

Title 31 MARYLAND INSURANCE ADMINISTRATION

Subtitle 05 ASSETS, LIABILITIES, RESERVES, AND INVESTMENTS OF INSURERS

Chapter 08 Credit for Reinsurance

Authority: Insurance Article, §§1-101(jj), 2-109, 2-205, 2-209, and 5-901—5-917, Annotated Code of Maryland

.24 Credit for Reinsurance — Certified Reinsurers.

A. – D. (text unchanged)

E. *Certification Procedure.*

(1) *The Commissioner shall post notice on the Administration's website promptly upon receipt of any application for certification, including instructions on how members of the public may respond to the application. The Commissioner may not take final action on the application until at least 30 days after posting the notice required by this subsection.*

(2) *The Commissioner shall issue written notice to an assuming insurer that has been approved as a certified reinsurer. Including in such notice shall be the certification rating assigned to the certified reinsurer in accordance with §G(2) of this regulation.*

(3) *The Commissioner shall publish a list of all certified reinsurers and their ratings.*

(4) *The Commissioner shall comply with all reporting and notification requirements that may be established by the NAIC with respect to certified reinsurers and qualified jurisdictions.*

[E.] F. *Certification Eligibility Requirements.* In order to be eligible for certification, the assuming insurer shall meet the following requirements:

(1) The assuming insurer shall be domiciled and licensed to transact insurance or reinsurance in a qualified jurisdiction, as determined by the Commissioner pursuant to Regulation [.27] .26 of this chapter

(2) The assuming insurer shall maintain capital and surplus, or its equivalent, of no less than \$250,000.00, calculated in accordance with [§F(2)(h)] §G(2)(h) of this regulation. This requirement may also be satisfied by a group including incorporated and individual unincorporated underwriters having minimum capital and surplus equivalents (net of liabilities) of at least \$250,000.00 and a central fund containing a balance of at least \$250,000.00.

(3) The assuming insurer shall have financial strength ratings from two or more *rating agencies deemed acceptable by the Commissioner. These ratings shall be based on interactive communication between the rating agency and the assuming insurer and may not be based solely on publicly available information. These financial strength ratings shall be one factor used by the Commissioner in determining the rating that is assigned to the assuming insurer. Failure to obtain or maintain at least two financial strength ratings from acceptable rating agencies shall result in the loss of eligibility for certification. Acceptable rating agencies include [of] the following [rating agencies]:*

(a) Standard & Poor's;

(b) Moody's Investors Service;

(c) Fitch Ratings;

(d) A.M. Best Company; or

(e) A nationally recognized statistical rating organization deemed acceptable by the Commissioner; and

(4) Any other requirements *imposed by the Commissioner.*

(5) If an applicant for certification has been certified as a reinsurer by the insurance regulatory agency of a state accredited by the NAIC, the Commissioner *has the discretion to defer to that [may use information provided by that] insurance regulatory agency to designate the assuming insurer as a certified reinsurer in this State.*

[F.] G. [Certified Reinsurers —] *Certification Rating.*

(1) (text unchanged)

(2) Factors that may be considered as part of the certification rating process include, but are not limited to:

(a) The certified reinsurer's financial strength rating from an acceptable rating agency pursuant to [§E(3)] §F(3) of this regulation, as follows:

(i) A certified reinsurer may not be eligible for a certification rating higher than the rating corresponding with the financial strength ratings set forth in [§F(2)(a)(iii)] §G(2)(a)(iii) of this regulation.

(ii) – (iii) (text unchanged)

(b) – (f) (text unchanged)

(g) The report of the independent auditor on the financial statements of the insurance enterprise, on the basis described in [§F(2)(h)] §G(2)(h) of this regulation.

