

**CHAPTER 161. REQUIREMENTS FOR QUALIFIED AND
CERTIFIED REINSURERS**

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Source

The provisions of this Chapter 161 adopted August 27, 1993, effective August 28, 1993, 23 Pa.B. 4061, unless otherwise noted.

Cross References

This chapter cited in 31 Pa. Code § 90j.4 (relating to applicability).

§ 161.1. Purpose.

(a) This chapter sets forth requirements to be met for a licensed ceding insurer to receive credit for reinsurance in its financial statements. This chapter specifies the conditions which shall be met by an unlicensed reinsurer to be considered by the Commissioner for inclusion on a list of qualified or certified reinsurers published and periodically reviewed by the Commissioner, as well as, the requirements for receiving reinsurance credit for joint underwriting or joint reinsurance pooling arrangements.

(b) This chapter does not apply to reinsurance agreements between or among affiliates which meet the conditions for exemption in section 319.2 of the act (40 P. S. § 442.2) or to the ability of licensed ceding insurers to receive credit for reinsurance by compliance with the conditions specified in 319.1(b) of the act (40 P. S. § 442.1(b)).

Authority

The provisions of this § 161.1 amended under sections 206, 506, 1501 and 1502 of The Administrative Code of 1929 (71 P.S. §§ 66, 186, 411 and 412); and section 319.1 of The Insurance Company Law of 1921 (40 P.S. § 442.1).

Source

The provisions of this § 161.1 amended May 24, 2013, effective June 24, 2013, 43 Pa.B. 2816. Immediately preceding text appears at serial page (265051).

§ 161.2. Definitions.

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

Accredited state—A state which is accredited by NAIC for compliance with the NAIC Financial Regulation Standards or successor standards.

Act—The Insurance Company Law of 1921 (40 P. S. §§ 341—991).

Alien insurer—An insurer incorporated or organized under the laws of a foreign nation or of a province or territory other than a state of the United States, the Commonwealth of Puerto Rico or the District of Columbia.

Commissioner—The Insurance Commissioner of the Commonwealth.

Department—The Insurance Department of the Commonwealth.

Foreign insurer—An insurer, other than an alien insurer, not incorporated or organized under the laws of the Commonwealth. For purposes of this chapter, the term also includes a United States branch of an alien assuming insurer which branch is not entered through and licensed to transact insurance or reinsurance in this Commonwealth.

NAIC—National Association of Insurance Commissioners.

Qualified United States financial institution—

(i) An institution which meets the following qualifications. The institution:

(A) Is organized or, in the case of a United States office of a foreign banking organization, licensed, under the laws of the United States or a state thereof.

(B) Is regulated, supervised and examined by Federal or state authorities having regulatory authority over banks and trust companies.

(C) Has been determined by either the Commissioner or the Securities Valuation Office of the NAIC or a successor thereto to meet the standards of financial condition and standing considered necessary and appropriate to regulate the quality of financial institutions whose letters of credit will be acceptable to the Commissioner.

(ii) For purposes of specifying institutions that are eligible to act as a fiduciary of a trust, an institution that meets the following qualifications. The institution:

(A) Is organized, or in the case of a United States branch or agency office of a foreign banking organization, licensed, under the laws of the United States or a state thereof and has been granted authority to operate with fiduciary powers.

(B) Is regulated, supervised and examined by Federal or state authorities having regulatory authority over banks and trust companies.

Authority

The provisions of this § 161.2 amended under sections 206, 506, 1501 and 1502 of The Administrative Code of 1929 (71 P. S. §§ 66, 186, 411 and 412); and section 319.1 of The Insurance Company Law of 1921 (40 P. S. § 442.1).

Source

The provisions of this § 161.2 amended May 24, 2103, effective June 24, 2013, 43 Pa.B. 2816. Immediately preceding text appears at serial pages (265051) to (265052).

§ 161.3. Credit for reinsurance.

A licensed domestic ceding insurer will be allowed credit for reinsurance as either an asset or a deduction from liability on account of reinsurance ceded only when the reinsurer meets the requirements of this section or as otherwise provided in § 161.7 (relating to credit for joint underwriting or pooling arrangements).

(1) Credit will be allowed when the reinsurance is ceded to an assuming insurer which is licensed to transact insurance or reinsurance in this Commonwealth.

(2) Credit will be allowed when the reinsurance is ceded to an assuming foreign insurer which has met the conditions specified in this paragraph and has been deemed to be a qualified reinsurer by the Commissioner. To be considered for qualification, an assuming foreign insurer shall meet the following conditions. The insurer shall:

(i) File evidence of its submission to the Commonwealth's jurisdiction with the Commissioner.

(ii) Submit to the Commonwealth's authority to examine its books and records.

(iii) Be licensed to transact insurance or reinsurance in at least one state, or in the case of a United States branch of an alien assuming insurer be entered through and licensed to transact insurance or reinsurance in at least one state. After 1994, one of the states in which the insurer is licensed shall be an accredited state.

(iv) File with the application for qualification and annually thereafter a copy of its annual statement filed with the insurance department of its state of domicile and a copy of its most recent audited financial statement.

(v) Demonstrate to the satisfaction of the Commissioner that it has adequate financial capacity to meet its reinsurance obligations and is otherwise qualified to assume reinsurance from domestic insurers. An assuming insurer is deemed to meet this requirement as of the time of its application if it maintains a surplus as regards policyholders in an amount not less than \$20 million and its qualification has not been denied by the Commissioner within 90 days after submission of its application.

(3) Credit will be allowed when the reinsurance is ceded to an assuming alien insurer which has met the conditions specified in this paragraph and has

been deemed to be a qualified reinsurer by the Commissioner. To be considered for qualification, an assuming alien insurer shall meet the following conditions. The insurer shall:

(i) File with the Commissioner evidence of its submission to the Commonwealth's jurisdiction.

