

ARMC CELL REGULATION

Adopted and Approved by the ARMC Board of Directors – 01/29/09

SECTION 1. PURPOSE.

To establish a plan of self-regulation covering the formation, administration, regulation and oversight of Cells (as hereinafter defined) by ARMC (as hereinafter defined) within Indian Country (as defined under federal law 18 U.S.C. §1151); to authorize the creation of Cells by ARMC; to organize and administer Cells consistent with similar rules utilized by other insurance regulatory authorities; and to establish minimum amounts of capital and reserves for Cells.

NOW, THEREFORE, pursuant to the authority granted it by the Charter (Section 10.1 and 12.1) and Bylaws (Section 3.2 and 8.4), this Regulation is enacted and shall be cited as the “ARMC Cell Regulation” of 01/29/09

SECTION 2. DEFINITIONS.

For the purposes of this Regulation, the term:

- A. “**Affiliate**” means an Affiliate as defined in Section 11.6 of the Charter of Incorporation of AMERIND Risk Management Corporation and Section 2.2 of the Bylaws of ARMC.
- B. “**ARMC**” means AMERIND Risk Management Corporation.
- C. “**Board**” means the ARMC Board of Directors.
- D. “**Bylaws**” means the Bylaws of ARMC.
- E. “**Cell**” means a separate and distinct operating unit of ARMC that protects the shared risk of Participants in that unit through contract. Each Cell must:
 - 1) Meet the minimum capital and reserves requirements for Cells established by this Regulation; and
 - 2) Be governed and administered pursuant to the provisions of this Regulation; and

- 3) Limit its assets exclusively to pay the liabilities incurred by the Participants of that Cell. Creditors of one Cell have no rights or recourse to the assets of another independent and segregated Cell.
- F. “Charter”** means the Charter of Incorporation of AMERIND Risk Management Corporation.
- G. “Commission”** means the ARMC Cell Commission.
- H. “Commission members”** means the individual members of the Commission.
- I. “Contributions”** means, as to Members, “Annual Contributions” and “Reserve Contributions” as defined in the Membership Agreement to which that Member is a signatory. As to Affiliates, “Contributions” means “Annual Contributions” as defined in the Affiliate Agreement to which that Affiliate is a signatory.
- J. “Federally-Recognized Indian Tribe”** means any tribal entity recognized by the Secretary of the Interior as having a government-to-government relationship with the United States.
- K. “General Assets”** means those assets held by ARMC that are neither specific to nor required to be included within any Cell. General Assets include but are not limited to unrestricted net assets of ARMC, profit, operating surplus, or other revenue not deemed part of any Cell.
- L. “Member”** means a Member as defined in Section 11.1 of the Charter and Section 2.1 of the Bylaws.
- M. “Membership Agreement” or “Affiliate Agreement”** means a contract by which ARMC insures the risks of a Participant and limits the losses of the Participant to the assets of a specific Cell.
- N. “Participant”** means a Member or Affiliate whose losses are limited through its Membership Agreement or Affiliate Agreement to the assets of a specific Cell.
- O. “Person”** means corporations, partnerships, associations, trusts, and individual natural persons.
- P. “Reserves”** means the amount set aside within, by, or on behalf of, a Cell for payment of claims, loss adjustment expenses and unearned premiums incurred or likely to be incurred by the Pool associated with that Cell.
- Q. “Unrestricted Net Assets”** means unimpaired capital, namely, that capital available to the Board for use in funding new programs and services, payment of

distributions, and maintaining the required Reserves of a specific Cell should that Cell's operations cause it to fall below the required minimum.

SECTION 3. ARMC CELL ADVISORY COMMISSION.