(h) For certified reinsurers not domiciled in the U.S., audited financial statements [(audited U.S. Generally Accepted Accounting Principles (GAAP) basis if available, audited International Financial Reporting standards (IFRS) are allowed but shall include an audited footnote reconciling equity and net income to U.S. GAAP basis, or, with the prior written permission of the Commissioner, IFRS are allowed with reconciliation to U.S. GAAP certified by an officer of the company)], regulatory filings and actuarial opinions (as filed with the non-U.S. jurisdiction supervisor, *with a translation into English*). Upon the initial application for certification, the Commissioner [may] *shall* consider audited financial statements for the last [3] *two* years filed with its non-U.S. jurisdiction supervisor;

(i) – (k) (text unchanged)

[I] If an applicant for certification has been certified as a reinsurer by the insurance regulatory agency of a state accredited by the NAIC, the Commissioner may use information provided by that insurance regulatory agency to assign a rating to the assuming insurer.]

[3] The Commissioner shall issue written notice to an assuming insurer that has been approved as a certified reinsurer. Included in such notice shall be the certification rating assigned the certified reinsurer in accordance with §F(2) of this regulation.]

[4] The Commissioner shall publish a list of all certified reinsurers and their ratings.]

[G.] *H. Certification Rating and Security Adjustment.* Based on the analysis conducted under [§F(2)] §G(2) of this regulation of a certified reinsurer's history of prompt payment of claims, the Commissioner may adjust the security the certified reinsurer is required to post to protect its liabilities to U.S. ceding insurers provided that the Commissioner shall, at a minimum, increase the security the certified reinsurer is required to post by one certification rating level pursuant to [§F(2)(a)(iii)] §G(2)(a)(iii) of this regulation if the Commissioner finds that:

(1) – (2) (text unchanged)

[H.] *I.* (text unchanged)

[I.] *J.* For initial eligibility as a certified reinsurer, an applicant shall *agree to meet applicable information filing requirements as determined by the Commissioner. All information submitted by applicants, which is not otherwise public information subject to disclosure, shall be exempt from disclosure under General Provisions Article, Title 4, Annotated Code of Maryland, and shall be withheld from public disclosure. The applicant shall file with the Commissioner:*

(1) A properly executed NAIC Form CR-F Assumed Reinsurance (for Property/Casualty Reinsurers) or NAIC Form CR-S Reinsurance Assumed (for Life and Health Reinsurers) [, as applicable as evidence that the applicant agrees to submit to the jurisdiction of the State and to the Commissioner's authority to examine its books and records];

(2) – (3) (text unchanged)

(4) [Upon request of the Commissioner:

(a)] The report of the independent auditor on the financial statements of the insurance enterprise and the audited financial statements, [(audited U.S. Generally Accepted Accounting Principles (GAAP) basis if available, audited International Financial Reporting standards (IFRS) are allowed but shall include an audited footnote reconciling equity and net income to U.S. GAAP basis, or, with the prior written permission of the Commissioner, IFRS are allowed with reconciliation to U.S. GAAP certified by an officer of the company),] regulatory filings and actuarial opinions (as filed with the non-U.S. jurisdiction supervisor, *with a translation into English*). Upon the initial application for certification, the Commissioner may consider audited financial statements for the last [3] *two* years filed with its non-U.S. jurisdiction supervisor;

[(b)] (5) A certification from the certified reinsurer's domestic regulator that the certified reinsurer is in good standing and maintains capital in excess of the jurisdiction's highest regulatory action level; and

[(c)] (6) Any other document or information that the Commissioner considers necessary to determine eligibility to act as a certified reinsurer; and

[(5)] (7) A properly executed NAIC Form CR-1 Certificate of Certified Reinsurer as evidence that the applicant agrees to:

(a) – (c) (text unchanged)

K. If an applicant for certification has been certified as a reinsurer in a NAIC accredited jurisdiction, the Commissioner shall have the discretion to defer to that jurisdiction's certification, and to defer to the rating assigned by that jurisdiction, if the assuming insurer submits a properly executed NAIC Form CR-1 and any additional information the Commissioner requires. The assuming insurer shall be considered to be a certified reinsurer in this state based on the following limitations:

(1) *Any change in the certified reinsurer's status or rating in the other jurisdiction shall apply automatically in this state as of the date it takes effect in the other jurisdiction. The certified reinsurer shall notify the Commissioner of any change in its status or rating within ten days after receiving notice of the change.*