(ii) Submit to the Commonwealth's authority to examine its books and records.

(iii) File with the application for qualification and annually thereafter substantially the same information as that required to be reported on the NAIC annual statement blank by licensed insurers.

(iv) File with the application for qualification and annually thereafter details on the soundness of its ceded reinsurance program, including the identity, domicile and premium volume for each retrocessionaire when the amount of reinsurance premium ceded is greater than or equal to \$50,000. If the insurer demonstrates to the Commissioner's satisfaction its inability to provide the requested detail with respect to individual retrocessionaires because of its method of operation, the Commissioner will consider the acceptability of alternative information pertaining to the soundness of the insurer's ceded reinsurance program.

(v) Agree to the requirements of this subparagraph in the reinsurance agreements. This subparagraph is not intended to conflict with or override the obligation of the parties to a reinsurance agreement to arbitrate their disputes, if an obligation is created in the agreement.

(A) In the event of the failure of the assuming insurer to perform its obligations under the terms of the reinsurance agreement, the assuming insurer shall at the request of the ceding insurer:

(I) Submit to the jurisdiction of a court of competent jurisdiction in a state of the United States.

(II) Comply with the requirements necessary to give the court jurisdiction.

(III) Abide by the final decision of the court or of an appellate court in the event of an appeal.

(B) The assuming insurer shall designate a person as its true and lawful agent upon whom may be served a lawful process in an action, suit or proceeding instituted by or on behalf of the ceding company.

(vi) Maintain a trust fund in a qualified United States financial institution, for the payment of valid claims of its United States policyholders and ceding insurers, their assigns and successors in interest.

(A) In the case of a single assuming insurer, the trust shall consist of a trustee account in an amount not less than the assuming insurer's liabilities attributable to business directly written or assumed in the United

States. In addition, the assuming insurer shall maintain a trustee surplus of at least \$20 million except as provided in this clause. At any time after the assuming insurer has permanently discontinued underwriting new business secured by the trust for at least 3 calendar years, the commissioner with principal regulatory oversight of the trust may authorize a reduction in the required trustee 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. The risk assessment may involve an actuarial review, including an independent analysis of reserves and cash flows, and will consider 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. The minimum required trustee surplus 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.

(B) In the case of a group of insurers which includes incorporated and unincorporated individual insurers, the trust shall consist of a trustee account not less than the respective insurers' several liabilities attributable to business directly written or assumed in the United States. In addition, the group shall maintain a trustee surplus of which \$100 million shall be held jointly for the benefit of United States ceding insurers of any insurer of the group. The group shall make available to the Commissioner an annual certification of the solvency of each insurer by the group's domiciliary regulator and its independent public accountants.

(4) Credit will be allowed when the reinsurance is ceded to a group of incorporated alien insurers under common administration if the group has met the conditions specified in this subsection and has been deemed to be a qualified reinsurer by the Commissioner. To be considered for qualification, the group shall meet the following conditions. The group shall:

(i) Have continuously transacted an insurance business outside the United States for at least 3 years immediately prior to applying for qualification.

(ii) File with the Commissioner evidence of its submission to the Commonwealth's jurisdiction.

(iii) File with the application for qualification and annually thereafter substantially the same information as that required to be reported on the NAIC annual statement blank by licensed insurers.

(iv) Submit to the Commonwealth's authority to examine its books and records and bear the expense of the examination.

(v) File with the application for qualification and annually thereafter details on the soundness of its ceded reinsurance program, including the

identity, domicile and premium volume for each retrocessionaire when the amount of reinsurance premium ceded is greater than or equal to \$50,000. If the insurer demonstrates to the Commissioner's satisfaction its inability to provide the requested detail with respect to individual retrocessionaires because of its method of operation, the Commissioner will consider the acceptability of alternative information pertaining to the soundness of the insurer's ceded reinsurance program.

(vi) Maintain an aggregate policyholder's surplus of at least \$10 billion, calculated and reported in substantially the same manner as prescribed by the annual statement instructions and Accounting Practices and Procedures Manual of the NAIC.

(vii) Maintain a trust fund in a qualified United States financial institution for the payment of valid claims of its United States policyholders and ceding insurers, their assigns and successors in interest. The trust shall be in an amount not less than the group's several liabilities attributable to business ceded by United States ceding insurers to any member of the group pursuant to reinsurance contracts issued in the name of the group. The group shall maintain a joint trustee surplus of which \$100 million shall be held jointly for the benefit of United States ceding insurers of any member of the group as additional security for the liabilities. Each member of the group shall make available to the Commissioner an annual certification of the member's solvency by the member's domiciliary regulator and its independent public accountant.

(viii) Agree to the requirements of this subparagraph in the reinsurance agreements. This subparagraph is not intended to conflict with or override the obligation of the parties to a reinsurance agreement to arbitrate their disputes, if an obligation is created in the agreement.

(A) In the event of the failure of the assuming insurer to perform its obligations under the terms of the reinsurance agreement, at the request of the ceding insurer the assuming insurer shall:

(I) Submit to the jurisdiction of a court of competent jurisdiction in a state of the United States.

(II) Comply with requirements necessary to give the court jurisdiction.

(III) Abide by the final decision of the court or of an appellate court in the event of an appeal.

(B) The assuming insurer shall designate a person as its true and lawful agent upon whom may be served a lawful process in an action, suit or proceeding instituted by or on behalf of the ceding company.

(5) Credit will be allowed when the reinsurance is ceded to an assuming insurer that has been certified by the Commissioner as a reinsurer in this Commonwealth in accordance with § 161.3a (relating to requirements for certified

reinsurers) and secures its obligations in accordance with § 161.3b (relating to calculation of credit for reinsurance regarding obligations secured with certified reinsurers).

