

# Amendments to Rule 740

## CREDIT FOR REINSURANCE

### Contents

Section 1.	Authority
Section 2.	Purpose
Section 3.	Severability
Section 4.	Definitions
Section 5.	<del>Reinsurer</del> <u>Reinsurers</u> licensed in this <del>state</del> <u>State</u>
Section 6.	<u>Certified reinsurers</u>
Section 7.	<u>Required filings by reinsurers not licensed or certified in this State</u>
Section 8.	<u>Accredited reinsurers</u>
Section <del>6</del> <u>9</u> .	<del>Reinsurer</del> <u>Reinsurers</u> domiciled and licensed in <del>another state</del> <u>other states</u>
Section <del>7</del> <u>10</u> .	Reinsurers maintaining <u>multibeneficiary</u> trust funds
Section <del>8</del> <u>11</u> .	Required conditions of <u>single-beneficiary</u> trust agreements
Section <del>9</del> <u>12</u> .	Permitted conditions of trust agreements
Section 13.	<u>Reinsurance contracts – mandatory provisions</u>
Section <del>10</del> <u>14</u> .	<u>Reinsurance contracts – permitted provisions</u>
Section <del>11</del> <u>15</u> .	Reinsurers utilizing letters of credit
Section <del>12</del> <u>16</u> .	Other security
Section 13.	<del>Contracts affected</del> <u>Section 17. Effective date</u>
Section 14.	<del>Existing agreements</del>
Appendix.	Form AR-1: Certificate of assuming insurer <u>Form CR-1: Certificate of Certified Reinsurer</u> <u>Form CR-F: Report of Assumed and Ceded Property/Casualty Reinsurance</u> <u>Form CR-S: Report of Assumed and Ceded Life/Health Reinsurance</u>

### Section 1. Authority

This rule is promulgated pursuant to Title 24-A M.R.S.A. §§ 212 and 731-B.

## Section 2. Purpose

The purpose of this rule is to set forth procedural requirements to carry out the provisions of the law on credit for reinsurance as set forth in Title 24-A M.R.S.A. § 731-B, for the protection of ceding insurers in this State and their policyholders.

## Section 3. Severability

If any provision of this rule or its application to any person or circumstance is held invalid, such determination shall not affect other provisions or applications of this rule which can be given effect without the invalid provision or application.

## Section 4. Definitions

As used in this rule the following terms have the following meanings:

- A. “*Jurisdiction*” means any state, district, or territory of the United States, ~~and~~ any lawful national government, and any supranational body or subdivision or dependency of a national government that is internationally recognized as exercising regulatory authority over the business of insurance.
- B. “*Substantially similar*” standard means credit for reinsurance standards which the Superintendent determines equal or exceed the standards of Title 24-A M.R.S.A. § 731-B and this rule in all material respects.
- C. “*Beneficiary*” means the entity for whose ~~sole~~ benefit a trust has been established and includes any successor by operation of law of the ~~named~~ beneficiary, including without limitation any liquidator, rehabilitator, receiver, or conservator.
- D. “*Grantor*” means the entity that has established a trust for the ~~sole~~ benefit of the beneficiary. For a trust established pursuant to a reinsurance agreement, the grantor is generally the assuming insurer.
- E. “*Obligations*” under a reinsurance agreement means:
  - (1) For business ceded by property and casualty insurers:
    - (a) Reinsured losses, allocated loss expenses, and unallocated loss expenses if a part of the reinsurance agreement, paid by the ceding company but yet to be recovered from the assuming insurer;
    - (2) (b) Reserves for reinsured losses reported and outstanding;
    - (3) (c) Reserves for reinsured losses incurred but not reported;

~~(4)~~ (d) Reserves for allocated reinsured loss expenses, and, if ~~provided in~~ unallocated loss expenses are covered by the agreement, reserves for unallocated reinsured loss expenses; and

~~(5)~~ (e) Reserves for unearned premiums.

(2) For business ceded by life and health insurers:

(a) Aggregate reserves for life policies and contracts net of policy loans and net due and deferred premiums;

(b) Aggregate reserves for accident and health policies;

(c) Deposit funds and other liabilities without life or disability contingencies; and

(d) Liabilities for policy and contract claims.

(3) Obligations shall be determined on a gross basis without regard to retrocessions.

F. “Licensed” means licensed under Title 24-A M.R.S.A. § 410, under some other law of this State or another state that entails an obligation to maintain risk-based capital in compliance with standards established by the National Association of Insurance Commissioners (NAIC) and to file statutory financial statements in compliance with the NAIC Accounting Practices and Procedures Manual, or under foreign licensing requirements that the Superintendent determines to be the analogous standards in that jurisdiction for commercial insurers or professional reinsurers.

## **Section 5. Reinsurers Reinsurers licensed in this state State**

Pursuant to Title 24-A M.R.S.A. § 731-B(1)(A), the Superintendent shall allow credit for reinsurance ceded by a domestic insurer to ~~assuming insurers which were~~ an assuming insurer which has been licensed in this State as of the date of filing of ~~at all times for which credit for reinsurance under this section is claimed on the ceding insurer’s statutory financial statement filed (as required pursuant to Title 24-A M.R.S.A. § 414) 423 or 423-A.~~

## **Section 6. Certified reinsurers**

A. In General. Pursuant to Title 24-A M.R.S.A. § 731-B(1)(B-2), the Superintendent shall allow credit for reinsurance ceded by a domestic insurer to an assuming insurer that has been certified as a reinsurer in this State at all times for which statutory financial statement credit for reinsurance is claimed under this section.

B. Security. The credit allowed shall be based upon the security held by or on behalf of the ceding insurer in accordance with a rating assigned to the certified reinsurer by the Superintendent. The security shall be in a form consistent with the requirements of Title

24-A M.R.S.A. §§ 731-B(1)(B-2) and 731-B(3) and either Paragraph (2) of this subsection or Section 11, 15, or 16 of this rule.

(1) The amount of security must equal or exceed the following percentage of the reinsured obligations for which credit is claimed:

<u>Rating</u>	<u>Security Required</u>
<u>Secure – 1</u>	<u>0%</u>
<u>Secure – 2</u>	<u>10%</u>
<u>Secure – 3</u>	<u>20%</u>
<u>Secure – 4</u>	<u>50%</u>
<u>Secure – 5</u>	<u>75%</u>
<u>Vulnerable – 6</u>	<u>100%</u>

(2) The security may be provided through a multibeneficiary trust meeting the requirements of Section 10, with the following modifications:

(a) The qualifying assets held in the trust must equal or exceed the percentage specified in Paragraph (1) of the aggregate obligations secured by the trust, plus a surplus of at least \$10,000,000.

(b) If the certified reinsurer also maintains a multibeneficiary trust for obligations required to be fully secured under Section 10 or comparable requirements of other states, the certified reinsurer shall maintain separate trust accounts for its obligations secured under this section or comparable requirements of other United States jurisdictions and for its obligations that are required to be fully secured. The trust accounts may not be approved as qualifying security unless the reinsurer has bound itself, by the language of the trust and by agreement with the insurance regulator with principal oversight of each such trust account, to apply, upon termination of any such trust account, the remaining surplus of that trust to the extent necessary to fund any deficiency of any other such trust account.

(3) Affiliated reinsurance transactions shall receive the same opportunity for reduced security requirements as all other reinsurance transactions.

