Guidance to the AIFC Captive Insurance Regime for Captive Insurers and Captive Insurance Managers

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Disclaimer

The goal of the Astana Financial Services Authority (AFSA) in producing this document is to provide a guide to the AIFC Captive Insurers and Captive Insurance Managers carrying on a Captive Insurance Business in or from the AIFC.

This guidance should be read in conjunction with the AIFC Financial Services Framework Regulations (FSFR), AIFC Insurance and Reinsurance Prudential Rules (PINS), AIFC Prudential Rules For Insurance Intermediaries and Insurance Managers (PRU INT), AIFC Conduct of Business Rules (COB), AIFC General Rules (GEN), AIFC Anti-money Laundering and Counter Terrorist Financing and Sanctions Rules (AML) and any other relevant material. This material may be amended by the AFSA from time to time. The full text of the AIFC Regulations and Rules that apply to firms carrying on business in or from the AIFC can be found on www.afsa.kz.

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Captive Insurance

A captive is an insurance company that is formed to insure or reinsure the risks of its parents or affiliates of the parent. The captive is primarily used as a risk management vehicle by the parent to either cover risks that cannot be insured in the market or to manage the parent’s insurable risks in a more cost-effective manner. On occasions, captives insure unrelated third-party risks.

In the AIFC, captives that insure unrelated third parties are expected to only underwrite risks arising from business or operations that are closely linked to the operations of the parent or group of companies to which the captive belongs.

Classes of Captive Insurance

In order to conduct captive insurance business a captive must be incorporated and authorised by the AFSA. There are three classes of captives in the AIFC:

	Class 1	Class 2	Class 3
Description	A captive that insures only the risks of its parent or affiliates.	Captive where up to 20% of its gross written premiums can be related to third party risks.	Captive that insures only the risks of its owners or affiliates who engage in similar or related business.
May underwrite related third-party risk?	No	Yes	Yes
May underwrite unrelated third-party risk?	No	Yes, up to 20%	No

Minimum Capital Requirements for Captive Insurers

The Minimum Capital Requirements for captives in the AIFC are designed to take into account the differences between classes. Regardless of a class, a captive must maintain the highest of its base capital requirement, premium risk component or technical provision risk component.

<table>
<tr><th colspan="4">MCR>BCR, PRC, TPRC</th></tr>
<tr><th></th><th>Base Capital Requirement</th><th>Premium Risk Component</th><th>Technical Provision Risk Component</th></tr>
<tr><td>Class 1</td><td>US$100,000</td><td rowspan="3">[18% × firm's net written premium up to US$ 5 million]

add

[16% × firm's net written premium in excess of US$ 5 million]</td><td rowspan="3">General Insurance Business:

[5% × firm's net claims reserve under general Contracts of Insurance]

less

[15% × the amount of firm's reinsurance and other recoveries expected
to be received in respect of those claims]

Long-term Insurance Business:

[2.5% × Policyholder liabilities calculated using actuarial methods for long-term insurance]</td></tr>
<tr><td>Class 2</td><td>US$200,000</td></tr>
<tr><td>Class 3</td><td>US$300,000</td></tr>
</table>

The prudential requirements are adapted to the risk profile of the captive. Captives that insure unrelated third parties would typically carry higher risks and therefore would need to meet more stringent prudential and business conduct requirements. Captives that carry on general insurance business would have higher risk than captives that carry on long-term insurance business.

The PINS rules contain the full set of Prudential requirements for Captive Insurers.
Because of the lower risk of pure captives (Class 1 in the AIFC), they are exempted from the obligation to calculate Prescribed Capital Requirement (PCR) and are allowed to provide Prudential Returns (Schedule 6 of PINS) twice a year instead of quarterly.

Management of Captives

Captive Insurers in the AIFC can be either self-managed or can outsource its management to an AFSA authorised Insurance Manager. The management of an AIFC Captive Insurer cannot be outsourced to an insurance manager not authorised by the AFSA.

Insurance Manager is defined in the AIFC General Rules as a company that performs underwriting or administration functions for a captive.

Role of Insurance Managers
Insurance managers are responsible for the day to day management, supervision and control of their client insurers. Insurance managers provide expertise to ensure that client insurers fulfil their financial, compliance, and regulatory obligations.
The responsibilities of an insurance manager towards a client insurer generally include, but are not limited to:

a) acting as consultant and advisor in respect of insurance matters;
b) processing applications for and endorsement on insurance contracts
c) verifying that the client insurer remains fit and proper;
d) administration of policies and procedures;
e) risk management;
f) financial management;
g) accounting and maintaining of other books and records for the client insurers in a manner that such books and records are easily accessible at the request of the AFSA; and
h) maintaining knowledge of the law and regulatory framework for insurance managers and client insurers.