(6) Credit will be allowed when the reinsurance is ceded to an assuming insurer that is not a qualified reinsurer in an amount not exceeding the liabilities carried by the ceding insurer in accordance with section 319.1(b) of the act (40 P. S. § 442.1(b)).

Authority

The provisions of this § 161.3 amended under sections 206, 506, 1501 and 1502 of The Administrative Code of 1929 (71 P. S. §§ 66, 186, 411 and 412); and section 319.1 of The Insurance Company Law of 1921 (40 P. S. § 442.1).

Source

The provisions of this § 161.3 amended May 24, 2013, effective June 24, 2013, 43 Pa.B. 2816; amended May 13, 2016, effective June 13, 2016, 46 Pa.B. 2415. Immediately preceding text appears at serial pages (366639) to (366643).

Cross References

This section cited in 31 Pa. Code § 161.3b (relating to calculation of credit for reinsurance regarding obligations secured with certified reinsurers); 31 Pa. Code § 161.4 (relating to trust fund requirements); and 31 Pa. Code § 161.9 (relating to application).

§ 161.3a. Requirements for certified reinsurers.

(a) *Certification as a certified reinsurer.* To be eligible for certification as a certified reinsurer, 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.

(i) In accordance with reporting and notification requirements that may be established by the NAIC, the Commissioner will create a list of qualified jurisdictions, which will be published annually in the *Pennsylvania Bulletin*.

(ii) United States jurisdictions that meet the requirement for accreditation under the NAIC financial standards and accreditation program will be recognized as qualified jurisdictions.

(iii) To determine whether the domiciliary jurisdiction of an alien assuming insurer is eligible to be recognized as a qualified jurisdiction, the Commissioner will evaluate:

(A) The appropriateness and effectiveness of the reinsurance supervisory system of the jurisdiction, initially and on an ongoing basis.

(B) The rights, benefits and the extent of reciprocal recognition afforded by the non-United States jurisdiction to reinsurers licensed and domiciled in the United States.

(C) Whether the jurisdiction is a qualified jurisdiction as determined by the NAIC through the committee process. If the Commissioner approves a jurisdiction as qualified that does not appear on the NAIC's list

of qualified jurisdictions, the Commissioner will provide thoroughly documented justification of reasons.

(D) The framework under which the assuming insurer is regulated.

(E) The structure and authority of the domiciliary regulator with regard to solvency regulation requirements and financial surveillance.

(F) The substance of financial and operating standards for assuming insurers in the domiciliary jurisdiction.

(G) The form and substance of financial reports required to be filed or made publicly available by reinsurers in the domiciliary jurisdiction and the accounting principles used.

(H) The domiciliary regulator's willingness to cooperate with United States regulators in general and the Commissioner in particular.

(I) The history of performance by assuming insurers in the domiciliary jurisdiction.

(J) Any relevant international standards or guidance with respect to mutual recognition of reinsurance supervision adopted by the International Association of Insurance Supervisors or successor organization.

(iv) A domiciliary jurisdiction of an alien assuming insurer is not eligible to be recognized as a qualified jurisdiction unless:

(A) The jurisdiction has agreed to share information and cooperate with the Commissioner with respect to certified reinsurers domiciled within that jurisdiction.

(B) The jurisdiction adequately and promptly enforces final United States judgments and arbitration awards.

(v) If a certified reinsurer's domiciliary jurisdiction ceases to be a qualified jurisdiction, the Commissioner may withdraw recognition of that jurisdiction.

(2) The assuming insurer shall maintain minimum capital and surplus, or its equivalent, in an amount to be determined acceptable by the Commissioner in accordance with the following standards:

(i) The assuming insurer must maintain capital and surplus, or its equivalent, of at least \$250 million calculated in accordance with subparagraph (ii). This requirement may also be satisfied by an association including incorporated and individual unincorporated underwriters having minimum capital and surplus equivalents (net of liabilities) of at least \$250 million and a central fund containing a balance of at least \$250 million.

(ii) Certified reinsurers not domiciled in the United States shall file with the Commissioner audited financial statements (audited United States Generally Accepted Accounting Principles (GAAP) basis if available, audited International Financial Reporting Standards (IFRS) basis statements are allowed but must include an audited footnote reconciling equity and net income to a United States GAAP basis or, with the permission of the state insurance commissioner, audited IFRS statements with reconciliation to United States

GAAP certified by an officer of the company), regulatory filings and actuarial opinion (as filed with the non-United States jurisdiction supervisor). Upon the initial application for certification, the Commissioner will consider audited financial statements for the last 3 years filed with its non-United States jurisdiction supervisor.

(3) The assuming insurer shall maintain financial strength ratings from two or more rating agencies deemed acceptable by the Commissioner in accordance with subparagraph (i) and be rated by the Commissioner in accordance with subparagraph (ii).

(i) *Financial strength ratings.* The financial strength ratings must be based on interactive communication between the rating agency and the assuming insurer and may not be based solely on publicly available information. These ratings will be one factor used by the Commissioner in determining the rating assigned under subparagraph (ii). Acceptable rating agencies include Standard & Poor’s, Moody’s Investors Service, Fitch Ratings, A.M. Best Company or another Nationally recognized statistical rating organization.

(ii) *Assignment and publication of rating.* The Commissioner will assign a rating to each certified reinsurer and publish a list of certified reinsurers and their ratings annually in the *Pennsylvania Bulletin* in accordance with the following:

(A) Each certified reinsurer will be rated on a legal entity basis, with due consideration being given to the group rating when appropriate, except that an association including incorporated and individual unincorporated insurers that have been approved to do business as a single certified reinsurer may be evaluated on the basis of its group rating.