(2) *The Commissioner may withdraw recognition of the other jurisdiction's rating at a time and assign a new rating in accordance with regulation .25 of this chapter.*

(3) *The Commissioner may withdraw recognition of the other jurisdiction's certification at any time, with written notice to the certified reinsurer. Unless the Commissioner suspends or revokes the certified reinsurer's certification in accordance with regulation .25 of this chapter, the certified reinsurer's certification shall remain in good standing in this state for a period of three months, which shall be extended if additional time is necessary to consider the assuming insurer's application for certification in this state.*

[J.] *L.* For continued eligibility as a certified reinsurer, *a certified reinsurer shall agree to meet applicable information filing requirements as determined by the Commissioner. All information submitted by certified reinsurers which is not otherwise public information subject to disclosure shall be exempted from disclosure under The General Provisions Article, Title 4, Annotated Code of Maryland, and shall be withheld from public disclosure. The certified reinsurer [an applicant] shall by May 30 of each year, file with the Commissioner:*

(1) A properly executed NAIC Form CR-F Assumed Reinsurance (for Property/Casualty Reinsurers) or NAIC Form CR-S Reinsurance Assumed (for Life and Health Reinsurers) [, as applicable as evidence that the applicant agrees to submit to the jurisdiction of the State and to the Commissioner's authority to examine its books and records];

(2) – (3) (text unchanged)

(4) [Upon request of the Commissioner:

(a) The report of the independent auditor on the financial statements of the insurance enterprise and the audited financial statements, [(audited U.S. Generally Accepted Accounting Principles (GAAP) basis if available, audited International Financial Reporting standards (IFRS) are allowed but shall include an audited footnote reconciling equity and net income to U.S. GAAP basis, or, with the prior written permission of the Commissioner, IFRS are allowed with reconciliation to U.S. GAAP certified by an officer of the company),] regulatory filings and actuarial opinions (as filed with the non-U.S. jurisdiction supervisor, *with a translation into English*). Upon the initial application for certification, the Commissioner may consider audited financial statements for the last *two* [3] years filed with its non-U.S. jurisdiction supervisor;

[(b)] (5) (text unchanged)

[(c)] (6) Any other document or information that the Commissioner considers necessary to determine continued eligibility to act as a certified reinsurer; and

[(5)] (7)(text unchanged)

[K.] M. Notification of the Commissioner by the Certified Reinsurer. In order to obtain or maintain a certification, a certified reinsurer must agree to notify and provide a written statement describing the changes and the reasons therefore in writing to the Commissioner within 10 business days of:

(1) – (2) (text unchanged)

(3) Any change in rating by an acceptable rating agency pursuant to [§E(3)] §F(3) of this regulation.

.28 Credit for Reinsurance – Reciprocal Jurisdictions

A. Pursuant to Insurance Article §5-917, Annotated Code of Maryland, the Commissioner shall allow credit for reinsurance ceded by a domestic insurer to an assuming insurer that is licensed to write reinsurance by, and has its head office or is domiciled in, a Reciprocal Jurisdiction, and which meets the other requirements of this regulation.

B. A “Reciprocal Jurisdiction” means a jurisdiction, as designated by the Commissioner pursuant to § D of this regulation that is:

(1) A non-United States jurisdiction that is subject to an in-force covered agreement with the United States, each within its legal authority, or, in the case of a covered agreement between the United States and the European Union, is a member state of the European Union. For purposes of this section, a “covered agreement” is an agreement:

(a) Entered into pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act, 31 U.S.C. §§313 and 314; and

(b) Currently in effect or in a period of provisional application and addresses the elimination, under specified conditions, of collateral requirements as a condition for entering into any reinsurance agreement with a ceding insurer domiciled in this State or for allowing the ceding insurer to recognize credit for reinsurance;

(2) A United States jurisdiction that meets the requirements for accreditation under the NAIC financial standard and accreditation program; or

(3) A qualified jurisdiction as determined by the Commissioner pursuant to Insurance Article §5-909, Annotated Code of Maryland, and Regulation 26 of this Chapter which is not otherwise described in paragraph 1 or 2 of this section and the Commissioner determines:

(a) Provides that an insurer has its head office or is domiciled in such qualified jurisdiction the insurer shall receive credit for reinsurance ceded to a United States domiciled assuming insurer in the same manner as credit for reinsurance is received for reinsurance assembled by insurers domiciled in such qualified jurisdictions;

(b) Does not require a United States domiciled assuming insurer to establish or maintain a local presence as a condition for entering into a reinsurance agreement with any ceding insurer subject to regulation by the non-U.S. jurisdiction or as a condition to allow the ceding insurer to recognize credit for such reinsurance;

(c) Recognizes the United States’ state regulatory approach to group supervision and group capital, by providing written confirmation by a competent regulatory authority, in such qualified jurisdiction, that insurers and insurance groups that are domiciled or maintain their headquarters in this state or another jurisdiction accredited by the NAIC shall be subject to:

(i) Worldwide prudential insurance group supervision including worldwide group governance, solvency and capital; and

(ii) Reporting, as applicable, by the Commissioner or the commissioner of the domiciliary state. Insurers and insurance groups will not be subject to group supervision at the level of the worldwide parent undertaking of the insurance or reinsurance group by the qualified jurisdiction; and

(d) Provides written confirmation by a competent regulatory authority in such qualified jurisdiction that information regarding insurers and their parent, subsidiary, or affiliated entities, if applicable, shall be provided to the Commissioner in accordance with a memorandum of understanding or similar document between the Commissioner and such qualified jurisdiction, including, but not limited to:

(i) The International Association of Insurance Supervisors Multilateral Memorandum of Understanding; or

(ii) Other multilateral memoranda of understanding coordinated by the NAIC.

C. Credit shall be allowed when the reinsurance is ceded from an insurer domiciled in this state to an assuming insurer meeting each of the conditions set forth below:

(1) The assuming insurer shall be licensed to transact reinsurance by, and have its head office or be domiciled in, a reciprocal jurisdiction;

(2) The assuming insurer shall have and maintain on an ongoing basis minimum capital and surplus, or its equivalent, calculated on at least an annual basis as of the preceding December 31 or at the annual date otherwise statutorily reported to the reciprocal jurisdiction, and confirmed as set forth in §C(7) of this regulation according to the methodology of its domiciliary jurisdiction, in the following amounts:

(a) No less than \$250,000,000.00; or

(b) If the assuming insurer is an association, including incorporated and individual unincorporated underwriters then the association must have:

(i) Minimum capital and surplus equivalents (net of liabilities) or own funds of the equivalent of at least \$250,000,000.00; and

(ii) A central fund containing a balance of the equivalent of at least \$250,000,000.00;

(3) The assuming insurer shall have and maintain on an ongoing basis a minimum solvency or capital ratio, as applicable, as follows:

(a) If the assuming insurer has its head office or is domiciled in a reciprocal jurisdiction as defined in §B of this regulation, the ratio specified in the applicable covered agreement;

(b) If the assuming insurer is domiciled in a reciprocal jurisdiction as defined in §B of this regulation, a risk-based capital ratio of three hundred percent of the authorized control level, calculated in accordance with the formula developed by the NAIC; or

(c) If the assuming insurer is domiciled in a reciprocal jurisdiction as defined in §B of this regulation, after consultation with the reciprocal jurisdiction and considering any recommendations published through the NAIC Committee Process, such as solvency or capital ratio as the Commissioner determines to be an effective measure of solvency;

(4) The assuming insurer shall agree to and provide adequate assurance, in the form of a properly executed Form RJ-1 Certificate of Reinsurer Domiciled in Reciprocal Jurisdiction, of its agreement to:

(a) Provide prompt written notice and explanation to the Commissioner if it falls below the minimum requirements set forth in §C (2) or (3) of this regulation, or if any regulatory action is taken against it for serious noncompliance with applicable law;

(b) Consent in writing to the jurisdiction of the courts of this state and to the appointment of the Commissioner as agent for service of process. In addition:

(i) The Commissioner may require that such consent be provided and included in each reinsurance agreement under the Commissioner's jurisdiction; and

