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**TITLE 760 DEPARTMENT OF INSURANCE****Proposed Rule**  
LSA Document #21-519

## DIGEST

Amends [760 IAC 1-56-7](#) regarding reinsurers maintaining trust funds. Amends [760 IAC 1-56-7.5](#) regarding certified reinsurer requirements. Adds [760 IAC 1-56-7.8](#) regarding reciprocal jurisdictions. Amends [760 IAC 1-56-8](#) regarding credit for reinsurance required by law. Amends [760 IAC 1-56-9](#) regarding reduction from liability for reinsurance ceded to an unauthorized assuming insurer. Amends [760 IAC 1-56-10](#) regarding trust agreements. Amends [760 IAC 1-56-13](#) regarding reinsurance contracts. Adds [760 IAC 1-56-17](#) concerning certificates of reinsurers domiciled in reciprocal jurisdictions. Makes numerous technical changes. Effective 30 days after filing with the Publisher.

[IC 4-22-2.1-5 Statement Concerning Rules Affecting Small Businesses](#)

[760 IAC 1-56-1](#); [760 IAC 1-56-2](#); [760 IAC 1-56-4](#); [760 IAC 1-56-5](#); [760 IAC 1-56-6](#); [760 IAC 1-56-7](#); [760 IAC 1-56-7.5](#); [760 IAC 1-56-7.8](#); [760 IAC 1-56-8](#); [760 IAC 1-56-9](#); [760 IAC 1-56-10](#); [760 IAC 1-56-11](#); [760 IAC 1-56-13](#); [760 IAC 1-56-17](#)

SECTION 1. [760 IAC 1-56-1](#) IS AMENDED TO READ AS FOLLOWS:

**[760 IAC 1-56-1](#) Authority**

**Authority:** [IC 27-1-3-7](#); [IC 27-6-10.1-5](#)

**Affected:** [IC 27-1-3-7](#); [IC 27-6-10.1-5](#)

Sec. 1. This rule is promulgated pursuant to the authority granted by [IC 27-1-3-7](#) and ~~[IC 27-6-10-15](#)~~. [IC 27-6-10.1-5](#).

(Department of Insurance; [760 IAC 1-56-1](#); filed Nov 14, 1994, 9:50 a.m.: 18 IR 870; readopted filed Sep 14, 2001, 12:22 p.m.: 25 IR 531; readopted filed Nov 27, 2007, 4:01 p.m.: [20071226-IR-760070717RFA](#); readopted filed Nov 26, 2013, 3:43 p.m.: [20131225-IR-760130479RFA](#); readopted filed Nov 19, 2019, 9:18 a.m.: [20191218-IR-760190497RFA](#))

SECTION 2. [760 IAC 1-56-2](#) IS AMENDED TO READ AS FOLLOWS:

**[760 IAC 1-56-2](#) Purpose**

**Authority:** [IC 27-1-3-7](#); [IC 27-6-10.1-5](#)

**Affected:** [IC 27-6-10.1](#)

Sec. 2. The purpose of this rule is to set forth rules and procedural requirements which the commissioner of the department of insurance deems necessary to carry out the provisions of ~~[IC 27-6-10](#)~~. [IC 27-6-10.1](#). The actions and information required by this rule are hereby declared to be necessary and appropriate in the public interest and for the protection of the ceding insurers in this state.

(Department of Insurance; [760 IAC 1-56-2](#); filed Nov 14, 1994, 9:50 a.m.: 18 IR 870; readopted filed Sep 14, 2001, 12:22 p.m.: 25 IR 531; readopted filed Nov 27, 2007, 4:01 p.m.: [20071226-IR-760070717RFA](#); readopted filed Nov 26, 2013, 3:43 p.m.: [20131225-IR-760130479RFA](#); readopted filed Nov 19, 2019, 9:18 a.m.: [20191218-IR-760190497RFA](#))

SECTION 3. [760 IAC 1-56-4](#) IS AMENDED TO READ AS FOLLOWS:

**[760 IAC 1-56-4](#) Reinsurer licensed in Indiana**

**Authority:** [IC 27-1-3-7](#); [IC 27-6-10.1-5](#)

**Affected:** [IC 27-6-10.1-2](#)

Sec. 4. Under ~~[IC 27-6-10-8](#)~~, [IC 27-6-10.1-2](#), the commissioner of the department of insurance shall allow credit

for reinsurance ceded by a domestic insurer to assuming insurers that were licensed in this state as of the date of the ceding insurer's statutory financial statement in which credit for reinsurance is claimed.