(B) Factors that may be considered as part of the evaluation process include the following:

(I) The certified reinsurer’s financial strength rating from an acceptable rating agency. The maximum rating that a certified reinsurer may be assigned will correspond to its financial strength rating as outlined in the following table. The Commissioner will use the lowest financial strength rating received from an approved rating agency in establishing the maximum rating of a certified reinsurer. A failure to obtain or maintain at least two financial strength ratings from acceptable rating agencies will result in loss of eligibility for certification.

<i>Ratings</i>	<i>Best</i>	<i>S&P</i>	<i>Moody’s</i>	<i>Fitch</i>
Secure—1	A++	AAA	Aaa	AAA
Secure—2	A+	AA+, AA, AA-	Aa1, Aa2, Aa3	AA+, AA, AA-

<i>Ratings</i>	<i>Best</i>	<i>S&P</i>	<i>Moody's</i>	<i>Fitch</i>
Secure—3	A	A+, A	A1, A2	A+, A
Secure—4	A-	A-	A3	A-
Secure—5	B++, B+	BBB+, BBB, BBB-	Baa1, Baa2, Baa3	BBB+, BBB, BBB-
Vulnerable—6	B, B-C++, C+, C, C-, D, E, F	BB+, BB, BB-, B+, B, B-, CCC, CC, C, D, R	Ba1, Ba2, Ba3, B1, B2, B3, Caa, Ca, C	BB+, BB, BB-, B+, B, B-, CCC+, CC, CCC-, DD

(II) The business practices of the certified reinsurer in dealing with its ceding insurers, including its record of compliance with reinsurance contractual terms and obligations.

(III) For certified reinsurers domiciled in the United States, a review of the most recent applicable NAIC Annual Statement Blank, either Schedule F (for property/casualty reinsurers) or Schedule S (for life and health reinsurers).

(IV) For certified reinsurers not domiciled in the United States, a review annually of Form CR-F (for property/casualty reinsurers) or Form CR-S (for life and health reinsurers) as developed by the NAIC.

(V) The reputation of the certified reinsurer for prompt payment of claims under reinsurance agreements, based on an analysis of ceding insurers' Schedule F reporting of overdue reinsurance recoverables, including the proportion of obligations that are more than 90 days past due or are in dispute, with specific attention given to obligations payable to companies that are in administrative supervision or receivership.

(VI) Regulatory actions against the certified reinsurer.

(VII) The report of the independent auditor on the financial statements of the insurance enterprise, on the basis described in subclause (VIII).

(VIII) For certified reinsurers not domiciled in the United States, audited financial statements (audited United States GAAP basis if available, audited IFRS basis statements are allowed but must include an audited footnote reconciling equity and net income to a United States GAAP basis or, with the permission of the state insurance commissioner, audited IFRS statements with reconciliation to United States GAAP certified by an officer of the company), regulatory filings and actuarial opinion (as filed with the non-United States jurisdiction supervisor). Upon the initial application for certification, the Commissioner will con-

sider audited financial statements for the last 3 years filed with its non-United States jurisdiction supervisor.

(IX) The liquidation priority of obligations to a ceding insurer in the certified reinsurer's domiciliary jurisdiction in the context of an insolvency proceeding.

(X) A certified reinsurer's participation in a solvent scheme of arrangement, or similar procedure, which involves United States ceding insurers. The Commissioner shall receive prior notice from a certified reinsurer that proposes participation by the certified reinsurer in a solvent scheme of arrangement.

(iii) *Change in rating or revocation of certification.*

(A) In the case of a downgrade by a rating agency or other disqualifying circumstance, the Commissioner will upon written notice assign a new rating to the certified reinsurer in accordance with subparagraph (ii)(B).

(B) The Commissioner has the authority to suspend, revoke or otherwise modify a certified reinsurer's certification in accordance with the procedures in § 161.6 (relating to revocation of reinsurer qualification or certification) at any time if the certified reinsurer fails to meet its obligations or security requirements under this section, or if other financial or operating results of the certified reinsurer, or documented significant delays in payment by the certified reinsurer, lead the Commissioner to reconsider the certified reinsurer's ability or willingness to meet its contractual obligations.

(C) If the rating of a certified reinsurer is upgraded by the Commissioner, the certified reinsurer may meet the security requirements applicable to its new rating on a prospective basis, but the Commissioner will require the certified reinsurer to post security under the previously applicable security requirements as to the contracts in force on or before the effective date of the upgraded rating. If the rating of a certified reinsurer is downgraded by the Commissioner, the Commissioner will require the certified reinsurer to meet the security requirements applicable to its new rating for all business it has assumed as a certified reinsurer.

(4) The assuming insurer shall agree to submit to the jurisdiction of the Commonwealth, appoint the Commissioner as its agent for service of process in this Commonwealth and agree to provide security for 100% of the assuming insurer's liabilities attributable to reinsurance ceded by United States ceding insurers if it resists enforcement of a final United States judgment. The assuming insurer shall submit a properly executed Form CR-1 as evidence of its submission to the jurisdiction of the Commonwealth, appointment of the Commissioner as an agent for service of process in this Commonwealth and agreement to provide security for 100% of the assuming insurer's liabilities attributable to reinsurance ceded by United States ceding insurers if it resists enforcement of a final United States judgment. The Commissioner will not certify an assuming

insurer that is domiciled in a jurisdiction that the Commissioner has determined does not adequately and promptly enforce final United States judgments or arbitration awards.