The insurance manager should have a place of business in the AIFC with such resources, including staff and facilities, books and records as the AFSA may consider appropriate, having regard to the nature and scale of the business. These resources should be sufficient for the insurance manager to discharge its insurance expertise obligations and adequately service the operations of the client insurer.

The AFSA expects that the insurance manager will be knowledgeable about the business of each client insurer, including the lines of business written and specific risks of the client insurer's business. The insurance manager should be appropriately staffed with the right skills, knowledge and experience to provide insurance expertise in relation to its types of client insurers.

Bank accounts of the insurance manager, bank accounts relating to the insurance business of the client insurer, and safeguarding the assets belonging to the client insurer should be controlled by the insurance manager. Bank accounts and assets belonging to the client insurer should be maintained separately from the bank accounts and assets belonging to the insurance manager.

The insurance manager should maintain complete and proper books and records for the client insurer including the client insurer's policies and procedures. In addition, contemporaneous records that are sufficiently detailed to reconstruct the transactions entered into by the insurance manager on behalf of the client insurer should be maintained by the insurance manager. These records should be readily accessible for the AFSA to review and maintained for period of time specified in the AIFC Conduct of Business Rules and other relevant AIFC Rules.

Relations with the AFSA

It is expected that the insurance manager will be the principal contact between the AFSA and the client insurer. The insurance manager should communicate with the AFSA in an open and co-operative manner and keep the regulator informed of anything which might reasonably be expected to be disclosed to it. The insurance manager should provide timely responses to questions or requests made by the AFSA.

The insurance manager should ensure effective and efficient communication between the client insurer and the AFSA. Notwithstanding the above, the AFSA may communicate directly with the client insurer.

In particular, the insurance manager's responsibilities, as it relates to its function as a point of communication between the client insurer and the AFSA, may include but not be limited to:

a) providing a list of potential client insurers during the initial application process to the AFSA, if known;
b) ensuring the timely submission of applicable Prudential Returns, Own Risk and Solvency Assessment (ORSA) and other required reports on behalf of the client insurer;
c) timely payment of the client insurer's fees to the AFSA (if applicable);
d) seeking the AFSA's prior approval of an assignment or a change of shareholders, directors, managers, officers, actuaries of the client insurer;

e) informing the AFSA, in a timely manner, of any legal or regulatory breaches of the client insurer whether in the AIFC or abroad;
f) notification of difficulties in obtaining information from the client insurer to the AFSA;
g) monitoring the capital and solvency positions of the client insurer to ensure that such positions meet the requirements of appropriate AFSA Rules and Regulations.
h) providing assistance where necessary at meetings concerning the client insurer with the AFSA.

The AFSA expects the insurance manager to notify the AFSA if the insurance manager has concerns about

a) the fitness and propriety or the financial soundness of a client insurer;
b) any matter which could have a significant adverse effect on client insurer's reputation;
c) any matter in relation to a client insurer which could result in serious adverse financial consequences;
d) a breach of a rule by a client insurer or its employees;
e) any proposed restructuring, merger, acquisition, reorganisation or business expansion which could have a significant impact on the client insurer's risk profile or resources;
f) any failure of the client insurer's systems and controls;
g) any action that would result in a material change in the capital adequacy or solvency of the client insurer;
h) non-compliance with Rules by a client insurer;
i) any significant conflict of interest matters.

Relations with Client Insurer

Insurance managers should diligently manage the business of client insurers. Insurance managers should provide client insurers with insurance expertise.

Insurance managers should maintain a process for handling complaints from client insurers and should deal with complaints in a timely manner.

Insurance managers must conduct initial and ongoing due diligence to ascertain the fitness and propriety of client insurers, including conducting due diligence on new or proposed shareholders and directors of the client insurer, both prior to initial licensing and before submitting any requests for approval to the AFSA.

Insurance managers should avoid situations that could place them in a conflict of interest situation with a client insurer.

Insurance managers should:

a) arrange access to the client insurer's business to ensure that the insurance manger is able to access and maintain accurate and adequate records of the client insurer;
b) provide in writing applicable legislation and regulatory measures to the client insurer, together with timely updates on any changes thereto;
c) provide and explain any other information reasonably necessary for the client insurer to comply with the above; and
d) verify that client insurers understand their financial, legal and regulatory obligations.

There should be a formal written agreement between the insurance manager and the client insurer that will describe and govern the relationship between the parties and clearly set out each party's respective functions, duties and responsibilities.