- A.** The Board has approved the creation of the ARMC Cell Advisory Commission (“Commission”), for the purpose of providing feedback, monitoring and compliance review concerning the creation and operation of Cells.
- B.** The Board shall identify and engage not less than three (3) nor more than seven (7) individuals to serve as members on the Commission, of whom:
 - 1) At least one but not more than two shall be state insurance regulators, one preferably from the New Mexico Department of Insurance;
 - 2) One shall hold an elected office in the government of the Red Lake Band of the Chippewa Indians or be an enrolled member appointed by the tribal council;
 - 3) One shall hold an elected office in the government of the Confederated Salish and Kootenai Tribes of the Flathead Reservation or be an enrolled member appointed by the tribal council;
 - 4) One shall hold appointed office in the government of the Pueblo of Santa Ana or be a tribal member appointed by the tribal council;
 - 5) One shall be the immediate past chairman of ARMC; and
 - 6) One shall have professional financial expertise.
- C.** The Commission shall elect a Chairman from those members appointed from **B.** 2), 3), 4) or 5) above.
- D.** The Commission members:
 - 1) Shall serve staggered three year terms, with initial members being chosen for terms of one, two, or three years as determined by the Board at the time of selection;
 - 2) May serve more than one term, if approved by the Board, so long as they remain qualified;
 - 3) Are subject to removal by a vote of a majority of the members of the Board serving at the time of the vote.
 - 4) Shall be paid an annual retainer as determined by resolution of the Board;

- 5) Shall be reimbursed for all reasonable and necessary expenses incurred as a Commission member;
 - 6) Shall meet in person at least once annually, not to exceed three (3) times per year, to perform the functions of the Commission; one of which meetings shall be conducted with a regularly scheduled meeting of the Board.
 - 7) May meet telephonically, as necessary, to provide Board consultation, review new Cell business plans, or review changes to existing Cell business plans;
 - 8) Shall report at least once annually to the Board about Commission activities; and
 - 9) Shall have no authority to act on behalf of the Board or to direct the business affairs of ARMC unless specifically stated in writing by the Board.
- E.** The Board shall set aside a sum of money each year to pay the retainers and expenses incurred by the Commission.
- F.** The Commission shall:
- 1) Monitor and periodically review the compliance of ARMC and the Cells with the requirements of this Regulation;
 - 2) Review all proposed new Cell business plans or proposed revisions to existing Cell business plans, and consult with, make recommendations or suggest modifications to such business plans for the purpose of ensuring their compliance with this Regulation;
 - 3) Review and discuss annually with the Board its assessment of the effectiveness of ARMC's internal controls set up to ensure compliance with this Regulation;
 - 4) Review and discuss with the Board any major financial exposures within each Cell and the adequacy of the steps ARMC has taken to monitor and control such exposures; and
 - 5) Immediately inform the Board whenever a non-compliance with this Regulation is identified or when, in the Commission's opinion, the financial integrity of a Cell is at risk.
- G.** The Commission, as required to meet its intended purpose, may review documents, interview staff, consultants, board members, Commission members,

Members, Affiliates, and other interested parties in evaluating the performance of ARMC in meeting the terms and conditions of this regulation.

- H. The Commission, as required to meet its intended purpose, may engage experts, including actuaries, examiners, and analysts for the purpose of evaluating the performance of ARMC in meeting the terms and conditions of this regulation. The Commission shall consult with and secure agreement from the Board before engaging such experts.

SECTION 4. CELLS.

- A. By approval of this regulation, the Board authorizes ARMC to establish and maintain Cells in accordance with this Regulation. ARMC is further authorized to disestablish a Cell or cease operations of a Cell on the affirmative vote of two-thirds (2/3) of the Board for any legitimate business reason upon 90 days notice to all creditors of that Cell and to all Participants of that Cell.
- B. A Cell may be organized and operated as a risk pool or plan of self-insurance, or any other business type authorized by the Board, may be established as a separate legal entity by the Board, and may, pursuant to this Regulation, transact any approved ARMC business as designated in the Membership and Affiliate Agreements for the Participants in that Cell.
- C. Prior to formation of a proposed Cell, ARMC must submit to the Board and the Commission a business plan for the proposed Cell, including, but not limited to, the following information:
 - 1) The strategic business plan for the Cell, including a description of the risks proposed to be protected against by the Cell, the general group of Persons that ARMC anticipates might be interested in the protection provided by the Cell, the general procedures for operation the Cell, the loss prevention activities to be performed in relation to the risks assumed by the Cell, and the amount of its anticipated liquidity relative to the risks to be assumed by the Cell;
 - 2) A five-year pro forma for the proposed Cell identifying the amount of contributions to be generated, the amount of expected losses, the operating costs and anticipated gain or loss for each of the five years;
 - 3) Evidence of the overall soundness of the plan of operation of the Cell;
 - 4) Draft form Membership and Affiliate Agreements and draft coverage documents for the Cell; and
 - 5) Any other documents or information the Board requires.

