Sec. 38a-88-4b. Credit for Reinsurance – Reciprocal Jurisdictions

(a) 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 assuming insurer meets other requirements of this section.

(b) For the purposes of this section, a "reciprocal jurisdiction" is a jurisdiction, as designated by the Commissioner pursuant to subsection (d) of this section, that meets one of the following:

(1) For the purposes of this section, 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 European Union, is a member state of the European Union. For purposes of this subsection, a "covered agreement" is an agreement entered into pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act, 31 USC 313 and 314, that is 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 standards and accreditation program; or

(3) A qualified jurisdiction, as determined by the Commissioner pursuant to section 38a-85a(c) of the Connecticut General Statutes or section 38a-88-4a(c) of the Regulations of Connecticut State Agencies, which is not otherwise described in subdivision (1) or (2) of this subsection and which the Commissioner determines meets all of the following additional requirements:

(A) Provides that an insurer which has its head office or is domiciled in such qualified jurisdiction 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 assumed by insurers domiciled in such qualified jurisdiction;

(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 a regulation by the non-United States 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 only to worldwide prudential insurance group supervision including worldwide group governance, solvency and capital, and reporting, as applicable, by the Commissioner or the commissioner of the domiciliary state and will not be subject to group supervision at the level of the worldwide parent undertaking of the insurance or reinsurance group of 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 the International Association of Insurance Supervisors Multilateral Memorandum of Understanding or 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 following conditions:

(1) The assuming insurer is licensed to transact reinsurance by, and has its head office or is domiciled in, a reciprocal jurisdiction.

(2) The assuming insurer has and maintains 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 subdivision (7) of this subsection according to the methodology of its domiciliary jurisdiction, in the following amounts:

(A) No less than $250,000,000; or

(B) If the assuming insurer is an association, including incorporated and individual unincorporated underwriters:

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

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

(3) The assuming insurer has and maintains 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 subdivision (1) of subsection (b) of this section, the ratio specified in the applicable covered agreement;

(B) If the assuming insurer is domiciled in a reciprocal jurisdiction as defined in subdivision (2) of subsection (b) of this section, a risk-based capital (RBC) ratio of three hundred percent (300%) 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 subdivision (3) of subsection (b) of this section, after consultation with the reciprocal jurisdiction and considering any recommendations published through the NAIC committee process, such solvency or capital ratio as the commissioner determines to be an effective measure of solvency.

(4) The assuming insurer agrees to and provides adequate assurance, in the form of a properly executed Form RJ-1 (Appendix C of sections 38a-88-1 to 38a-88-12, inclusive, of the Regulations of Connecticut State Agencies), of its agreement to the following:

(A) The assuming insurer shall provide prompt written notice and explanation to the Commissioner if it falls below the minimum requirements set forth in subdivision (2) or (3) of this subsection, or if any regulatory action is taken against it for serious noncompliance with applicable law.

(B) The assuming insurer shall 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.

(i) The Commissioner may also require that the consent required by this subparagraph be provided and included in each reinsurance agreement under the Commissioner's jurisdiction.

(ii) Nothing in this subparagraph 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 or delinquency laws.

(C) The assuming insurer shall consent in writing to pay all final judgments, wherever enforcement is sought, obtained by a ceding insurer, that have been declared enforceable in the territory where the judgment was obtained.

(D) Each reinsurance agreement shall include a provision requiring the assuming insurer to provide security in an amount equal to one hundred percent (100%) of the assuming insurer's liabilities attributable to reinsurance ceded pursuant to that agreement if the assuming insurer resists enforcement of a final judgment 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) The assuming insurer shall confirm that it is not presently participating in any solvent scheme of arrangement, which involves this state's ceding insurers, and shall agree to notify the ceding insurer and the Commissioner and to provide one hundred percent (100%) 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 provisions of sections 38a-85, 38a-85a, and 38a-86 of the Connecticut General Statutes and this section and sections 38a-88-4 and 38a-88-4a of the Regulations of Connecticut State Agencies. For purposes of this section, "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 finally commute liabilities of duly noticed classed members or creditors of a solvent debtor, or 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.

(F) The assuming insurer shall agree in writing to meet the applicable information filing requirements as set forth in subdivision (5) of this subsection.

(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 to the Commissioner:

(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) Prior to entry into the reinsurance agreement and not more than semi-annually thereafter, an updated list of all disputed and overdue reinsurance claims outstanding for

90 days or more, regarding reinsurance assumed from ceding insurers domiciled in the United States; and

(D) Prior to entry into the reinsurance agreement and not more than semi-annually thereafter, information regarding the assuming insurer's assumed reinsurance by ceding insurer, 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 subdivision (6) of this subsection.

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

(A) More than fifteen percent (15%) of the reinsurance recoverables from the assuming insurer are overdue and in dispute as reported to the Commissioner;

(B) More than fifteen percent (15%) 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, 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, 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 is in compliance with the requirements set forth in subdivisions (2) and (3) of this subsection.

(8) Nothing in this subsection precludes an assuming insurer from providing the Commissioner with information on a voluntary basis.

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

(1) A list of reciprocal jurisdictions is published through the NAIC committee process. The Commissioner's list shall include any reciprocal jurisdiction as defined in subdivision (1) or (2) of subsection (b) of this section and the Commissioner 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.

(2) 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 shall not remove from the list a reciprocal jurisdiction as defined in subdivision (1) or (2) of subsection (b) of this section. 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 sections 38a-85 to 38a-87, inclusive, of the Connecticut General Statutes or sections 38a-88-1 to 38a-88-12, inclusive, of the Regulations of Connecticut State Agencies.

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

(1) If an NAIC accredited jurisdiction has determined that the conditions set forth in subsection (c) of this section have been met, the Commissioner has the discretion to 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 subsection. The Commissioner may accept financial documentation filed with another NAIC accredited jurisdiction or with the NAIC in satisfaction of the requirements of subsection (c) of this section.

(2) When requesting that the Commissioner defer to another NAIC accredited jurisdiction's determination, an assuming insurer must submit a properly executed Form RJ-1 (Appendix C of sections 38a-88-1 to 38a-88-12, inclusive, of the Regulations of Connecticut State Agencies), and additional information as the Commissioner may require. A state that has received such a request will notify other states through the NAIC committee process and provide relevant information with respect to the determination of eligibility.

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

(1) 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 section 38a-88-6 of the Regulations of Connecticut State Agencies.

(2) 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 section 38a-88-6 of the Regulations of Connecticut State Agencies.

(g) Before denying statement credit or imposing a requirement to post security with respect to subsection (f) of this section or adopting any similar requirement that will have substantially the same regulatory impact as security, the Commissioner shall:

(1) Communicate to 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 subsection (c) of this section;

(2) 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;

(3) After the expiration of 90 days or less, as set out in subdivision (2) of this subsection 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 subsection; and

(4) Provide a written explanation to the assuming insurer of any of the requirements set out in this subsection.

(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.

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