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

(5) In order to facilitate the prompt payment of claims, the Superintendent may permit a certified reinsurer to defer posting security for catastrophe recoverables for a period of up to one 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 Superintendent. The one-year deferral period is contingent upon the certified reinsurer continuing to pay claims in a timely manner, and applies only to reinsurance recoverables for the following lines of business as reported on the NAIC annual financial statement and related specifically to the catastrophic occurrence:

- (a) Line 1: Fire
  - (b) Line 2: Allied Lines
  - (c) Line 3: Farmowners multiple peril
  - (d) Line 4: Homeowners multiple peril
  - (e) Line 5: Commercial multiple peril
  - (f) Line 9: Inland Marine
  - (g) Line 12: Earthquake
  - (h) Line 21: Auto physical damage
- (6) Credit for reinsurance under this section shall apply only to reinsurance contracts entered into or renewed on or after the effective date of the certification of the assuming insurer. Any reinsurance contract entered into before the effective date of the certification of the assuming insurer that is subsequently amended by the parties after that date to permit reduced collateral, or a new reinsurance contract covering any risk for which collateral was provided previously, shall only be subject to this section with respect to losses incurred and reserves reported on or after the effective date of the amendment or new contract.
- (7) Nothing in this subsection shall prohibit the parties to a reinsurance agreement from agreeing to provisions establishing security requirements that exceed the minimum security requirements established for certified reinsurers under this subsection.

### C. Certification Procedure

- (1) A reinsurer requesting to be certified by the Superintendent shall apply using the application form developed by the NAIC, or as otherwise specified by the Superintendent. The Superintendent shall post notice on the Bureau of Insurance Web site promptly upon receipt of any application for certification, with instructions on how members of the public may respond to the application. The Superintendent may not take final action on the application until at least 30 days after posting the notice required by this paragraph.
- (2) Upon approval of a reinsurer's application for certification, the Superintendent shall assign a rating in accordance with this subsection and issue written notice to the reinsurer of its certification and rating. The Superintendent shall publish a list of all certified reinsurers and their ratings.

- (3) In order to be eligible to receive and maintain certification, a reinsurer must meet the following requirements:
- (a) The reinsurer must be domiciled and licensed to transact insurance or reinsurance in a jurisdiction that has been determined by the Superintendent to be a qualified jurisdiction pursuant to Subsection D.
  - (b) The reinsurer must maintain capital and surplus, or its equivalent, of no less than \$250,000,000 calculated in accordance with Subparagraph (7)(d). 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 \$250,000,000 and a central fund containing a balance of at least \$250,000,000.
  - (c) The reinsurer must maintain financial strength ratings from two or more rating agencies deemed acceptable by the Superintendent. These 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. Acceptable rating agencies include the following:
    - (i) Standard & Poor's;
    - (ii) Moody's Investors Service;
    - (iii) Fitch Ratings;
    - (iv) A.M. Best Company; or
    - (v) Any other Nationally Recognized Statistical Rating Organization.
  - (d) The reinsurer must comply with any other requirements reasonably imposed by the Superintendent.
- (4) Each certified reinsurer shall be rated on a legal entity basis, with due consideration being given to the group rating where appropriate, except that an association including incorporated and individual unincorporated underwriters that has been approved to do business as a single certified reinsurer may be evaluated on the basis of its group rating. Factors that may be considered as part of the evaluation process include, but are not limited to, the following:
- (a) The certified reinsurer's financial strength ratings from acceptable rating agencies. Unless an exception is granted in accordance with Subsection I, the Superintendent may not assign a rating that exceeds the lowest regulatory rating corresponding in the table below to the financial strength rating that any of the listed rating agencies assigns the certified reinsurer. A failure to obtain or maintain at least two financial strength ratings from acceptable rating agencies shall result in loss of eligibility for certification;

<u>Regulatory</u>	<u>A.M. Best</u>	<u>S &amp; P</u>	<u>Moody's</u>	<u>Fitch</u>
<u>Secure – 1</u>	<u>A++</u>	<u>AAA</u>	<u>Aaa</u>	<u>AAA</u>
<u>Secure – 2</u>	<u>A+</u>	<u>AA+, AA, AA-</u>	<u>Aa1, Aa2, Aa3</u>	<u>AA+, AA, AA-</u>
<u>Secure – 3</u>	<u>A</u>	<u>A+, A</u>	<u>A1, A2</u>	<u>A+, A</u>
<u>Secure – 4</u>	<u>A-</u>	<u>A-</u>	<u>A3</u>	<u>A-</u>
<u>Secure – 5</u>	<u>B++, B+</u>	<u>BBB+, BBB, BBB-</u>	<u>Baa1, Baa2, Baa3</u>	<u>BBB+, BBB, BBB-</u>
<u>Vulnerable – 6</u>	<u>B or lower</u>	<u>BB+ or lower</u>	<u>Ba1 or lower</u>	<u>BB+ or lower</u>

- (b) The business practices of the certified reinsurer in dealing with its ceding insurers, including its record of compliance with reinsurance contractual terms and obligations;
- (c) For a certified reinsurer domiciled in the United States, a review of the most recent applicable NAIC Annual Statement Blank, including in particular Schedule F for property/casualty reinsurers or Schedule S for life and health reinsurers;
- (d) For a certified reinsurer not domiciled in the United States, an annual review of filings with its domiciliary regulator comparable to the NAIC annual statement, together with Form CR-F or Form CR-S as applicable, filed with the Superintendent pursuant to Subparagraph 7(b);
- (e) 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;
- (f) Regulatory actions against the certified reinsurer;
- (g) The audited financial statements of the certified reinsurer, on both a legal entity and an enterprise basis, for at least the three most recent years, together with reports of the independent auditor and actuarial opinions;
- (h) The liquidation priority of obligations to a ceding insurer in the certified reinsurer's domiciliary jurisdiction in the context of an insolvency proceeding;

- (i) The certified reinsurer's participation in any solvent scheme of arrangement, or similar procedure, that involves United States ceding insurers;
  - (j) Any material uncertainty regarding the fitness or financial condition of the reinsurer resulting from the unavailability of information specified in this paragraph; and
  - (k) Any other information deemed relevant by the Superintendent.
- (5) Based on the analysis conducted under Subparagraph 4(e) of a certified reinsurer's reputation for prompt payment of claims, the Superintendent may make appropriate adjustments in the security the certified reinsurer is required to post to protect its liabilities to United States ceding insurers. The Superintendent shall reduce the certified reinsurer's rating by at least one level below the level indicated by the chart in Subparagraph (4)(a) if the Superintendent finds that either:
  - (a) More than 15% of the certified reinsurer's ceding insurance clients have undisputed reinsurance recoverables on paid losses in excess of \$100,000 that are overdue by 90 days or more; or
  - (b) The aggregate amount of undisputed reinsurance recoverables on paid losses that are overdue by 90 days or more exceeds \$50,000,000.
- (6) Each certified reinsurer must agree to comply with the provisions of this rule and the applicable provisions of Title 24-A M.R.S.A. § 731-B, and must submit a properly executed Form CR-1, attached as an appendix to this rule, as evidence of its submission to the jurisdiction of this State, appointment of the Superintendent as an agent for service of process in this State, and agreement to provide security for 100% of the assuming insurer's obligations attributable to reinsurance ceded by United States ceding insurers if the assuming insurer resists enforcement of a final United States judgment. The Superintendent shall not certify any assuming insurer that is domiciled in a jurisdiction that the Superintendent has determined does not adequately and promptly enforce final United States judgments or arbitration awards.
- (7) Each certified reinsurer and each applicant for certification must, as a condition of certification, file the following information with the Superintendent:
  - (a) Notification within 10 days of any regulatory actions taken against the certified reinsurer, any change in the provisions of its domiciliary license, or any change in rating by an approved rating agency, including a statement describing such changes and the reasons therefor;
  - (b) Annually, Form CR-F for property/casualty reinsurers or Form CR-S for life/health reinsurers, attached as appendices to this rule;