- D.** The Board and Commission shall evaluate and determine whether the proposed Cell meets the minimum requirements for Cells as set forth in the Regulation.
- E.** Notwithstanding subsection B. of this Section 4, a Cell shall not:
- 1) Protect any risks other than those owned or operated by Federally-recognized Indian Tribes, their political sub-divisions, enterprises or enrolled members;
 - 2) Protect any risks other than those described by coverage documents that are directly placed in a Cell by authorized representatives of ARMC who are either employees of ARMC or contractors engaged by ARMC under written agreement. Only risks that have been approved in writing by an authorized employee of ARMC are protected by a Cell;
 - 3) Protect any risks other than those of the Members or Affiliates that are Participants in that Cell that have entered into coverage agreements with that Cell, which coverage agreements shall be in a form adopted by the Board and approved by the Commission.
- F.** It is expressly intended that the assets held within or on behalf of, and the liabilities attributable to, each Cell are exclusive to that Cell and are distinct and separate and shall be segregated and held separately from the assets held within or on behalf of, and the liabilities attributable to, any and all other Cells. Therefore, except in instances of loans made pursuant to subsection K. of this Section 4, the assets of one Cell shall not be utilized to pay the obligations or liabilities of any other Cell, or the general obligations or liabilities of ARMC.
- G.** Any act, matter, deed, agreement, contract, instrument under seal, or other instrument or arrangement which is to be binding on or to inure to the benefit of a Cell shall be executed by ARMC for and on behalf of that Cell, shall be in writing and shall indicate that the execution is in the name of, or by or for the account of, that Cell.
- H.** The assets of a Cell are comprised of the assets held by ARMC on behalf of that Cell.
- I.** The liabilities of a Cell are comprised of the obligations of that Cell.
- J.** A Cell may enter into an agreement with ARMC or with another Cell that shall be enforceable as if each Cell were a separate legal entity.
- K.** A Cell may make a loan to another Cell or to ARMC if the loan:
- 1) Is first approved in writing by the Board;

- 2) Is evidenced by a note that is in a form that is approved by the Board; and
 - 3) Does not include any money that has been set aside as capital or reserves as required by Section 6 of this Regulation.
- L.** The Board shall establish and maintain procedures:
- 1) To segregate, and keep segregated, the assets and liabilities of each Cell separate and separately identifiable from General Assets and liabilities;
 - 2) To segregate, and keep segregated, the assets and liabilities of each Cell separate and separately identifiable from assets and liabilities of any other Cell; and
 - 3) To ensure that all Persons that transact business with a Cell are informed of and acknowledge that any recourse they may have is limited to the assets of the Cell with which they conduct business. In the event that a Person transacts business with more than one Cell, that Person shall be informed of and acknowledge that the obligations of one Cell are not transferable to another.
- M.** The assets, liabilities and net worth held within, by or on behalf of, or attributable to, each Cell shall be accounted for separately and discretely from the assets, liabilities and net worth held within, by or on behalf of, or attributable to, every other Cell and from the assets, liabilities and net worth of ARMC and shall reflect the financial condition and results of operations of that Cell, including net income or loss, distributions to Members who are Participants of that Cell, and such other factors as may be provided by the Membership or Affiliate Agreements of the Participants in that Cell or required by the Board.
- N.** If ARMC (a) enters into a transaction with respect to a Cell, or (b) incurs a liability arising from an activity or asset of a particular Cell, a claim by any Person in connection with the transaction or liability extends only to the assets of that Cell. The assets of that Cell shall:
- 1) Only be available and used to meet liabilities to creditors with respect to that Cell, and those creditors shall thereby be entitled to have recourse only to the assets of that Cell;
 - 2) Not be available or used to meet obligations to, and shall be absolutely protected from, the creditors of ARMC who are not creditors with respect to that Cell, and creditors of ARMC who are not creditors with respect to that Cell shall not be entitled to have recourse to assets of that Cell; and