(ii) Nothing in this provision shall limit or in any way alter the capacity of parties to a reinsurance agreement to agree to alternative dispute resolution mechanisms, except to the extent such agreements are unenforceable under applicable insolvency of delinquency laws;

(c) Consent in writing to pay all final judgements, wherever enforcement is sought, obtained by a ceding insurer, that have been declared enforceable in the territory where the judgement was obtained;

(d) Include a provision in each reinsurance agreement requiring the assuming insurer to provide security in an amount equal to one hundred percent of the assuming insurer's liabilities attributable to reinsurance ceded pursuant to that agreement if the assuming insurer resists enforcement of a final judgement that is enforceable under the law of the jurisdiction in which it was obtained or a properly enforceable arbitration award, whether obtained by the ceding insurer or by its legal successor on behalf of its estate, if applicable;

(e) Confirm that it is not presently participating in any solvent scheme of arrangement, which involves this state's ceding insurers, and agrees to notify the ceding insurer and the Commissioner of such solvent scheme arrangement; and to provide one hundred percent security to the ceding insurer consistent with the terms of the scheme should the assuming insurer enter into such a solvent scheme of arrangement. Such security shall be in a form consistent with the provision of Insurance Article §§5-908 and 5-914, Annotated Code of Maryland, and §§ 12, 13, or 14 of this regulation. For purposes of this regulation, the term "solvent scheme of arrangement" means a foreign or alien statutory or regulatory compromise procedure subject to requisite majority creditor approval and judicial sanction in the assuming insurer's home jurisdiction either to:

(i) Finally commute liabilities of duly noticed class members or creditors of a solvent debtor; or

(ii) To reorganize or restructure the debts and obligations of a solvent debtor on a final basis and which may be subject to judicial recognition and enforcement of the arrangement by a governing authority outside the ceding insurer's home jurisdiction; and

(f) Meet the applicable information filing requirements as set forth in §C(5) of this regulation;

(5) The assuming insurer or its legal successor shall provide, if requested by the Commissioner, on behalf of itself and any legal predecessors, the following documentation:

(a) For the two years preceding entry into the reinsurance agreement and on an annual basis thereafter, the assuming insurer's annual audited financial statements, in accordance with the applicable law of the jurisdiction of its head office or domiciliary jurisdiction, as applicable, including the external audit report;

(b) For the two years preceding entry into the reinsurance agreement, the solvency and financial condition report or actuarial opinion, if filed with the assuming insurer's supervisor;

(c) An updated listed of all disputed and overdue reinsurance claims outstanding for 90 days or more, regarding reinsurance assumed from ceding insurers domiciled in the United States shall be submitted prior to entry into the reinsurance agreement and on a semi-annual basis thereafter; and

(d) Information regarding the assuming insurer's assumed reinsurance by ceding insured, ceded reinsurance by the assuming insurer, and reinsurance recoverable on paid and unpaid losses by the assuming insurer to allow for the evaluation of the criteria set forth in §C(6) of the regulation, shall be provided prior to entry into the reinsurance agreement and on a semi-annual basis thereafter;

(6) The assuming insurer shall maintain a practice of prompt payment of claims under reinsurance agreements. The lack of prompt payment will be evidenced if any of the following criteria is met:

(a) More than fifteen percent of the reinsurance recoverable from the assuming insurer are overdue and in dispute as reported to the Commissioner;

(b) More than fifteen percent of the assuming insurer's ceding insurers or reinsurers have overdue reinsurance recoverable on paid losses of 90 days or more which are not in dispute and which exceed for each ceding insurer \$100,000.00, or as otherwise specified in a covered agreement; or

(c) The aggregate amount of reinsurance recoverable on paid losses which are not in dispute, but are overdue by 90 days or more, exceeds \$50,000,000.00, or as otherwise specified in a covered agreement;

(7) The assuming insurer's supervisory authority shall confirm to the Commissioner on an annual basis that the assuming insurer complies with the requirements set forth in §§C(2) and (3) of this regulation; and

(8) The assuming insurer may provide the Commissioner with information on a voluntary basis.

D. List of reciprocal jurisdictions.

(1) The Commissioner shall create and publish a list of reciprocal jurisdictions.

