

HAWAII ADMINISTRATIVE RULES

TITLE 16

DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS

CHAPTER 170

DISCLOSURE OF MATERIAL TRANSACTIONS

- §16-170-1 Report
- §16-170-1.5 Definitions
- §16-170-2 Acquisitions and dispositions of assets
- §16-170-3 Nonrenewals, cancellations, or revisions of ceded reinsurance agreements

§16-170-1 Report. (a) Every insurer domiciled in this State shall file a report with the commissioner disclosing material acquisitions and dispositions of assets or material nonrenewals, cancellations, or revisions of ceded reinsurance agreements or material new ceded reinsurance agreements affecting in force life insurance business unless the acquisitions and dispositions of assets or material nonrenewals, cancellations, or revisions of ceded reinsurance agreements or material new ceded reinsurance agreements affecting in force life insurance business have been submitted to the commissioner for review, approval, or information purposes pursuant to other provisions of the insurance code, laws, rules, or other requirements.

(b) The report required in subsection (a) is due within fifteen days after the end of the calendar month in which any of the foregoing transactions occur.

(c) One complete copy of the report, including any exhibits or other attachments, shall be filed with:

- (1) The insurance department of the insurer's state of domicile; and
- (2) The National Association of Insurance Commissioners.

(d) All reports obtained by or disclosed to the commissioner pursuant to this chapter, shall be given confidential treatment and shall not be subject to subpoena and shall not be made public by the commissioner, the National Association of Insurance Commissioners, or any other person, except to insurance departments of other states, and as otherwise required by chapter 92F, HRS. An individual report may be made public by the commissioner, the National

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Association of Insurance Commissioners, or any other person with the prior written consent of the insurer to which the report pertains. An individual report may be made public without the prior written consent of the insurer to which the report pertains if the commissioner, after giving the insurer to which the report pertains notice and an opportunity to be heard, determines that the interest of policyholders, shareholders, or the public will be served by publication, in which event the commissioner may publish all or any part of the report in the manner the commissioner may deem appropriate. [Eff 1/25/97; am and comp 02/20/09] (Auth: HRS §§431:2-201, 431:2-209, 431:5-401) (Imp: HRS §§431:2-201, 431:3-301; 431:3-302, 431:5-401)

### §16-170-1.5 Definitions. As used in this chapter:

"Material transaction" means an insurer's acquisition or disposition of assets or the nonrenewal, cancellation, or revision of a ceded reinsurance agreement or a new ceded reinsurance agreement affecting in force life insurance business. A material transaction subject to the reporting requirements is identified in sections 16-170-2 and 16-170-3. [Eff and comp 02/20/09] (Auth: HRS §§431:2-201, 431:2-209, 431:5-401) (Imp: HRS §§431:2-201, 431:3-301; 431:3-302, 431:5-401)

§16-170-2 Acquisitions and dispositions of assets. (a) Materiality. No acquisitions or dispositions of assets need be reported pursuant to section 16-170-1 if the acquisitions or dispositions are not material. For purposes of this chapter, a material acquisition (or the aggregate of any series of related acquisitions during any thirty-day period) or disposition (or the aggregate of any series of related dispositions during any thirty-day period) is one that is non-recurring and not in the ordinary course of business and involves more than five per cent of the reporting insurer's total admitted assets as reported in its most recent statutory statement filed with the insurance department of the insurer's state of domicile.

#### (b) Scope.

- (1) Asset acquisitions subject to this chapter include every purchase, lease, exchange, merger, consolidation, succession, or other acquisition other than the construction or development of real property by or for the reporting insurer or the acquisition of materials for such purpose.
- (2) Asset dispositions subject to this chapter include every sale, lease, exchange, merger, consolidation, mortgage, hypothecation,

assignment (whether for the benefit of creditors or otherwise), abandonment, destruction, or other disposition.