- 3) Not be sold, exchanged, transferred to any Person, or distributions made to any Member without the Board's prior written approval and Board approval shall not be given if, as a result of the sale, exchange, transfer, or distribution that Cell would be in hazardous financial condition.
- O.** If liability to a Person arises or is imposed with respect to a Cell, the liability shall extend only to that Person, with respect to that liability, and that Person shall have recourse only against:
- 1) First, the assets of that Cell; and
 - 2) Second, and solely with prior approval by the Board, to the extent that the assets of that Cell are insufficient to satisfy the liability, the General Assets, to the extent that the General Assets exceed the minimum capital and reserves amounts required by this Regulation.
- P.** If a liability of ARMC to a Person arises otherwise than in respect of a particular Cell, the liability shall extend only to, and that Person shall, with respect to that liability, have recourse only to, the General Assets.
- Q.** Liabilities of ARMC not attributable to any particular Cell shall be discharged from the General Assets. Income, receipts, and other property or rights of or acquired by ARMC not otherwise attributable to any Cell shall be attributed to the General Assets.

SECTION 5. SUPERVISION, REHABILITATION OR LIQUIDATION OF CELLS.

- A.** If a Cell is being rehabilitated or liquidated pursuant to this Section 5, the rehabilitation or liquidation shall not apply with respect to ARMC or any other Cell.
- B.** The Board shall consider any written request for rehabilitation or liquidation of a Cell made to the Board by:
- 1) The Chief Executive Officer of ARMC;
 - 2) Any member of the Board;
 - 3) Any creditor of that Cell; or
 - 4) Any Participant in that Cell.
- C.** In the event such a request is made, ARMC shall provide to the requesting Person name and contact information for all Persons that, under subsection B. of this

Section 5, are entitled to file such a request and such other Persons as the Board may direct. The requesting Person shall notify all such Persons of the request within ten (10) days of receiving the names and contact information from ARMC.

- D.** Subject to the provisions of this section, the Board may by order require rehabilitation or liquidation of the Cell if the Board is satisfied that:
- 1) The assets of the Cell (and in those cases where the Board has permitted creditors of the Cell recourse against the General Assets, the available General Assets), are or are likely to be insufficient to discharge the claims of creditors with respect to that Cell; and
 - 2) Requiring rehabilitation or liquidation of the Cell would achieve the purposes set forth in subsection E. of this Section 5.
- E.** A Cell as to which the Board has required rehabilitation or liquidation shall be managed by a Receiver appointed by the Board to act in the name of the Board for the purpose of:
- 1) The orderly rehabilitation or closing of the business of, or attributable to, that Cell; and
 - 2) The distribution of the assets and collecting all receivables of, or attributable to, that Cell to those having recourse thereto.
- F.** The Receiver of a Cell:
- 1) Shall be appointed by the Board and shall be a person that is a member in good standing of the International Association of Insurance Receivers who is not employed by ARMC, is not a member or affiliate of ARMC or any of its Cell, or otherwise affiliated with ARMC in any manner.
 - 2) Shall be paid for his or her services as determined by the Board and shall be reimbursed for all necessary expenses incurred in the performance of his or her duties as Receiver.
 - 3) Shall have all functions and powers necessary to rehabilitate or liquidate the Cell; provided that, the Receiver shall deal with the assets of the Cell and the General Assets only in accordance with the procedures set forth in Section 4 of this Regulation, the Charter, and the Bylaws;
 - 4) Shall perform his duties under and pursuant to the direction of the Board; and