(2) A list of reciprocal jurisdictions is published through the NAIC Committee Process. The Commissioner's list shall include any reciprocal jurisdiction as defined under §B of this regulation and shall consider any other reciprocal jurisdiction included on the NAIC list. The Commissioner may approve a jurisdiction that does not appear on the NAIC list of reciprocal jurisdictions as provided by applicable law, regulation, or in accordance with criteria published through the NAIC Committee process.

(3) The Commissioner may remove a jurisdiction from the list of reciprocal jurisdictions upon a determination that the jurisdiction no longer meets one or more of the requirements of a reciprocal jurisdiction, as provided by applicable law, regulation, or in accordance with a process published through the NAIC Committee process, except that the Commissioner may not remove from the list a reciprocal jurisdiction as defined under §B of this regulation. Upon removal of a reciprocal jurisdiction from this list, credit for reinsurance ceded to an assuming insurer domiciled in that jurisdiction shall be allowed, if otherwise allowed pursuant to Insurance Article, Title 5, Subtitle 9, Annotated Code of Maryland.

E. List of assuming insurers.

(1) The Commissioner shall timely create and publish a list of assuming insurers that have satisfied the conditions set forth in this regulation and to which cessions shall be granted credit in accordance with this regulation.

(2) If an NAIC accredited jurisdiction has determined that the conditions set forth in §C of this regulation have been met, the Commissioner may defer to that jurisdiction's determination, and add such assuming insurer to the list of assuming insurers to which cessions shall be granted credit in accordance with this section.

(3) The Commissioner may accept financial documentation filed with another NAIC accredited jurisdiction or with the NAIC in satisfaction of the requirements of §C of this regulation.

(4) When requesting that the Commissioner defer to another NAIC accredited jurisdiction's determination, an assuming insurer shall submit a properly executed NAIC Form RJ-1 and additional information as the Commissioner may require. A state that has received such a request shall notify other states through the NAIC Committee process and provide relevant information with respect to the determination of eligibility.

F. Suspension of assuming insurers.

(1) If the Commissioner determines that an assuming insurer no longer meets one or more of the requirements under this regulation, the Commissioner may revoke or suspend the eligibility of the assuming insurer for recognition under this section.

(2) While an assuming insurer's eligibility is suspended, no reinsurance agreement issued, amended or renewed after the effective date of the suspension qualifies for credit except to the extent that the assuming insurer's obligations under the contract are secured in accordance with Insurance Article, §5-914, Annotated Code of Maryland.

(3) If an assuming insurer's eligibility is revoked, no credit for reinsurance may be granted after the effective date of the revocation with respect to any reinsurance agreements entered into by the assuming insurer, including reinsurance agreements entered into prior to the date of revocation, except to the extent that the assuming insurer's obligations under the contract are secured in a form acceptable to the Commissioner and consistent with the provisions of Insurance Article, §5-914, Annotated Code of Maryland.

G. Security.

(1) Before denying statement credit or imposing a requirement to post security with respect to §9F of this regulation or adopting any similar requirement that will have substantially the same regulatory impact as security, the Commissioner shall:

(a) Communicate with the ceding insurer, the assuming insurer, and the assuming insurer's supervisory authority that the assuming insurer no longer satisfies one of the conditions listed in §C of this regulation;

(b) Provide the assuming insurer with 30 days from the initial communication to submit a plan to remedy the defect, and 90 days from the initial communication to remedy the defect, except in exceptional circumstances in which a shorter period is necessary for policyholder and other consumer protection; and

(c) Provide a written explanation to the assuming insurer of any of the requirements set out in section.

(2) After the expiration of 90 days or less, as set out in §G(1)(b) of this regulation, if the Commissioner determines that no or insufficient action was taken by the assuming insurer, the Commissioner may impose any of the requirements as set out in this section; and

H. If subject to a legal process of rehabilitation, liquidation or conservation, as applicable, the ceding insurer, or its representative, may seek and, if determined appropriate by the court in which the proceedings are pending, may obtain an order requiring that the assuming insurer post security for all outstanding liabilities.