- (c) Annually, the report of the independent auditor on the financial statements of the insurance enterprise, on the basis described in Subparagraph (d);
  - (d) Annually, an audited financial statement, an actuarial opinion, and if applicable any additional financial statements or reports that the certified reinsurer is required to file with insurance or securities regulators in its domiciliary jurisdiction. With the initial application for certification, audited financial statements, actuarial opinions, and regulatory filings for the most recent three years. If the audited financial statement is not prepared on a United States statutory or GAAP basis, it shall include an audited footnote reconciling equity and net income to a United States statutory or GAAP basis, or, with the permission of the Superintendent, an audited IFRS statement may include a reconciliation to United States GAAP certified by an officer of the company;
  - (e) At least annually, an updated list of all disputed and overdue reinsurance claims regarding reinsurance assumed from ceding insurers domiciled in the United States;
  - (f) A certification from the certified reinsurer's domiciliary regulator that the certified reinsurer is in good standing and maintains capital in excess of the jurisdiction's highest regulatory action level;
  - (g) Prior notice to the Superintendent, if the certified reinsurer proposes participation in any solvent scheme of arrangement or similar procedure; and
  - (h) Any other information that the Superintendent may reasonably require.
- (8) Change in Rating or Revocation of Certification:
- (a) In the case of a downgrade by a rating agency or other disqualifying circumstance, the Superintendent shall upon written notice assign a new rating to the certified reinsurer in accordance with the requirements of Paragraph (4).
  - (b) The Superintendent has the authority to suspend, revoke, or otherwise modify a certified reinsurer's 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 Superintendent to reconsider the certified reinsurer's ability or willingness to meet its contractual obligations. If a certified reinsurer's domiciliary jurisdiction ceases to be a qualified jurisdiction, then the Superintendent may suspend the reinsurer's certification indefinitely, in lieu of revocation.
  - (c) If the rating of a certified reinsurer is upgraded by the Superintendent, the certified reinsurer may meet the security requirements applicable to its

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

- (d) Upon revocation of the certification of a certified reinsurer by the Superintendent, the assuming insurer shall be required to post security in accordance with Sections 10 through 16 in order 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 Paragraph B(2), the Superintendent may allow additional credit equal to the ceding insurer's *pro rata* share of such funds, discounted to reflect the risk of uncollectibility 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 a period of three months for all reinsurance ceded to that certified reinsurer, unless the reinsurance is found by the Superintendent to be at high risk of uncollectibility.

#### D. *Qualified Jurisdictions*

- (1) If, upon conducting an evaluation under this section with respect to the reinsurance supervisory system of any alien assuming insurer, the Superintendent in his or her discretion determines that the jurisdiction meets the requirements to be recognized as a qualified jurisdiction, the Superintendent shall publish notice and evidence of such recognition in an appropriate manner. The Superintendent may establish a procedure to withdraw recognition of those jurisdictions that are no longer qualified.
- (2) In order to determine whether the domiciliary jurisdiction of an alien assuming insurer is eligible to be recognized as a qualified jurisdiction, the Superintendent shall evaluate the jurisdiction's reinsurance supervisory system, both initially and on an ongoing basis, and consider the rights, benefits, and the extent of reciprocal recognition afforded by the jurisdiction to reinsurers licensed and domiciled in the United States. The Superintendent shall determine the appropriate approach for evaluating the qualifications of such jurisdictions, and create and publish a list of jurisdictions whose reinsurers may be approved by the Superintendent as eligible for certification. A qualified jurisdiction must agree in writing to share information and cooperate with the Superintendent with respect to all certified reinsurers domiciled within that jurisdiction. Additional factors to be considered by the Superintendent in determining whether to recognize the assuming insurer's domicile as a qualified jurisdiction include but are not limited to the following:

- (a) The framework under which the assuming insurer is regulated;
  - (b) The structure and authority of the domiciliary regulator with regard to solvency regulation requirements and financial surveillance;
  - (c) The substance of financial and operating standards for reinsurers domiciled in the jurisdiction;
  - (d) 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;
  - (e) The willingness of the jurisdiction's regulator to cooperate with United States regulators in general and the Superintendent in particular;
  - (f) The history of performance by assuming insurers in the jurisdiction;
  - (g) Any documented evidence of substantial problems with the enforcement of final United States judgments in the domiciliary jurisdiction. A jurisdiction may not be recognized as a qualified jurisdiction if the Superintendent has determined that it does not adequately and promptly enforce final United States judgments or arbitration awards;
  - (h) 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; and
  - (i) Any other matters deemed relevant by the Superintendent.
- (3) If the NAIC has published a list of recommended qualified jurisdictions, the Superintendent shall defer to that list in determining whether or not a jurisdiction is a qualified jurisdiction, but may make exceptions subject to the procedures established in Subsection I.
- (4) United States jurisdictions that meet the requirements for accreditation under the NAIC financial standards and accreditation program shall be recognized as qualified jurisdictions.
- (5) If more than one licensing regime with substantially different standards is maintained or recognized by the same jurisdiction, the Superintendent may evaluate each such licensing regime separately for purposes of determining whether to recognize it as a qualified jurisdiction under this subsection.

E. Recognition of Certification Issued by an NAIC-Accredited Jurisdiction

- (1) If an applicant for certification is domiciled in a qualified jurisdiction and has been certified as a reinsurer in an NAIC-accredited jurisdiction, referred to in this subsection as the "lead state," the Superintendent has the discretion to defer to the lead state's certification and to defer to the rating assigned by the lead state, if the assuming insurer submits a properly executed Form CR-1 and such additional

information as the Superintendent requires. In determining whether to grant certification under this subsection, the Superintendent shall give due consideration to any procedures established by the NAIC for lead-state certification and to any recommendations the NAIC Reinsurance Financial Analysis Working Group, or its successor organization, has made regarding the certification or rating of the applicant.

- (2) If a reinsurer has been certified pursuant to this subsection, any change in the certified reinsurer's status or rating in the lead state shall apply automatically in this State as of the date it takes effect in the lead state. The certified reinsurer shall notify the Superintendent of any change in its status or rating within 10 days after receiving notice of the change.
- (3) The Superintendent may withdraw recognition of the lead state's rating at any time and assign a new rating in accordance with Paragraph C(8).
- (4) The Superintendent may withdraw recognition of the lead state's certification at any time, with written notice to the certified reinsurer. Unless the Superintendent suspends or revokes the certified reinsurer's certification in accordance with Subparagraph C(8)(b) of this section, 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.

F. *Mandatory Funding Clause.* In addition to the clauses required under Section 13, any reinsurance contracts entered into or renewed under this section shall include a proper funding clause, which requires the certified reinsurer to provide and maintain security in an amount sufficient to avoid the imposition of any financial statement penalty on the ceding insurer under this section for reinsurance ceded to the certified reinsurer.

G. *Reporting by Superintendent.* The Superintendent shall comply with all reporting and notification requirements that may be established by the NAIC with respect to certified reinsurers and qualified jurisdictions.

H. *Confidentiality.* The Superintendent shall safeguard the confidentiality of all information filed or disclosed by a certified reinsurer or applicant for certification that is not otherwise publicly available and that is protected from public disclosure by Maine law, including the provisions of Title 24-A M.R.S.A. § 216(5) that protect shared regulatory information that is confidential under the laws of the reinsurer's domiciliary jurisdiction.

- (1) The Superintendent's acquisition of relevant information through the examination process or through information sharing with the reinsurer's domiciliary regulator satisfies applicable filing requirements for that information, subject to the Superintendent's authority to require the reinsurer to attest to the accuracy of the information.
- (2) For any information that is a trade secret or its equivalent under the laws of the reinsurer's domiciliary jurisdiction, the Superintendent shall give due

consideration to that protected status when determining whether it should be protected as a trade secret under Maine law.

- (3) The Superintendent may grant an exception in accordance with Subsection I from filing certain documents otherwise required by this section if the reinsurer provides access to all relevant information and the Superintendent finds that the reinsurer has shown good cause for withholding the documents from filing in this State and that the information the Superintendent has reviewed is sufficient to enable a fully informed decision.

I. *Exceptions.* The Superintendent may only grant exceptions from the requirements of this section as authorized by the applicable provisions of this section for good cause shown, after notice and an opportunity for an adjudicatory hearing. Any exception granted must be consistent with the purposes of this section and supported by detailed findings of fact.