(5) The assuming insurer shall agree to meet applicable information filing requirements both with respect to an initial application for certification and on an ongoing basis. Information submitted by certified reinsurers that is not otherwise public information subject to disclosure is confidential and privileged and is not subject to subpoena, discovery, the Right-to-Know Law (65 P. S. §§ 67.101—67.3104) or admissible in evidence in any private civil action. The applicable information filing requirements are as follows:

(i) Notification within 10 days of regulatory actions taken against the certified reinsurer, a change in the provisions of its domiciliary license or a change in rating by an approved rating agency, including a statement describing the changes and the reasons.

(ii) Annual submission of Form CR-F or CR-S, as applicable per NAIC instructions.

(iii) Annual submission of the report of the independent auditor on the financial statements of the insurance enterprise on the basis described in subparagraph (iv).

(iv) Annual submission of audited financial statements (audited United States GAAP basis if available, audited IFRS basis statements are allowed but must include an audited footnote reconciling equity and net income to a United States GAAP basis or, with the permission of the state insurance commissioner, audited IFRS statements with reconciliation to United States GAAP certified by an officer of the company), regulatory filings and actuarial opinion (as filed with the certified reinsurer's supervisor). Upon the initial certification, audited financial statements for the last 3 years filed with the certified reinsurer's supervisor.

(v) At least annually, filing of an updated list of disputed and overdue reinsurance claims regarding reinsurance assumed from United States domestic ceding insurers.

(vi) 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.

(b) *Certification of an association as a certified reinsurer.* In addition to meeting the requirements of subsection (a), an association, including incorporated and individual unincorporated insurers, may be a certified reinsurer if it satisfies the following additional requirements:

(1) The association shall satisfy its minimum capital and surplus requirements through the capital and surplus equivalents (net of liabilities) of the association and its members, which includes a joint central fund that may be applied to any unsatisfied obligation of the association or any of its members, in an amount determined by the Commissioner to provide adequate protection.

(2) The incorporated members of the association may not be engaged in business other than underwriting as a member of the association and shall be subject to the same level of regulation and solvency control by the association's domiciliary regulator as are the unincorporated members.

(3) Within 90 days after its financial statements are due to be filed with the association's domiciliary regulator, the association shall provide to the Commissioner an annual certification by the association's domiciliary regulator of the solvency of each insurer member or, if a certification is unavailable, financial statements, prepared by independent public accountants, of each insurer member of the association.

(c) *Deferment of certification.* If an applicant for certification has been certified as a reinsurer in an NAIC accredited jurisdiction, the Commissioner has the discretion to defer to that jurisdiction's certification and to defer to the rating assigned by that jurisdiction. The assuming insurer will be considered to be a certified reinsurer in this Commonwealth in accordance with the following:

(1) The assuming insurer shall submit a properly executed Form CR-1 to the Commissioner.

(2) A change in the certified reinsurer's status or rating in the other jurisdiction applies automatically in this Commonwealth as of the date it takes effect in the other jurisdiction. The certified reinsurer shall notify the Commissioner of a change in its status or rating within 10 days after receiving notice of the change.

(3) The Commissioner may withdraw recognition of the other jurisdiction's rating at any time and assign a new rating in accordance with subsection (a)(3)(ii).

(4) The Commissioner may withdraw recognition of the other jurisdiction's certification at any time with written notice to the certified reinsurer. Unless the Commissioner revokes the certified reinsurer's certification in accordance with § 161.6, the certified reinsurer's certification will remain in good standing in this Commonwealth for 3 months, which will be extended if additional time is necessary to consider the assuming insurer's application for certification in this Commonwealth.

(d) *Inactive status certification.* A certified reinsurer that ceases to assume new business in this Commonwealth may request to maintain its certification in inactive status to continue to qualify for a reduction in security for its in-force business. An inactive certified reinsurer shall continue to comply with the applicable requirements of this section and the Commissioner will assign a rating that takes into account, if relevant, the reasons why the reinsurer is not assuming new business.

(e) *Certification procedure.*

(1) The Department will post notice of an application for certification in the *Pennsylvania Bulletin* promptly upon receipt and will include instructions on how members of the public may respond to the application. The Commis-

sioner will not take final action on the application until at least 30 days after posting the notice in the *Pennsylvania Bulletin*.

(2) If the Department is satisfied that an assuming insurer has met the conditions for certification and determines to designate the assuming insurer as a certified reinsurer, the Department will issue written notice of the designation to the assuming insurer. The rating assigned the certified reinsurer in accordance with subsection (a)(3)(ii) will be included in the notice.

Authority

The provisions of this § 161.3a issued under sections 206, 506, 1501 and 1502 of The Administrative Code of 1929 (71 P. S. §§ 66, 186, 411 and 412); and section 319.1 of The Insurance Company Law of 1921 (40 P. S. § 442.1).

Source

The provisions of this § 161.3a adopted May 24, 2013, effective June 24, 2013, 43 Pa.B. 2816.

Cross References

This section cited in 31 Pa. Code § 161.3 (relating to credit for reinsurance); and 31 Pa. Code § 161.3b (relating to calculation of credit for reinsurance regarding obligations secured with certified reinsurers).

§ 161.3b. Calculation of credit for reinsurance regarding obligations secured with certified reinsurers.

(a) For a domestic ceding insurer to qualify for full financial statement credit for reinsurance ceded to a certified reinsurer, the certified reinsurer shall maintain security in a form acceptable to the Commissioner and consistent with section 319.1(b) of the act (40 P. S. § 442.1(b)) or in a multibeneficiary trust in accordance with § 161.3(3)(vii)(B) (relating to credit for reinsurance) except that:

(1) If a certified reinsurer maintains a trust to fully secure its obligations subject to § 161.3(3)(vii) and chooses to secure its obligations incurred as a certified reinsurer in the form of a multibeneficiary trust, the certified reinsurer shall maintain separate trust accounts for its obligations incurred under reinsurance agreements issued or renewed as a certified reinsurer with reduced security as permitted by this paragraph or comparable laws of other United States jurisdictions and for its obligations subject to § 161.3(3)(vii)(B). It shall be a condition to the grant of certification under this subsection that the certified reinsurer shall have bound itself, by the language of the trust and agreement with the chief regulatory official with principal regulatory oversight of each trust account, to fund, upon termination of a trust account, out of the remaining surplus of the trust any deficiency of another trust account.