- 5) In exercising his functions and powers, shall act as the agent of ARMC and in place of ARMC with respect to the business of, or attributable to, that Cell, and shall not incur personal liability except to the extent that he acts fraudulently, recklessly, negligently, or in bad faith.
- G.** Upon a request for rehabilitation or liquidation of a Cell being approved by the Board, and during the pendency of such proceeding:
- 1) No other proceedings shall be instituted or continued against the Cell; and
 - 2) No steps shall be taken to enforce any security with respect to the business or assets of the Cell except by leave of the Board;
 - 3) The functions and powers of ARMC shall cease with respect to the business of, or attributable to, that Cell with respect to which the order was made.
- H.** The Board shall not terminate a rehabilitation or liquidation proceeding unless it appears to the Board that the purpose for which the proceeding was instituted has been achieved, has been substantially achieved, or is incapable of being achieved.
- I.** Upon the conclusion of a rehabilitation or liquidation proceeding with respect to a Cell on the ground that the purpose for which the proceeding was instituted has been achieved or substantially achieved, the Board may direct that any payment made by the Receiver to any creditor of ARMC with respect to that Cell shall be full satisfaction of the liabilities of ARMC to that creditor with respect to that Cell, and the creditor's claims against ARMC with respect to that Cell shall be thereby extinguished. The Board may also direct that any payment made by the Receiver to any creditor of that Cell shall be in full satisfaction of the liabilities of that Cell to that creditor with respect to that Cell.

SECTION 6. CAPITAL AND RESERVES.

- A.** ARMC shall maintain Unrestricted Net Assets of \$2,500,000 in General Assets.
- B.** In addition to any other assets required to be maintained pursuant to paragraph C. of this Section, ARMC shall at all times maintain liquid Reserves for each Cell in an amount the greater of \$250,000 or the following Contribution to Reserve ratio per Cell:
- 1) Indian Housing Block Grant Recipient Program Cell - \$2 Contribution for each \$1 dollar of Reserve (Ratio 2:1).
 - 2) Shield and Tribal Operations Cells - \$3 Contribution for each \$1 dollar of Reserve (Ratio 3:1).

- 3) Tribal Employee Injury Protection Program Cell - \$4 Contribution for each \$1 dollar of Reserve (Ratio 4:1).
 - 4) Any new Cell created by the Board shall be capitalized with initial Reserves of not less than \$250,000 and the Contribution to Reserve ratio shall not be less than \$2 Contribution to \$1 dollar of Reserve (Ratio 2:1) during the first 12 months of the creation of the Cell. The Board shall identify and implement an appropriate Contribution to Reserve ratio for the new Cell at the conclusion of the first 12 months of its operation and said ratio shall not exceed \$4 Contribution for each \$1 dollar of Reserve (Ratio 4:1).
- C.** The Board may require ARMC, including each Cell, to maintain additional unimpaired capital based on the type, volume, and characteristics of the risks protected against by that Cell.
- D.** Except as otherwise provided in this section, the assets or capital required to be maintained pursuant to this section shall be in the form of cash, irrevocable letters of credit, or investments approved by the Board.
- E.** A letter of credit used by ARMC as evidence of capital required pursuant to this section shall:
- 1) Be issued by a bank chartered in the United States and such bank shall be a member of the United States Federal Reserve System, or one whose deposits are insured by the Federal Deposit Insurance Corporation;
 - 2) Be issued on a form approved by the Board; and
 - 3) Include a provision pursuant to which the letter of credit is automatically renewed each year.
- F.** Cell assets in excess of the capital and reserves required by subsection B. of this Section 6 and any unimpaired capital required by subsection C. of this Section 6 shall be held within, by, or on behalf of that Cell and shall not be part of General Assets.
- G.** The Board may approve an ongoing plan for distributions by a Cell, whether or not from current or accumulated earnings and profits, to Members who are Participants in that Cell in the form of premium or periodic contribution credits if, at the time of each distribution, the amount of capital and reserves retained within or on behalf of that Cell is in excess of the amounts required by this Section 6. The Board shall adopt by rule:

- 1) A specific amount that a Cell must have in excess capital and reserves for the approval of an ongoing plan for making distributions; or
 - 2) A formula pursuant to which the specific amount of required excess capital and reserves may be calculated.
- H.** Except as otherwise provided in this section, a Cell shall make distributions from its capital or reserves or both, only in accordance with the provisions set forth in subsection G. of this section with the prior written approval of the Board.
- I.** No more than ten percent (10%) of the assets held by, on behalf of, or within a Cell shall be exposed to any single liability of that Cell.