*(Department of Insurance; [760 IAC 1-56-4](#); filed Nov 14, 1994, 9:50 a.m.: 18 IR 870; readopted filed Sep 14, 2001, 12:22 p.m.: 25 IR 531; readopted filed Nov 27, 2007, 4:01 p.m.: [20071226-IR-760070717RFA](#); readopted filed Nov 26, 2013, 3:43 p.m.: [20131225-IR-760130479RFA](#); filed Dec 16, 2013, 9:14 a.m.: [20140115-IR-760130006FRA](#); readopted filed Nov 19, 2019, 9:18 a.m.: [20191218-IR-760190497RFA](#))*

SECTION 4. [760 IAC 1-56-5](#) IS AMENDED TO READ AS FOLLOWS:

**[760 IAC 1-56-5](#) Accredited reinsurers**

**Authority:** [IC 27-1-3-7](#); [IC 27-6-10.1-5](#)

**Affected:** [IC 27-6-10.1-2](#)

Sec. 5. (a) Under ~~[IC 27-6-10-9](#)~~, [IC 27-6-10.1-2](#), the commissioner of the department of insurance shall allow credit for reinsurance ceded by a domestic insurer to an assuming insurer that is accredited as a reinsurer in this state as of the date of the ceding insurer's statutory financial statement in which credit for reinsurance is claimed. An accredited reinsurer is one that:

- (1) files a properly executed Form AR-1, as established in section 15 of this rule, as evidence of its submission to this state's jurisdiction and to this state's authority to examine its books and records;
- (2) files with the commissioner of the department of insurance a certified copy of a letter or a certificate of authority or of compliance as evidence that it is licensed to transact insurance or reinsurance in at least one (1) state or, in the case of a United States branch of an alien assuming insurer, is entered through and licensed to transact insurance or reinsurance in at least one (1) state;
- (3) files annually with the commissioner of the department of insurance a copy of its annual statement filed with the department of insurance of its state of domicile or, in the case of an alien assuming insurer, with the state through which it is entered and in which it is licensed to transact insurance or reinsurance, and a copy of its most recent audited financial statement; and
- (4) maintains a surplus as regards policyholders in an amount not less than twenty million dollars (\$20,000,000) and whose accreditation has not been denied by the commissioner of the department of insurance within ninety (90) days of its submission or, in the case of companies with a surplus as regards policyholders of less than twenty million dollars (\$20,000,000), whose accreditation has been approved by the commissioner of the department of insurance.

(b) If the commissioner of the department of insurance determines that the assuming insurer has failed to meet or maintain any of the qualifications in this section, ~~he or she~~ **the commissioner** may, upon written notice and opportunity for hearing, suspend or revoke the accreditation. No credit shall be allowed a domestic ceding insurer with respect to reinsurance ceded after the next following year end if the assuming insurer's accreditation has been denied or revoked by the commissioner of the department of insurance after notice and hearing.