(2) The minimum trusteed surplus requirements provided in § 161.3(3)(vii) are not applicable with respect to a multibeneficiary trust maintained by a cer-

tified reinsurer for the purpose of securing obligations incurred under this paragraph, except that the trust must maintain a minimum trusted surplus of \$10 million.

(b) The allowable credit allowed a ceding insurer must be based upon the security held by or on behalf of the ceding insurer and shall be calculated in accordance with the following requirements:

(1) For full credit to be allowed, the amount of security must correspond with the rating assigned by the Commissioner to the certified reinsurer under § 161.3a(a)(3) (relating to requirements for certified reinsurers) as follows:

<i>Rating</i>	<i>Security required</i>
Secure—1	0%
Secure—2	10%
Secure—3	20%
Secure—4	50%
Secure—5	75%
Vulnerable—6	100%

(2) Affiliated reinsurance transactions will receive the same opportunity for reduced security requirements as other reinsurance transactions.

(3) The Commissioner will require the certified reinsurer to post 100% for the benefit of the ceding insurer or its estate, security upon the entry of an order of rehabilitation, liquidation or conservation against the ceding insurer.

(4) To facilitate the prompt payment of claims, a certified reinsurer will not be required to post security for catastrophe recoverables for 1 year from the date of the first instance of a liability reserve entry by the ceding company as a result of a loss from a catastrophic occurrence as recognized by the Commissioner. When determining what constitutes a catastrophic occurrence, the Commissioner will consult with the NAIC and consider both natural and human events. The 1-year deferral period is contingent upon the certified reinsurer continuing to pay claims in a timely manner in compliance with its contractual obligations in the reinsurance agreement under which the claims are ceded. Reinsurance recoverables for only the following lines of business as reported on the NAIC annual financial statement related specifically to the catastrophic occurrence will be included in the deferral:

<i>Line 1:</i>	Fire
<i>Line 2:</i>	Allied Lines
<i>Line 3:</i>	Farmowners multiple peril
<i>Line 4:</i>	Homeowners multiple peril

<i>Line 5:</i>	Commercial multiple peril
<i>Line 9:</i>	Inland Marine
<i>Line 12:</i>	Earthquake
<i>Line 21:</i>	Auto physical damage

(c) With respect to obligations incurred by a certified reinsurer, if the security is insufficient, the Commissioner will reduce the allowable credit by an amount proportionate to the deficiency and has the discretion to impose further reductions in allowable credit upon finding that there is a material risk that the certified reinsurer's obligations will not be paid in full when due.

(d) For purposes of calculating the allowable credit under this section, a certified reinsurer whose certification has been terminated for any reason shall be treated as a certified reinsurer required to secure 100% of its obligations.

(1) As used in this subsection, "terminated" refers to revocation, suspension, voluntary surrender and inactive status.

(2) If the Commissioner continues to assign a higher rating as permitted by this section, this requirement does not apply to a certified reinsurer in inactive status or to a reinsurer whose certification has been suspended.

(e) Based on the analysis conducted under § 161.3a(a)(3)(ii)(B)(V) of a certified reinsurer's reputation for prompt payment of claims, the Commissioner may make appropriate adjustments in the security the certified reinsurer is required to post to protect its liabilities to United States ceding insurers, provided that the Commissioner will, at a minimum, increase the security the certified reinsurer is required to post by one rating level under § 161.3a(a)(3)(ii)(B)(I) if the Commissioner finds either of the following:

(1) More than 15% of the certified reinsurer's ceding insurance clients have overdue reinsurance recoverables on paid losses of 90 days or more which are not in dispute and which exceed \$100,000 for each cedent.

(2) The aggregate amount of reinsurance recoverables on paid losses not in dispute that are overdue by 90 days or more exceeds \$50 million.

(f) This section does not prohibit the parties to a reinsurance agreement from agreeing to provisions establishing security requirements that exceed the minimum security requirements under this section or under § 161.8a (relating to reinsurance contracts).

Authority

The provisions of this § 161.3b issued under sections 206, 506, 1501 and 1502 of The Administrative Code of 1929 (71 P. S. §§ 66, 186, 411 and 412); and section 319.1 of The Insurance Company Law of 1921 (40 P. S. § 442.1).

Source

The provisions of this § 161.3b adopted May 24, 2013, effective June 24, 2013, 43 Pa.B. 2816.

Cross References

This section cited in 31 Pa. Code § 161.3 (relating to credit for reinsurance).

§ 161.3c. Concentration risk.

(a) A ceding insurer shall take steps to manage its reinsurance recoverables proportionate to its own book of business. A domestic ceding insurer shall notify the Commissioner within 30 days after reinsurance recoverables from a single assuming insurer, or group of affiliated assuming insurers, exceed 50% of the domestic ceding insurer's last reported surplus to policyholders, or after it is determined that reinsurance recoverables from a single assuming insurer or group of affiliated assuming insurers is likely to exceed this limit. The notification must demonstrate that the exposure is safely managed by the domestic ceding insurer.

(b) A ceding insurer shall take steps to diversify its reinsurance program. A domestic ceding insurer shall notify the Commissioner within 30 days after ceding to a single assuming insurer, or group of affiliated assuming insurers, more than 20% of the ceding insurer's gross written premium in the prior calendar year, or after it has determined that the reinsurance ceded to a single assuming insurer, or group of affiliated assuming insurers is likely to exceed this limit. The notification must demonstrate that the exposure is safely managed by the domestic ceding insurer.