### **Section 7. Required filings by reinsurers not licensed or certified in this State**

In order for credit to be granted under Sections 8, 9, or 10 for reinsurance ceded to an unlicensed reinsurer, the reinsurer must file a properly executed Form AR-1, as shown in the appendix to this rule, as evidence of its submission to this State's jurisdiction and to this State's authority to examine its books and records at the reinsurer's expense. Upon request of the Superintendent, the reinsurer shall provide any information requested by the Superintendent that is relevant to its financial condition or otherwise relevant to determining its continuing qualification under the relevant provisions of this rule. Annual regulatory statements and annual audited financial statements filed with the NAIC and made available to the Superintendent by the NAIC are deemed to be filed with the Superintendent, and no additional filings are required unless otherwise ordered by the Superintendent.

### **Section 8. Accredited reinsurers**

Pursuant to Title 24 A M.R.S.A. § 731-B(1)(B-1), the Superintendent shall allow credit for reinsurance ceded by a domestic insurer to an assuming insurer which has been accredited as a reinsurer in this State at all times for which statutory financial statement credit is claimed under this section. If the Superintendent determines that an accredited reinsurer has failed to meet or maintain any of the qualifications for accreditation, the Superintendent may suspend or revoke the reinsurer's accreditation after written notice and opportunity for hearing. Credit for reinsurance shall not be allowed under this section if the assuming insurer's accreditation has been revoked by the Superintendent or if the reinsurance was ceded while the assuming insurer's accreditation was under suspension by the Superintendent.

## **Section 6 9. Reinsurer Reinsurers domiciled and licensed in another state other states**

Pursuant to Title 24 A M.R.S.A. § 731-B(1)(B), the Superintendent shall allow credit for reinsurance ceded by a domestic insurer to an assuming insurer which ~~is~~ has been domiciled and licensed in another State that employs standards regarding credit for reinsurance substantially similar to those applicable in Section 731-B, ~~and as of the date of the ceding insurer's statutory financial statement, files~~ at all times for which statutory financial statement credit for reinsurance is claimed under this section, has filed evidence of its submission to this State's authority to examine its books and records, ~~appoints the Superintendent as its~~ has appointed an agent to receive service of legal process pursuant to Title 24-A M.R.S.A. § 421, ~~and submits~~ has submitted to the authority of any court of competent jurisdiction in the State of Maine or any other ~~State~~ state in the United States for the adjudication of any issues arising out of the reinsurance agreement(s), ~~and maintains a surplus as regards policyholders in an amount not less than \$20,000,000. An insurer with a qualifying United States port of entry, as determined by the Superintendent pursuant to Title 24-A M.R.S.A. § 413-A(1), is considered domiciled in that State. The minimum surplus requirement does not apply to reinsurance ceded and assumed pursuant to pooling arrangements approved by the Superintendent among insurers in the same holding company system.~~

## **Section 7 10. Reinsurers maintaining multibeneficiary trust funds**

A. Pursuant to Title 24-A M.R.S.A. § 731-B(1)(C), the Superintendent shall allow credit for reinsurance ceded by a domestic insurer to an assuming insurer ~~if, as of the date of the ceding insurer's statutory financial statement, it maintains~~ that has, at all times for which statutory financial statement credit for reinsurance is claimed under this section, maintained a trust fund in ~~an amount prescribed herein~~ compliance with this section and other applicable provisions of this rule in a qualified United States financial institution (as defined in Title 24-A M.R.S.A. § 731-B(4-A)), for the payment of the valid claims of its United States ~~policyholders and~~ ceding insurers, their assigns and successors in interest. The assuming insurer shall report annually to the Superintendent substantially the same information as that required to be reported on the NAIC annual statement form by licensed insurers, to enable the Superintendent to determine the sufficiency of the trust fund. In addition to other requirements, multibeneficiary trust funds shall be maintained as follows:

- (1) The trust for a single assuming insurer must consist of a trustee account ~~representing the assuming insurer's liabilities attributable to business written in the United States in an amount not less than the assuming insurer's obligations attributable to reinsurance ceded by United States insurers, excluding obligations that are otherwise secured by acceptable means, and, in addition, include a trustee surplus of at least \$20,000,000, except as otherwise provided in this paragraph. At any time after the assuming insurer has permanently discontinued underwriting new business secured by the trust for at least three full years, the insurance regulator with principal 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 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. The minimum required trusteed surplus may not be reduced to an amount less than 30% of the assuming insurer's obligations attributable to reinsurance ceded by United States ceding insurers covered by the trust.

(2) The trust fund for a group of individuals that constitutes a syndicate of unincorporated alien including incorporated and individual unincorporated underwriters shall consist of a trusteed account representing the group's aggregate liabilities attributable to business written in the United States be subject to the following requirements:

(a) The trust may consist in part of accounts restricted to the liabilities of particular underwriters, syndicates, or years of account, but no surplus in any such account may be offset against a deficit in another account in determining the overall sufficiency of the trust. The funds held in trust must collectively include the following:

(i) Funds in trust in an amount not less than the respective underwriters' several obligations, excluding obligations that are otherwise secured by acceptable means, attributable to business ceded by United States-domiciled ceding insurers to any member of the group under reinsurance agreements with an inception, amendment, or renewal date on or after January 1, 1993;

(ii) Funds in trust in an amount not less than the respective underwriters' several insurance and reinsurance obligations, excluding obligations that are otherwise secured by acceptable means, attributable to business written in the United States under reinsurance agreements with an inception date on or before December 31, 1992, and not amended or renewed after that date, and under any insurance contracts secured by the same trust accounts; and, in

(iii) In addition, include a trusteed surplus of at least \$100,000,000 which must be held jointly for the benefit of United States ceding insurers of any member of the group for any year of account.

(b) The incorporated members of the group shall not be engaged in any business other than underwriting as a member of the group and must be subject to the same level of regulation and solvency control by the group's domiciliary regulator as are the unincorporated members. The group shall, within 90 days after its financial statements are due to be filed with the group's domiciliary regulator, make available to the Superintendent an:

- ~~(i) An annual certification by the group's domiciliary regulator and the independent public accountants of the solvency of each underwriter member of the group; or~~
  - ~~(ii) If a certification is unavailable, a financial statement, prepared by independent public accountants, of each underwriter member of the group.~~
- ~~(3) The trust for a group of incorporated insurers under common administration that is under the supervision of the Department of Trade and Industry of the United Kingdom which possesses aggregate policyholders' surplus of \$10,000,000,000 (calculated and reported in substantially the same manner as prescribed by the annual statement instructions and accounting practices and procedures of the National Association of Insurance Commissioners) and which has continuously transacted an insurance business outside the United States for at least three (3) years immediately prior to the date of filing of the ceding insurer's statutory financial statement, must be in an amount equal to the group's several liabilities attributable to business written in the United States. In addition, the group shall maintain a joint trustee surplus of which \$100,000,000 shall be held jointly for the benefit of United States ceding insurers of any member of the group. The group shall file evidence of the group's submission to this State's authority to examine the books and records of any of its members and shall certify that any member examined will bear the expense of any such examination, appoints the Superintendent as its agent to receive service of legal process pursuant to Title 24-A M.R.S.A. § 421, and submits to the authority of any court of competent jurisdiction in the State of Maine or any other State in the United States for the adjudication of any issues arising out of the reinsurance agreement(s). The group shall make available to the Superintendent annual certifications by the members' domiciliary regulators and their independent public accountants of the solvency of the members of the group.~~

B. A reinsurer maintaining trust funds in conjunction with a reinsurance agreement pursuant to this section must establish a trust in a form approved by the Superintendent which complies with Title 24-A M.R.S.A. § 731-B(1)(C)(5) and this rule. The form of the trust and any trust amendments shall also be filed with the Superintendent and with the other domiciliary regulators of ceding insurers. The trust instrument shall provide that:

- (1) 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 any court of competent jurisdiction in the United States;
- (2) Legal title to the assets of the trust shall be vested in the trustee for the benefit of all of the grantor's United States ceding insurers, their assigns and successors in interest. They shall be the sole beneficiaries of the trust, except for trusts that were established before January 1, 1993, for the benefit of both cedents and direct policyholders that are and fully funded in compliance with Subparagraph A(2)(a) of this section;



- (3) The trust shall be subject to examination as determined by the Superintendent or by other domiciliary regulators of any United States ceding insurer;
- (4) The trust shall remain in effect for as long as the assuming insurer, or any member or former member of a group of insurers, shall have outstanding obligations under reinsurance agreements subject to the trust; and
- (5) No later than February 28 of each year, the trustee of the trust shall report to the Superintendent in writing setting forth the balance in the trust and listing the trust's investments at the preceding year-end, and shall certify the date of termination of the trust, if so planned, or certify that the trust shall not expire before the end of the current year;
- (6) Notwithstanding any other provisions in the trust instrument, if the trust fund is inadequate because it contains an amount less than the amount required by Subsection A, or if the grantor of the trust has been declared insolvent or placed into receivership, rehabilitation, liquidation, or similar proceedings under the laws of its state or country of domicile:
  - (a) The trustee shall comply with an order of the insurance regulator with oversight over the trust or with an order of a court of competent jurisdiction directing the trustee to transfer all of the assets of the trust fund to the insurance regulator with oversight over the trust, or other designated receiver.
  - (b) The assets shall be distributed by and claims shall be filed with and valued by the insurance regulator with oversight over the trust in accordance with the laws of the state in which the trust is domiciled that govern the liquidation of insurance companies domiciled in that state.
  - (c) If the insurance regulator with oversight over the trust determines that the assets of the trust fund or any part thereof are not necessary to satisfy the claims of the United States beneficiaries of the trust, the insurance regulator with oversight over the trust shall return the assets, or any part thereof, to the trustee for distribution in accordance with the trust agreement.
  - (d) The grantor shall waive any right otherwise available to it under United States law that is inconsistent with this Paragraph.
  - (e) If a trust fund has been determined to lack the surplus required by this subsection, the Superintendent shall have the discretion to grant credit for reinsurance recoveries for liabilities ceded before the ceding insurer had notice of the impairment of the trust, but the credit shall not exceed an amount determined by the Superintendent to be fully secured by the trust notwithstanding the impairment.

~~C. When established on or before the date of filing of the financial statement of the ceding insurer, a trust may be employed to reduce liability for reinsurance ceded to an~~

~~unauthorized assuming insurer which is required to file financial statements with the Superintendent.~~

- ~~D. The failure of any trust agreement to specifically identify the beneficiary as defined in Section 4 of this Rule shall not be construed to affect any actions or rights which the Superintendent or a statutory successor may take or possess pursuant to the provisions of the laws of this State.~~
- ~~E. The reduction in liabilities of the ceding insurer is limited to the lesser of the current fair market value of trust assets or the value of the specific obligations under the reinsurance agreement.~~
- C. In determining the adequacy of the trust's funding, the Superintendent shall consider only the assets that have been permitted and valued by the insurance regulator with principal oversight over the trust under standards that the Superintendent has determined to be consistent with the purposes of this Rule.
- D. Notwithstanding any other provision of this section, it shall be a condition precedent for presentation of a claim by a ceding insurer to a trust established pursuant to this section that any specific security provided to the ceding insurer for the same reinsurance obligation in accordance with Sections 11, 15, or 16 of this rule has been applied, until exhausted, to the payment of the liabilities of the assuming insurer to the ceding insurer.

### **Section 8 11. Required conditions of single-beneficiary trust agreements**

Pursuant to Title 24-A M.R.S.A. § 731-B(1)(D), the Superintendent shall allow credit for reinsurance ceded by a domestic insurer to an assuming insurer, under reinsurance contracts that comply with Sections 13 and 14, if at all times for which statutory financial statement credit is claimed under this section, a trust fund is maintained for the sole benefit of the ceding insurer, including any successor by operation of law, in compliance with this section and other applicable provisions of this rule. The credit allowed shall be limited to the lesser of the current fair market value of the trust assets or the amount of the reinsurance obligations secured by the trust.

- A. No amendment to the trust shall be effective unless reviewed and approved in advance by the Superintendent.
- ~~B. Claims remaining unsatisfied thirty (30) days after entry of a final order of any court of competent jurisdiction in the United States mandating payment shall be valid and enforceable against assets held in the trust.~~
- ~~C. The trust shall remain in effect as long as the assuming insurer, or any member or former member of a group of assuming insurers, shall have outstanding obligations under reinsurance agreements secured by the trust.~~
- D B. The trust agreement shall be entered into between the beneficiary, the grantor, and a trustee which shall be a qualified United States financial institution as defined in Title 24-A M.R.S.A. § 731-B(4-A).

*E C.* All assets in the trust account credited thereunder shall be held by the trustee in the United States.

*F D.* The trust agreement must provide that:

- (1) The beneficiary shall have the right to withdraw assets from the trust account at any time, without notice to the grantor, subject only to written notice from the beneficiary to the trustee;
- (2) No other statement or document is required to be presented in order to withdraw assets, except that the beneficiary may be required to acknowledge receipt of withdrawn assets;
- (3) No other conditions or qualifications not contained in the trust agreement shall apply; and
- (4) The agreement constitutes the entire agreement of the parties and no other documents will be referred to or apply, except as expressly provided in the agreement. Any such express exceptions must be consistent with Section 12 of this rule.

*G E.* The trust agreement must require that the trustee:

- (1) Receive and hold all assets transferred to the trustee in a ~~fiduciary capacity~~ safe place;
- (2) Determine that all assets are in such form that the beneficiary, or the trustee upon direction by the beneficiary, may whenever necessary negotiate any such assets without consent or signature from the grantor or any other person or entity;
- (3) Furnish a statement of trust assets to the grantor and the beneficiary at establishment and at intervals no less frequent than the end of each calendar quarter valued in accordance with current market value;
- (4) Notify the grantor and the beneficiary within ten (10) days of any deposits to or withdrawals from the trust account;
- (5) Upon written demand of the beneficiary, immediately take any and all steps necessary to transfer all right, title, and interest in the assets held in the trust account to the beneficiary and deliver physical custody of the assets to the beneficiary; and
- (6) Permit ~~substitutions or no~~ withdrawals except on written instructions from the beneficiary, ~~subject to the limitations of Section 9. The trustee may, without the consent of but~~ and permit no substitutions of assets without written instructions from the beneficiary except as authorized pursuant to powers granted in compliance with Subsection 12(D), or, with notice to the beneficiary, upon call or maturity of any a trust asset, withdraw that asset upon condition that the proceeds are paid into the trust account.

*H F.* The trust agreement shall be made subject to and governed by the laws of the state in which the trust is established.

- I.G. The trust agreement shall prohibit invasion of the trust corpus for the purpose of paying compensation to, or reimbursing the expenses of, the trustee.
- H. The trust agreement shall provide that the trustee shall be liable for its negligence, willful misconduct, or lack of good faith.
- I. In order for a letter of credit to qualify as an asset of the trust, it must comply with Section 15, and the trust agreement or some other binding agreement approved by the Superintendent must give the trustee the right and the obligation to draw down the full amount of the letter of credit immediately and hold the proceeds in trust for the beneficiaries of the trust if the letter of credit will otherwise expire without being renewed or replaced, or if the Superintendent will no longer recognize it as a qualifying trust asset. The trust agreement must further provide that the trustee's failure to draw against the letter of credit in circumstances where a draw is required shall be deemed to be actionable negligence or willful misconduct.
- J. The trust agreement shall provide that written notification of termination must be delivered by the trustee to the beneficiary between 30 and 45 days before termination of the trust account.
- K. The failure of any trust agreement to specifically identify a beneficiary shall not be construed to affect any actions or rights that the Superintendent or a statutory successor may take or possess pursuant to the provisions of the laws of this State.
- L. Either the trust agreement or the reinsurance agreement must provide that assets deposited in the trust account shall be valued according to their current fair market value and shall consist only of cash in United States dollars, certificates of deposit issued by a United States bank and payable in United States dollars, letters of credit complying with Subsection I, and investments permitted by the Maine Insurance Code, or any combination of the above, provided that investments in or issued by an entity controlling, controlled by, or under common control with either the grantor or the beneficiary of the trust shall not exceed 5% of total investments. The agreement may further specify the types of investments to be deposited. If the reinsurance agreement covers life, annuities or accident and health risks, then the provisions required by this paragraph must be included in the reinsurance agreement.