SECTION 7. NAME.

- A.** A Cell shall not use or adopt a name that is the same as, deceptively similar to, or likely to be confused with or mistaken for any other Cell approved by the Board.
- B.** A Cell must include in its name the words “an ARMC Cell”.

SECTION 8. ANNUAL REPORT.

- A.** The annual audit required by Section 15.4 of the Charter and Section 8.3 of the Bylaws shall include financial statements detailing the financial status of each Cell.
- B.** ARMC shall use generally accepted accounting principles and include any useful or necessary modifications or adaptations thereof that have been approved or accepted by the Board.

SECTION 9. ARBITRATION; JUDICIAL REVIEW; MANDAMUS.

A. Arbitration.

- 1) Scope of Arbitration. The parties agree to resolve any dispute arising out of or relating to this regulation by arbitration.
- 2) Appointment of Arbitrator. The parties will jointly select a single arbitrator to conduct the arbitration. If the parties cannot agree on the arbitrator, then either party may request the United States Attorney for the District of New Mexico to select the arbitrator.
- 3) Administration of Arbitration. The Arbitration Rules of American Arbitration Association will govern the arbitration.

- 4) Scope of Arbitrator's Authority. The arbitrator has authority to render any award, including damages (but not punitive or exemplary damages), interest, attorneys' fees, and arbitration proceeding costs. If the arbitrator refuses to award attorneys' fees and arbitration proceeding costs, then the parties shall equally share the arbitration costs and bear their own attorneys' fees. The arbitrator must render a written decision setting forth the factual and legal basis of the award. There must be an arbitration record that includes all hearings and all evidence (including exhibits, deposition transcripts, affidavits, etc., admitted into evidence) in the arbitration proceeding.
- 5) Venue. The arbitration will be held in Albuquerque, New Mexico, no later than 60 days after arbitration is invoked.
- 6) Submission to Jurisdiction. The arbitrator's award is final, and may be entered and enforced in the United States District Court for the District of New Mexico or the Pueblo of Santa Ana Tribal Court. For this purpose, each party agrees to submit to the jurisdiction of these courts. The Federal Arbitration Act, 9 U.S.C. §§ 1-16, shall govern all matters relating to the enforceability of this Section 8, and any arbitrator's award rendered.
- 7) Governing Law. The arbitrator shall apply the substantive law of the Pueblo of Santa Ana, exclusive of any conflict of law rules.
- 8) Limitation of Actions. Any arbitration proceeding under this regulation must be brought no later than one year after the dispute arose. The failure to timely bring an arbitration proceeding is (a) an absolute bar to the commencement of the arbitration proceeding concerning the dispute and (b) a waiver of the dispute.
- 9) Obligations during Arbitration. Each party is required to continue to perform its obligations under the applicable agreements between the parties pending final resolution of the arbitration proceeding unless to do so would be impossible or impracticable under the circumstances.

B. Judicial Review.

- 1) Appeal. An appeal may be taken from any final award in any arbitration arising out of or related to the regulation to the Southwest Intertribal Court of Appeals.

2) Standard of Review. An appellate award may be issued modifying or setting aside the arbitrator's award, but only on the following grounds:

(a) that the arbitrator's award contains material and prejudicial errors of law of such a nature that it does not rest upon any appropriate legal basis, or is based upon factual findings clearly unsupported by the record; or (b) that the arbitrator's award is subject to one or more of grounds set forth in Section 10 of the Federal Arbitration Act, 9 U.S.C. § 10, for vacating an award.

SECTION 10. EFFECTIVE DATE.

This Regulation shall take effect following approval by the Board and publication on the ARMC website.