Authority

The provisions of this § 161.3c issued under sections 206, 506, 1501 and 1502 of The Administrative Code of 1929 (71 P. S. §§ 66, 186, 411 and 412); and section 319.1 of The Insurance Company Law of 1921 (40 P. S. § 442.1).

Source

The provisions of this § 161.3c adopted May 24, 2013, effective June 24, 2013, 43 Pa.B. 2816.

§ 161.4. Trust fund requirements.

(a) A trust required under § 161.3(3) or (4) (relating to credit for reinsurance) shall be established and maintained in a form approved by the Commissioner. The trust instrument shall provide that contested claims shall be valid and enforceable out of funds in trust to the extent remaining unsatisfied 30 days after entry of the final order of a court of competent jurisdiction in the United States. The trust shall vest legal title to its assets in the trustees of the trust for the benefit of the grantor's United States policyholders and ceding insurers, their assigns and successors in interest. The trust and the assuming insurer shall be subject to examination as determined by the Commissioner. The trust described in this section shall remain in effect for as long as the assuming insurer or a member or former member of a group of insurers shall have outstanding obligations due under reinsurance agreements subject to the trust.

(b) By February 28 of each year, the trustees of a trust established to comply with § 161.3(3) or (4) shall report to the Commissioner in writing setting forth the balance of the trust and listing the trust's investments at the preceding year's end and shall certify the date of termination of the trust, if so planned, or certify that the trust will not expire prior to the next following December 31. The assuming insurer shall annually submit a financial exhibit which quantifies the liabilities attributable to business directly written or assumed in the United States.

(c) An amendment to the trust will not be effective unless reviewed and approved in advance by the Commissioner.

Cross References

This section cited in 31 Pa. Code § 161.6 (relating to revocation of reinsurer qualification or certification).

§ 161.5. Determination of reinsurer qualification.

(a) Applications for designation as a qualified reinsurer shall be submitted by the assuming insurer and shall be accompanied by a properly executed Form QR-1 as provided in Appendix A (relating to Form QR-1 Certificate of Assuming Insurer).

(b) If the Department is satisfied that an assuming insurer has met the conditions for qualification and determines to designate the assuming insurer as a qualified reinsurer, the Department will issue written notice of the designation to the assuming insurer and include the insurer on a list of qualified reinsurers published and periodically reviewed by the Commissioner.

(c) If the Department determines that qualification will be denied, the Department will issue written notice of denial to the assuming insurer. The assuming insurer may request a hearing to review the Department's denial. The hearing will be held in accordance with 2 Pa.C.S. §§ 501—508 and 701—704 (relating to the Administrative Agency Law) and 1 Pa. Code Part II (relating to the general rules of administrative practice and procedure).

§ 161.6. Revocation of reinsurer qualification or certification.

(a) If the Department determines that a reinsurer has failed to continue to meet one or more of the conditions for qualification or certification, the Commissioner may upon written notice and hearing revoke its qualification or certification and remove it from the published list of qualified or certified reinsurers.

(b) If an assuming insurer's qualification has been revoked by the Commissioner after notice, a ceding insurer shall be allowed to continue to take credit for reinsurance ceded to the assuming insurer until the end of the contract year or 1 year from the date of the revocation, whichever time is less, but in no event less than 6 months. If an assuming insurer's certification has been revoked by the Commissioner, the assuming insurer shall post security in accordance with section 319.1(b) of the act (40 P. S. § 442.1(b)) for the ceding insurer to continue to take credit for reinsurance ceded to the assuming insurer. If funds continue to be held in trust in accordance with § 161.4 (relating to trust fund requirements) the Commissioner may allow additional credit equal to the ceding insurer's pro rata share of the funds, discounted to reflect the risk of uncollectability and anticipated expenses of trust administration. Notwithstanding the change of a certified reinsurer's rating or revocation of its certification, a domestic insurer that has ceded reinsurance to that certified reinsurer may not be denied credit for reinsurance for 3 months for reinsurance ceded to that certified reinsurer, unless the reinsurance is found by the Commissioner to be at high risk of uncollectability.

(c) If a modification, amendment or revision to an existing reinsurance agreement, which increases the risk reinsured, takes place after an assuming insurer's qualification or certification has been revoked, credit will not be allowed a ceding insurer for additional risks ceded after the date and directly resulting from the modification, amendment or revision.

(d) Notwithstanding the provisions of subsections (b) and (c), a ceding insurer may continue to take credit for reinsurance ceded before the date of the

revocation of the assuming insurer's qualification with respect to a risk covered by the reinsurance agreement during the time the assuming insurer's qualification was in effect.

Authority

The provisions of this § 161.6 amended under sections 206, 506, 1501 and 1502 of The Administrative Code of 1929 (71 P. S. §§ 66, 186, 411, 412); and section 319.1 of The Insurance Company Law of 1921 (40 P. S. § 42.1).

Source

The provisions of this § 161.6 amended May 24, 2013, effective June 24, 2013, 43 Pa.B. 2816. Immediately preceding text appears at serial page (265057).

Cross References

This section cited in 31 Pa. Code § 161.3a (relating to requirements for certified reinsurers).

§ 161.7. Credit for joint underwriting or pooling arrangements.

(a) Domestic ceding insurers which are participating in a joint underwriting or joint reinsurance pooling arrangement, in which the insurers participating in the arrangement are not qualified or certified reinsurers, may request specific approval by the Commissioner to take reserve credit for reinsurance ceded under those arrangements.