## **Section 9 12. Permitted conditions of trust agreements**

~~Notwithstanding other provisions of this Rule, when~~ When a trust agreement is established in conjunction with a reinsurance agreement, the trust agreement may contain the following provisions:

- A. ~~That~~ Notwithstanding other provisions of this rule, where it is customary to provide a trust agreement for a specific purpose, a provision that the ceding insurer, if it is not itself the subject of a delinquency proceeding, may undertake to use and apply amounts drawn upon the trust account, without diminution because of the insolvency of the ceding insurer or the assuming insurer, only for the following purposes:

- (1) To pay or reimburse the ceding insurer for the assuming insurer's share under the reinsurance agreement ~~regarding of~~:
  - (a) For life, annuity, and health risks, surrenders and benefits or losses paid by the ceding insurer under the terms and provisions of the policies reinsured under the reinsurance agreement, but not yet recovered from the assuming insurer, and premiums returned to policyowners on account of cancellations of policies reinsured under the reinsurance agreement, but not yet recovered from the assuming insurer; and
  - (b) For other risks, any losses and allocated loss expenses, or unallocated loss expenses if contained within the agreement, paid by the ceding insurer but not recovered from the assuming insurer, or ~~for~~ unearned premiums due to the ceding insurer if not otherwise paid by the assuming insurer;
- (2) To make payment to the assuming insurer of any amounts held in the trust account in excess of:
  - (a) For life, annuity, and health risks, assets with a current fair market value that is at least the actual amount required to fund the assuming insurer's obligations under the reinsurance agreement.
  - (b) For other risks, assets with a current fair market value that is at least 102 percent of the actual amount required to fund the assuming insurer's obligations under the reinsurance agreement ~~as long as trust assets are recognized at current market value in applying the calculation~~; or
- (3) Where the ceding insurer has received notification of termination of the trust account and where the assuming insurer's ~~entire~~ obligations under the ~~specific particular~~ reinsurance agreement remain unliquidated and undischarged in whole or part ten (10) days prior to the termination date and have not been fully secured by replacement security approved by the Superintendent, to withdraw amounts equal to the unsecured obligations and deposit those amounts in the name of the ceding insurer in any qualified United States financial institution (as defined in Title 24-A M.R.S.A. § 731-B(4-A)). Such withdrawn assets shall be maintained in a separate account apart from general assets, ~~to~~ in trust for such uses and purposes specified in ~~Subparagraphs (a) and (b)~~ Paragraphs (1) and (2) above as may remain executory after such withdrawal and for any period after the termination date.

~~B. That at least thirty (30) days, but not more than forty five (45) days, prior to termination of the trust account, written notification of termination shall be delivered by the trustee to the beneficiary.~~

C. B. That the trustee may resign upon delivery of a written notice of resignation, effective not less than ninety (90) days after receipt by the beneficiary and grantor of the notice, and that the trustee may be removed by the grantor by delivery to the trustee and the beneficiary of a written notice of removal, effective not less than ninety (90) days after receipt by the trustee and the beneficiary of the notice, provided that no such resignation or removal shall be effective until a successor trustee has been duly appointed and

approved by the beneficiary and the grantor, and all assets in the trust have been duly transferred to the new trustee.

- D C.* That the grantor may have the full and unqualified right to vote any shares of stock in the trust account and may have a right to receive from time to time payments of any dividends or interest upon any shares of stock or obligations included in the trust account. Any such interest or dividends shall be either forwarded promptly upon receipt to the grantor or deposited in a separate account established in the grantor's name.
- E D.* That the trustee may be given authority to invest, and accept substitutions of, any funds in the account, provided that no substitution shall be made without prior approval of the beneficiary, unless the trust agreement specifies categories of investments acceptable to the beneficiary and authorizes the trustee to invest funds and to accept substitutions which the trustee determines are at least equal in current fair market value to the assets withdrawn and which are permissible under ~~Section 10(1)(B)~~ Subsection 11(L) of this ~~Rule~~ rule and any additional investment limitations established by the agreement.
- F E.* That upon termination of the trust account, all assets not previously withdrawn by the beneficiary may, with written approval by the beneficiary, be delivered to the grantor provided adequate security for the reinsurance obligations is otherwise maintained under exclusive control of the beneficiary.

### **Section 13. Reinsurance contracts – mandatory provisions**

Except for reinsurance required by law, the Superintendent may not grant credit for reinsurance unless the reinsurance agreement contains the provisions specified in this section. In determining whether to grant full credit under Title 24-A M.R.S.A. § 731-B(1)(D) for reinsurance required by law, the Superintendent shall consider whether the reinsurance program provides protections comparable to those specified in this section, if applicable to the nature of the reinsurance program.

- A. An insolvency clause meeting the requirements of 24-A M.R.S.A. § 731-B(5), providing that in the event of the insolvency of the ceding insurer, the reinsurance is payable under a contract or contracts reinsured by the assuming insurer on the basis of reported claims allowed by the court, without diminution because of the insolvency of the ceding insurer. The payments must be made directly to the ceding insurer or to the ceding insurer's domiciliary receiver unless the contract or other written agreement specifically provides another payee in the event of the insolvency of the ceding insurer or unless the assuming insurer, with the consent of the direct insured or insureds, has assumed the policy obligations of the ceding insurer as direct obligations of the assuming insurer to the payees under the reinsured policies and in substitution for the obligations of the ceding insurer to those payees.
- B. A provision, meeting the requirements of 24-A M.R.S.A. § 731-B(2)(A), requiring the assuming insurer, at the request of the ceding insurer, to submit to the jurisdiction of any court of competent jurisdiction in any state of the United States, or to an alternative

dispute resolution panel if provided in the agreement, to comply with all requirements necessary to give the court or panel jurisdiction, and to abide by the final decision after appeal rights have been exhausted.

- C. A provision, meeting the requirements of 24-A M.R.S.A. § 731-B(2)(B), designating the Superintendent or an attorney as the assuming insurer's attorney upon whom may be served any lawful process in any action, suit, or proceeding instituted by or on behalf of the ceding company.
- D. An intermediary clause, if payments may be made through intermediaries, under which the intermediary's credit risk is borne by the assuming insurer.

