

Article - Insurance

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§5-907.

(a) To enable the Commissioner to determine the sufficiency of the trust fund provided for in § 5-904(e) of this subtitle, the assuming insurer shall report each year to the Commissioner information substantially the same as that required to be reported on the National Association of Insurance Commissioners annual statement form by authorized insurers.

(b) The assuming insurer shall submit to examination of its books and records by the Commissioner and bear the expense of examination.

(c) Credit for reinsurance may not be granted under this section unless the form of the trust and any amendments to the trust have been approved by:

(1) the insurance regulatory agency of the state where the trust is domiciled; or

(2) the insurance regulatory agency of another state who, under the terms of the trust instrument, has accepted principal regulatory oversight of the trust.

(d) The form of the trust and any trust amendments shall be filed with the insurance regulatory agency of each state in which the ceding insurer beneficiaries of the trust are domiciled.

(e) The trust instrument shall provide that contested claims shall be valid and enforceable on the final order of any court of competent jurisdiction in the United States.

(f) The trust shall vest legal title to its assets in its trustees for the benefit of the assuming insurer's United States ceding insurers and their assigns and successors in interest.

(g) The trust and the assuming insurer shall be subject to examination as determined by the Commissioner.

(h) The trust shall remain in effect for as long as the assuming insurer has outstanding obligations due under the reinsurance contracts subject to the trust.

(i) Not later than February 28 of each year, the trustee of the trust shall:

(1) report to the Commissioner in writing the balance of the trust and list the trust's investments at the preceding year-end; and

(2) certify the date of termination of the trust, if so planned, or certify that the trust will not expire before the following December 31.

(j) (1) This subsection applies to ceding to a single assuming insurer.

(2) The trust fund shall consist of funds in trust in an amount not less than the assuming insurer's liabilities attributable to reinsurance ceded by United States ceding insurers.

(3) Except as provided in paragraph (4) of this subsection, the assuming insurer shall maintain a trusteed surplus of not less than \$20,000,000.

(4) (i) Subject to subparagraphs (ii) and (iii) of this paragraph, at any time after the assuming insurer has permanently discontinued underwriting new business secured by the trust for at least 3 full years, the insurance regulatory agency with principal regulatory oversight of the trust may authorize a reduction in the required trusteed surplus, but only after a finding, based on an assessment of the risk, that the new required surplus level is adequate for the protection of United States ceding insurers, policyholders, and claimants in light of reasonably foreseeable adverse loss development.

(ii) The risk assessment under subparagraph (i) of this paragraph:

1. may involve an actuarial review, including an independent analysis of reserves and cash flows; and

2. shall consider all material risk factors, including, when applicable, the lines of business involved, the stability of the incurred loss estimates, and the effect of the surplus requirements on the assuming insurer's liquidity or solvency.

(iii) The minimum required trusteed surplus under subparagraph (i) of this paragraph may not be reduced to an amount less than 30% of the assuming insurer's liabilities attributable to reinsurance ceded by United States ceding insurers covered by the trust.

(k) (1) This subsection applies to ceding to a group that includes incorporated and individual unincorporated underwriters.

(2) For reinsurance ceded under reinsurance contracts with an inception, amendment, or renewal date on or after January 1, 1993, the trust shall consist of a trusteed account in an amount not less than the respective underwriters' several liabilities attributable to business ceded by United States domiciled ceding insurers to any underwriter of the group.

(3) For reinsurance ceded under reinsurance contracts with an inception date on or before December 31, 1992, and not amended or renewed after that date, notwithstanding any other provisions of this section, the trust shall consist of a trusteed account in an amount not less than the respective underwriters' several insurance and reinsurance liabilities attributable to business written in the United States.

(4) In addition to these trusts, the group shall maintain in trust a trustee surplus of which \$100,000,000 shall be held jointly for the benefit of the United States domiciled ceding insurers of any member of the group for all years of account.

(5) The incorporated members of the group:

(i) may not be engaged in any business other than underwriting as a member of the group; and

(ii) shall be subject to the same level of regulation and solvency control by the group's domiciliary regulator as are the unincorporated members.

(6) Within 90 days after its financial statements are due to be filed with the group's domiciliary regulator, the group shall provide to the Commissioner:

(i) an annual certification by the group's domiciliary regulator of the solvency of each underwriter member; or

(ii) if a certification is unavailable, financial statements, prepared by independent public accountants, of each underwriter member of the group.

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