(b) The Commissioner may specify what information is required to be filed with respect to the participants in the arrangement to determine whether credit shall be allowed.

(c) In determining whether credit will be allowed under this section, the Commissioner will consider:

- (1) The amount of risk ceded under the arrangement to reinsurers which are either qualified reinsurers under this chapter or which are licensed to transact insurance or reinsurance in this State.
- (2) The financial condition and state of domicile of the participants.
- (3) The length of time the agreement has been in force and the effect of the agreement on the participants.
- (4) The type of risk being reinsured by the pool and the maximum per risk exposure of the pool.
- (5) The management and control of the operations of the pool.
- (6) Other information the Commissioner may prescribe.

Authority

The provisions of this § 161.7 amended under sections 206, 506, 1501 and 1502 of The Administrative Code of 1929 (71 P. S. §§ 66, 186, 411 and 412); and section 319.1 of The Insurance Company Law of 1921 (40 P. S. § 42.1).

Source

The provisions of this § 161.7 amended May 24, 2013, effective June 24, 2013, 43 Pa.B. 2816. Immediately preceding text appears at serial pages (265057) to (265058).

Cross References

This section cited in 31 Pa. Code § 161.3 (relating to credit for reinsurance).

§ 161.8. [Reserved].**Authority**

The provisions of this § 161.8 reserved under sections 206, 506, 1501 and 1502 of The Administrative Code of 1929 (71 P. S. §§ 66, 186, 411 and 412); and section 319.1 of The Insurance Company Law of 1921 (40 P. S. § 442.1).

Source

The provisions of this § 161.8 reserved May 24, 2013, effective June 24, 2013, 43 Pa.B. 2816. Immediately preceding serial text pages appear at (265058) to (265061).

§ 161.8a. Reinsurance contracts.

A ceding insurer will not be granted a credit or allowed an asset or reduction from liability for reinsurance effected with assuming insurers meeting the requirements of this chapter unless the reinsurance agreement includes the following provisions:

- (1) A proper insolvency clause as provided for in section 319.1(d) of the act (40 P. S. § 442.1(d)), which stipulates that reinsurance is payable directly to the liquidator or successor without diminution regardless of the status of the ceding company.
- (2) A reinsurance intermediary clause, if applicable, which stipulates that the credit risk for the intermediary is carried by the assuming insurer.
- (3) A mandatory funding clause requiring the certified reinsurer to provide and maintain security in an amount sufficient to avoid the imposition of a financial statement penalty on the ceding insurer for reinsurance ceded to the certified reinsurer.

Authority

The provisions of this § 161.8a issued under sections 206, 506, 1501 and 1502 of The Administrative Code of 1929 (71 P. S. §§ 66, 186, 411 and 412); and section 319.1 of The Insurance Company Law of 1921 (40 P. S. § 442.1).

Source

The provisions of this § 161.8a adopted May 24, 2013, effective June 24, 2013, 43 Pa.B. 2816.

Cross References

This section cited in 31 Pa. Code § 161.3b (relating to calculation of credit for reinsurance regarding obligations secured with certified reinsurers).

§ 161.9. Application.

(a) Credit will be allowed when the reinsurance is ceded to an assuming insurer not meeting the requirements of this section or § 161.3 (relating to credit for reinsurance) with respect to the insurance of risks located in jurisdictions if the reinsurance is required by applicable law or regulation of that jurisdiction. As used in this section, “jurisdiction” means a state, district or territory of the United States and a lawful national government.

(b) An insurer which has been designated as a qualified reinsurer prior to August 28, 1993, will have until August 28, 1995, to achieve compliance with this chapter or have its qualification revoked.

Ch. 161 QUALIFIED AND CERTIFIED REINSURERS **31 § 161.9**

Authority

The provisions of this § 161.9 amended under sections 206, 506, 1501 and 1502 of The Administrative Code of 1929 (71 P. S. §§ 66, 186, 411 and 412); and section 319.1 of The Insurance Company Law of 1921 (40 P. S. § 42.1).

Source

The provisions of this § 161.9 amended May 24, 2013, effective June 24, 2013, 43 Pa.B. 2816. Immediately preceding text appears at serial page (265061).

APPENDIX A

FORM QR-1

CERTIFICATE OF ASSUMING INSURER

I, _____, _____
(name of officer) (title of officer)

of _____, the assuming insurer
(name of assuming insurer)
under a reinsurance agreement(s) with one or ore insurers domiciled in
_____, hereby certify that
(name of state)

(name of assuming insurer)

(“Assuming Insurer”):

1. Submits to the jurisdiction of any court of competent jurisdiction in

(ceding insurer’s state of domicile)

for the adjudication of any issues arising out of the reinsurance agreement(s), agrees to comply with all requirements necessary to give such court jurisdiction, and will abide by the final decision of such court or any appellate court in the event of an appeal. Nothing in this paragraph constitutes or should be understood to constitute a waiver of Assuming Insurer’s rights to commence an action in any court of competent jurisdiction in the United States, to remove an action to a United States District Court, or to seek a transfer of a case to another court as permitted by the laws of the United States or of any state in the United States. This paragraph is not intended to conflict with or override the obligation of the parties to the reinsurance agreement(s) to arbitrate their disputes if such an obligation is created in the agreement(s).

2. Designates _____ as its lawful
(name of lawful agent)

agent upon whom may be served any lawful process in any action, suit or proceeding arising out of the reinsurance agreement(s) instituted by or on behalf of the ceding insurer.

3. Submits to the authority of the Insurance Commissioner of the Commonwealth of Pennsylvania to examine its books and records and agrees to bear the expense of any such examination.

Cross References

This appendix cited in 31 Pa. Code § 161.5 (relating to determination of reinsurer qualification).

[Next page is 162-1.]