#### **Section 10 14. Reinsurance contracts – permitted provisions**

I. A reinsurance agreement, the administration of which employs a trust account subject to Section 11, may contain provisions that:

- A. Require the assuming insurer to enter into a trust agreement and to establish a trust account for the benefit of the ceding insurer, and ~~specifying that~~ specify what the agreement is to cover;
- B. ~~Stipulate that assets deposited in the trust account shall be valued according to their current fair market value and shall consist of cash (United States legal tender), certificates of deposit (issued by a United States bank and payable in United States legal tender), and other admitted assets of a character, maturity, and value to fulfill the intent of the agreement, provided that such investment is issued by an institution that is not the parent, subsidiary or affiliate of either the grantor or the beneficiary. The reinsurance agreement may specify the types of investments to be deposited. Where a trust agreement is entered into in conjunction with a~~ Specify trust investment standards in a manner consistent with Subsection 11(L). An investment clause consistent with Subsection 11(L) is mandatory if it is not contained in the trust agreement or if the reinsurance agreement covering risks other than covers life, annuities annuity, or accident and health risks, then the trust agreement may contain the provisions required by this paragraph in lieu of including such provisions in the reinsurance agreement;
- C. Require the assuming insurer, prior to depositing assets with the trustee, to execute assignments or endorsements in blank, or to transfer legal title to the trustee of all shares, obligations, or any other assets requiring assignments, in order that the ceding insurer, or the trustee upon the direction of the ceding insurer, may whenever necessary negotiate these assets without consent or signature from the assuming insurer or any other entity;
- D. Require that all settlements of account between the ceding insurer and the assuming insurer be made in cash or its equivalent; and
- E. Stipulate that the assuming insurer and the ceding insurer agree that the assets in the trust account, established pursuant to the provisions of the reinsurance agreement, may be withdrawn at any time by the ceding insurer, ~~if it is not itself the subject of a delinquency~~

~~proceeding~~, notwithstanding any other provisions in the reinsurance agreement, ~~provided that it is further stipulated~~ and may further stipulate that the funds withdrawn shall be utilized and applied by the ceding insurer (or its successors in interest by operation of law, including without limitation any liquidator, rehabilitator, receiver, or conservator of such company), on the basis of the liability of the ceding insurer under the contracts reinsured without diminution because of the insolvency of the ceding insurer or assuming insurer, ~~and provided that it is further stipulated that assets may be withdrawn only for the following purposes:~~

- (1) To reimburse the ceding insurer for the assuming insurer's share of premiums returned to the owners of policies reinsured under the reinsurance agreement because of cancellations of such policies;
- (2) To reimburse the ceding insurer for the assuming insurer's share of policy surrenders and benefits or losses paid by the ceding insurer pursuant to the provisions of the policies reinsured under the reinsurance agreement; and
- ~~(3) To fund accounts specifically established by the ceding insurer to cover loss exposures of the ceding insurer in an amount at least equal to the deduction from the ceding insurer's liabilities for reinsurance ceded under the agreement. The account shall include, but not be limited to, amounts for policy reserves, claims and losses incurred (including losses incurred but not reported), loss adjustment expenses, and unearned premium reserves; and~~
- ~~(4)~~ (3) To pay any ~~other amounts~~ obligations, consistent with the terms of the reinsurance agreement, which the ceding insurer has reasonably calculated to be due to it. The agreement may contain provisions that also allow the ceding insurer to fund one or more accounts specifically established by the ceding insurer, under standards specified in the agreement, for the payment of certain obligations incurred but not yet due.

F. Give the assuming insurer the right to seek approval from the ceding insurer, which shall not unreasonably or arbitrarily withhold its approval, to withdraw from the trust account all or any part of the trust assets and transfer those assets to the assuming insurer, provided:

- (1) The assuming insurer shall, at the time of withdrawal, replace the withdrawn assets with other qualified assets having a current fair market value at least equal to the greater of the market value of the assets withdrawn ~~so as to maintain at all times the deposit in~~ or the amount necessary to restore the funding of the trust to the required amount, or
- (2) After withdrawal and transfer, the current fair market value of qualified assets in the trust account is no less than 102 percent of the required amount.

G. Give the assuming insurer the right to:

- (1) The return of any amount withdrawn in excess of the actual amounts required for ~~subsection (1)(E)(a), (b), and (c)~~ Paragraphs E(1) or (2) of this part, or in the case of ~~subsection (1)(E)(d)~~ Paragraph E(3), any amounts determined not to be ~~due a~~



permitted withdrawal pursuant to a final accounting between the parties to the agreement; and

- (2) Interest payments, at a rate not in excess of the ~~average~~ prime rate of interest applicable to the period or periods during which the amounts returned pursuant to Paragraph (1) were held ~~pursuant to subsection (1)(E)(c)~~.

H. Permit the award by ~~any~~ an arbitration panel or any court of competent jurisdiction of:

- (1) Interest at a rate different from that provided in ~~Section 10(1)(G)(b)~~ Paragraph G(2) of this part;
- (2) Court or arbitration costs;
- (3) Attorney's fees; and
- (4) Other reasonable expenses.

II. A reinsurance agreement in conjunction with which a letter of credit is utilized may contain the following provisions and the provisions shall be applied without diminution in amounts owed because of insolvency on the part of the ceding insurer or assuming insurer:

A. A requirement that the assuming insurer provide letters of credit to the ceding insurer and specify what they are to cover.

B. A stipulation that the assuming insurer and ceding insurer agree that letters of credit provided by the assuming insurer pursuant to the provisions of a reinsurance agreement may be drawn upon at any time, notwithstanding any other provisions in the agreement, ~~and~~ but the proceeds shall be applied only to:

- (1) ~~reimburse~~ Reimburse the ceding insurer for the assuming insurer's share of premiums returned to the owners of policies reinsured under the reinsurance agreement because of cancellation of such policies;
- (2) ~~reimburse~~ Reimburse the ceding insurer for the assuming insurer's share of policy surrenders and benefits or losses paid by the ceding insurer pursuant to the provisions of the policies reinsured under the reinsurance agreement;
- (3) ~~fund accounts specifically established by the ceding insurer to cover loss exposures of the ceding insurer in an amount at least equal to the deduction from the ceding insurer's liabilities for reinsurance ceded under the agreement. The account shall include, but not be limited to, amounts for policy reserves, claims and losses incurred (including losses incurred but not reported), loss adjustment expenses, and unearned premium reserves; and~~
- (4) ~~(3)~~ pay Pay any ~~other amounts~~ obligations, consistent with the terms of the reinsurance agreement, which the ceding insurer has reasonably calculated to be due to it or which the assuming insurer has agreed may be funded from proceeds of the letter of credit in advance of their due date; or
- (4) Be deposited with a trustee for the purpose of securing the reinsurer's undischarged obligations, if the letter of credit will expire without renewal or be

reduced or replaced by a letter of credit for a reduced amount or if the Superintendent will no longer recognize it as qualifying security, provided that:

(a) The amount drawn must be limited to the those obligations of the assuming insurer under the reinsurance agreement that remain unliquidated and undischarged, and that have not been fully secured by replacement security approved by the Superintendent, 10 days before the date that the letter of credit is anticipated to expire, be replaced or reduced in amount, or to lose recognition as qualifying security; and

(b) The terms and conditions under which the funds are held must comply with Section 11, except for the requirement that the assuming insurer be the grantor of the trust.

~~C.~~ ~~A provision for an interest payment, at a rate not in excess of the average prime rate of interest applicable to the period during which amounts were held pursuant to subsection subsection 2(B)(c); and~~

~~D C.~~ A provision for the return of any amounts drawn on the letters of credit in excess of the actual amounts required under ~~subsection 2(B)~~ Subsection (II)(B), or, in the case of ~~subsection 2(B)(d)~~ Paragraph (II)(B)(3), any amounts that are subsequently determined not to be due pursuant to a final account between the parties to the agreement; and

~~D.~~ Interest payments, at a rate not in excess of the prime rate of interest applicable to the period or periods during which the amounts returned pursuant to Subsection II(C) were held.

#### **Section 11 15. Reinsurers utilizing letters of credit**

A. A letter of credit may be used to reduce a ceding insurer's liability in its financial statements for reinsurance ceded to an unauthorized assuming insurer, pursuant to Title 24 A M.R.S.A. § 731-B(1)(D), if the reinsurance contract complies with Sections 13 and 14, and the letter of credit qualifies hereunder under this section, names the ceding insurer as beneficiary, and has been issued on or before the date of filing of the in force at all times for which statutory financial statement credit is claimed under this section. The reduction in liabilities of the ceding insurer is limited to the lesser of the value of the specific obligations under the reinsurance agreement or the amount available under the letter of credit.