- (c) Information to be reported.
- (1) The following information is required to be disclosed in any report of a material acquisition or disposition of assets:
  - (A) Date of the transaction;
  - (B) Manner of acquisition or disposition;
  - (C) Description of the assets involved;
  - (D) Nature and amount of the consideration given or received;
  - (E) Purpose of, or reason for, the transaction;
  - (F) Manner by which the amount of consideration was determined;
  - (G) Gain or loss recognized or realized as a result of the transaction; and
  - (H) Names of all persons from whom the assets were acquired or to whom they were disposed.
- (2) Insurers are required to report material acquisitions and dispositions on a non-consolidated basis unless the insurer is part of a consolidated group of insurers which utilizes a pooling arrangement or one hundred per cent reinsurance agreement that affects the solvency and integrity of the insurer's reserves and the insurer ceded substantially all of its direct and assumed business to the pool. An insurer is deemed to have ceded substantially all of its direct and assumed business to a pool if the insurer has less than \$1,000,000 total direct plus assumed written premiums during a calendar year that are not subject to a pooling arrangement and the net income of the business not subject to the pooling arrangement represents less than five per cent of the insurer's capital and surplus. [Eff 1/25/97; comp 02/20/09] (Auth: HRS §§431:2-201, 431:5-401) (Imp: HRS §§431:2-201, 431:3-301; 431:3-302, 431:5-401)

§16-170-3 Nonrenewals, cancellations, or revisions of ceded reinsurance agreements. (a) Materiality and scope.

- (1) No nonrenewals, cancellations, or revisions of ceded reinsurance agreements or new ceded reinsurance agreements affecting in force life insurance business need be reported pursuant to section 16-170-1 if the nonrenewals, cancellations, or revisions of ceded reinsurance agreements or new ceded reinsurance agreements

affecting in force life insurance business are not material. For purposes of this chapter, a material nonrenewal, cancellation, or revision of a ceded reinsurance agreement or a material new ceded reinsurance agreement affecting in force life insurance business is one that affects:

- (A) As respects property and casualty business, including accident and health business written by a property and casualty insurer:
    - (i) More than fifty per cent of the insurer's total ceded written premium; or
    - (ii) More than fifty per cent of the insurer's total ceded indemnity and loss adjustment reserves.
  - (B) As respects life, annuity, and accident and health business, more than fifty per cent of the total reserve credit taken for business ceded, on an annualized basis, as indicated in the insurer's most recent annual statement.
  - (C) As respects either property and casualty or life, annuity, and accident and health business, either of the following events shall constitute a material revision which must be reported:
    - (i) An authorized reinsurer representing more than ten per cent of a total cession is replaced by one or more unauthorized reinsurers; or
    - (ii) Previously established collateral requirements have been reduced or waived as respects one or more unauthorized reinsurers representing collectively more than ten per cent of a total cession.
- (2) However, no filing shall be required if:
- (A) As respects property and casualty business, including accident and health business written by a property and casualty insurer, the insurer's total ceded written premium represents, on an annualized basis, less than ten per cent of its total written premium for direct and assumed business, or
  - (B) As respects life, annuity, and accident and health business, the total reserve credit taken for business ceded represents, on an annualized basis, less than ten per cent of the statutory reserve requirement prior to any cession.
- (b) Information to be reported.
- (1) The following information is required to be disclosed in any report of a material nonrenewal, cancellation, or revision of ceded

reinsurance agreements or material new ceded reinsurance agreements affecting in force life insurance business:

- (A) Effective date of the nonrenewal, cancellation, or revision or new agreement;
- (B) The description of the transaction with an identification of the initiator thereof;
- (C) Purpose of, or reason for, the transaction; and
- (D) If applicable, the identity of the replacement reinsurers.

- (2) Insurers are required to report all material nonrenewals, cancellations, or revisions of ceded reinsurance agreements or material new ceded reinsurance agreements affecting in force life insurance business on a non-consolidated basis unless the insurer is part of a consolidated group of insurers which utilizes a pooling arrangement or one hundred per cent reinsurance agreement that affects the solvency and integrity of the insurer's reserves and the insurer ceded substantially all of its direct and assumed business to the pool. An insurer is deemed to have ceded substantially all of its direct and assumed business to a pool if the insurer has less than \$1,000,000 total direct plus assumed written premiums during a calendar year that are not subject to a pooling arrangement and the net income of the business not subject to the pooling arrangement represents less than five per cent of the insurer's capital and surplus.  
[Eff 1/25/97; am and comp 02/20/09] (Auth: HRS §§431:2-201, 431:5-401) (Imp: HRS §§431:2-201, 431:3-301; 431:3-302, 431:5-306, 431:5-401)

Amendments to the compilation of chapter 16-170, Hawaii Administrative Rules, on the Summary page dated January 7, 2009, were adopted on January 7, 2009, following a public hearing held on the same date, after public



## Hawaii Administrative Rules

January 7, 2009

### SUMMARY

1. §16-170-1 is amended.
2. §16-170-1.5 is new
3. §16-171-3 is amended
4. Chapter 170 is compiled.

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Effective 02/20/09