bill No. 28-0183 is hereby approved.

**Witness my hand and the Seal of the
Government of the United States
Virgin Islands at Charlotte Amalie,
St. Thomas, this 27th day of January,
A.D., 2010.**



Handwritten signature of John P. de Jongh, Jr. in cursive.

John P. de Jongh, Jr.
Governor