B. A letter of credit must be clean, irrevocable, and unconditional and issued or confirmed by a qualified United States financial institution as defined in Title 24-A M.R.S.A. § 731-B(4). The letter of credit shall specify an issue date and date of expiration and shall stipulate that the beneficiary need only draw a sight draft under the letter of credit and present it to obtain funds and that no other document need be presented. The letter of credit shall also state that it is not subject to any condition or qualifications not contained therein. In addition, the letter of credit itself shall not contain reference to any other agreements, documents, or entities, except as provided in ~~Section 10, subsection (2)(A) & (B)~~ Subsection F.

- C. The heading of the letter of credit may include a boxed section containing the name of the applicant and other appropriate notations to provide a reference for the letter of credit. The boxed section shall be clearly marked to indicate that such information is for internal identification purposes only.
- C D. A letter of credit shall contain a statement to the effect that the obligation of the qualified United States financial institution which issues a letter of credit is in no way contingent upon reimbursement with respect thereto.
- D E. The term of a letter of credit shall be for at least one year and shall contain an “evergreen clause” which prevents the expiration of the letter of credit without due notice from the issuer. The “evergreen clause” shall provide for a period of no less than thirty (30) days’ notice prior to expiration date or at nonrenewal.
- E F. A letter of credit shall state ~~either~~ that it is subject to and governed by ~~the~~ one of the following:
- (1) The laws of this State ~~or that it is governed by the;~~
  - (2) The Uniform Customs and Practice for Documentary Credits of the International Chamber of Commerce (Publication 400), and all drafts drawn thereunder shall be presentable at Publication 600 (UCP 600), or any successor publication; or
  - (3) International Standby Practices of the International Chamber of Commerce Publication 590 (ISP98), or any successor publication.
- G. The letter of credit shall designate one or more offices ~~an office~~ in the United States of a qualified United States financial institution, as defined in Title 24-A M.R.S.A. § 731-B(4), and it shall state that all drafts drawn thereunder shall be presentable at the designated office or offices.
- F H. ~~If a letter of credit is made subject to the Uniform Customs and Practice for Documentary Credits of the International Chamber of Commerce (Publication 400), then the~~ The letter of credit shall specifically address and make provision for ~~an~~ a reasonable extension of time to draw against the letter of credit in the event that ~~one or more of the occurrences specified in Article 19 of Publication 400 occur~~ the designated place for presentation is closed for any reason on the last business day for presentation and no reasonable alternative place for presentation was designated by the issuer with timely notice.
- I. If the issuer of the letter of credit is not a qualified United States financial institution, then:
- (1) The letter of credit shall formally designate the confirming qualified United States financial institution as the issuing financial institution’s agent for the receipt and payment of the drafts; and
  - (2) The “evergreen clause” shall require thirty (30) days’ notice by the confirming financial institution if the confirmation is nonrenewed.

J. Letters of credit meeting applicable standards of issuer acceptability as of the dates of their issuance (or confirmation) may at the discretion of the Superintendent, notwithstanding the issuing (or confirming) institution's subsequent failure to meet applicable standards of issuer acceptability, continue to be acceptable as security until their expiration, extension, renewal, modification, or amendment, whichever first occurs.

#### **Section 12 16. Other security**

A ceding insurer may take credit under Title 24 A M.R.S.A. § 731-B(1)(D) for reinsurance ceded in accordance with Sections 13 and 14, in an amount not to exceed the amount recognized by the ceding insurer as a liability for the risks ceded under the reinsurance agreement, to the extent that the assuming insurer's obligations have been secured at all times for which statutory financial statement credit is claimed under this section by unencumbered admitted assets, of a character, maturity, and value to fulfill the intent of the agreement, withheld by the ceding insurer in the United States, subject to withdrawal solely by the ceding insurer and under its exclusive control. The assets must be of the following form:

A. Cash;

B. Securities listed by the Securities Valuation Office of the NAIC, including those deemed exempt from filing as defined by the Purposes and Procedures Manual of the Securities Valuation Office, and qualifying as admitted assets;

C. Letter of credit in compliance with Section 15;

D. Any other form of security that the Superintendent finds to be acceptable consistent with the purposes of this rule.

#### **Section 13 17. ~~Contracts affected~~ Effective date**

This rule is effective October 1, 1993. The 2016 amendments to this rule are effective January 24, 2016. All new and renewal reinsurance transactions executed on or after the effective date of this ~~Rule~~ rule shall conform to the requirements of Title 24-A M.R.S.A. and this ~~Rule~~ rule, as in force on the date of the transaction, if credit is to be given to the ceding insurer for such reinsurance.

#### **~~Section 14. Existing agreements~~**

~~Notwithstanding the effective date of this Rule, any trust agreement or underlying reinsurance agreement in existence prior to the effective date of this Rule will continue to be acceptable until June 30, 1994, at which time the agreements will have to be in full compliance for the trust agreement to be acceptable.~~

**FORM AR-1**  
**CERTIFICATE OF ASSUMING INSURER**

I, \_\_\_\_\_, \_\_\_\_\_ of \_\_\_\_\_,  
(name of officer) (title of officer) (name of assuming insurer)

the assuming insurer under a reinsurance agreement(s) with one or more insurers domiciled in the State of Maine, hereby certify that \_\_\_\_\_ (“Assuming Insurer”):  
(name of assuming insurer)

1. Submits to the jurisdiction of any court of competent jurisdiction in the State of Maine ~~or any other State~~ 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 the Superintendent of Insurance of the State of Maine as its lawful attorney upon whom may be served any lawful process in any action, suit or proceeding arising out of the reinsurance agreements(s) instituted by or on behalf of the ceding insurer.
3. Submits to the authority of the Superintendent of Insurance to examine its books and records and agrees to bear the expense of any such examination.
4. Submits with this form a current list of insurers domiciled in the State of Maine reinsured by Assuming Insurer and undertakes to submit additions to or deletions from the list to the Superintendent at least once per calendar quarter.

Dated: \_\_\_\_\_  
(name of assuming insurer)

BY: \_\_\_\_\_  
(name of officer)

\_\_\_\_\_  
(title of officer)

**FORM CR-1**  
**CERTIFICATE OF CERTIFIED REINSURER**

I, \_\_\_\_\_, \_\_\_\_\_ of \_\_\_\_\_,  
(name of officer) (title of officer) (name of assuming insurer)

the assuming insurer under a reinsurance agreement(s) with one or more insurers domiciled in the State of Maine, in order to be considered for approval in this State, hereby certify that \_\_\_\_\_ (“Assuming Insurer”):

\_\_\_\_\_  
(name of assuming insurer)

1. Submits to the jurisdiction of any court of competent jurisdiction in the State of Maine 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 the Superintendent of Insurance of the State of Maine as its lawful attorney upon whom may be served any lawful process in any action, suit or proceeding arising out of the reinsurance agreements(s) instituted by or on behalf of the ceding insurer.
3. Agrees to provide security in an amount equal to 100% of liabilities attributable to U.S. ceding insurers if it resists enforcement of a final U.S. judgment or properly enforceable arbitration award.
4. Agrees to provide notification within 10 days of any regulatory actions taken against it, any change in the provisions of its domiciliary license or any change in its rating by an approved rating agency, including a statement describing such changes and the reasons therefor.
5. Agrees to annually file information comparable to relevant provisions of the NAIC financial statement for use by insurance markets in accordance with Maine Bureau of Insurance Rule 740 § 6(C)(7).
6. Agrees to annually file the report of the independent auditor on the financial statements of the insurance enterprise.
7. Agrees to annually file audited financial statements, regulatory filings, and actuarial opinion in accordance with Maine Bureau of Insurance Rule 740 § 6(C)(7).
8. Agrees to annually file an updated list of all disputed and overdue reinsurance claims regarding reinsurance assumed from U.S. domestic ceding insurers.

9. Is in good standing as an insurer or reinsurer with the supervisor of its domiciliary jurisdiction.

Dated: \_\_\_\_\_  
(name of assuming insurer)

BY: \_\_\_\_\_  
(name of officer)

\_\_\_\_\_  
(title of officer)