*(Department of Insurance; [760 IAC 1-56-5](#); filed Nov 14, 1994, 9:50 a.m.: 18 IR 871; readopted filed Sep 14, 2001, 12:22 p.m.: 25 IR 531; readopted filed Nov 27, 2007, 4:01 p.m.: [20071226-IR-760070717RFA](#); readopted filed Nov 26, 2013, 3:43 p.m.: [20131225-IR-760130479RFA](#); filed Dec 16, 2013, 9:14 a.m.: [20140115-IR-760130006FRA](#); readopted filed Nov 19, 2019, 9:18 a.m.: [20191218-IR-760190497RFA](#))*

SECTION 5. [760 IAC 1-56-6](#) IS AMENDED TO READ AS FOLLOWS:

**[760 IAC 1-56-6](#) Reinsurer domiciled and licensed in another state**

**Authority:** [IC 27-1-3-7](#); [IC 27-6-10.1-5](#)

**Affected:** [IC 27-6-10.1-2](#)

Sec. 6. (a) Under ~~[IC 27-6-10-10](#)~~, [IC 27-6-10.1-2](#), the commissioner of the department of insurance shall allow credit for reinsurance ceded by a domestic insurer to an assuming insurer that, as of the date of the ceding insurer's statutory financial statement in which credit for reinsurance is claimed:

- (1) is domiciled and licensed in (or, in the case of a United States branch of an alien assuming insurer, is entered through and licensed in) a state that employs standards regarding credit for reinsurance substantially similar to those applicable under this rule;
- (2) maintains a surplus as regards policyholders in an amount not less than twenty million dollars

(\$20,000,000); and

(3) files a properly executed Form AR-1 with the commissioner of the department of insurance as evidence of its submission to the state's authority to examine its books and records.

(b) The provisions of this section relating to surplus as regards policyholders shall not apply to reinsurance ceded and assumed pursuant to pooling arrangements among insurers in the same holding company system. As used in this section, "substantially similar" standards means credit for reinsurance standards that the commissioner of the department of insurance determines equal or exceed the standards of this rule.

*(Department of Insurance; [760 IAC 1-56-6](#); filed Nov 14, 1994, 9:50 a.m.: 18 IR 871; readopted filed Sep 14, 2001, 12:22 p.m.: 25 IR 531; readopted filed Nov 27, 2007, 4:01 p.m.: [20071226-IR-760070717RFA](#); readopted filed Nov 26, 2013, 3:43 p.m.: [20131225-IR-760130479RFA](#); filed Dec 16, 2013, 9:14 a.m.: [20140115-IR-760130006FRA](#); readopted filed Nov 19, 2019, 9:18 a.m.: [20191218-IR-760190497RFA](#))*

SECTION 6. [760 IAC 1-56-7](#) IS AMENDED TO READ AS FOLLOWS:

### **[760 IAC 1-56-7](#) Reinsurers maintaining trust funds**

**Authority:** [IC 27-1-3-7](#); [IC 27-6-10.1-5](#)

**Affected:** [IC 27-6-10.1](#)

Sec. 7. (a) Under ~~[IC 27-6-10-11](#)~~, [IC 27-6-10.1-2](#), the commissioner of the department of insurance shall allow credit for reinsurance ceded by a domestic insurer to an assuming insurer that, as of the date of the ceding insurer's statutory financial statement, maintains a trust fund in an amount prescribed in this section in a qualified United States financial institution, as defined in ~~[IC 27-6-10-6](#)~~, [IC 27-6-10.1-4](#), 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 commissioner of the department of insurance substantially the same information as that required to be reported on the National Association of Insurance Commissioners' annual statement form by licensed insurers to enable the commissioner of the department of insurance to determine the sufficiency of the trust fund.

(b) The following requirements apply to the following categories of assuming insurer:

(1) The trust fund for a single assuming insurer shall consist of funds in trust in an amount not less than the assuming insurer's liabilities attributable to business written in the United States and, in addition, a trustee surplus of not less than twenty million dollars (\$20,000,000), except as provided in subdivision (2).

(2) At any time after the assuming insurer has permanently discontinued underwriting new business secured by the trust for at least three (3) full years, the commissioner of the department of insurance with principal regulatory oversight of the trust may authorize a reduction in the required trustee surplus, but only after a finding, based on an assessment of the risk, that the new required surplus level is adequate for the protection of U.S. 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 trustee surplus may not be reduced to an amount less than thirty percent (30%) of the assuming insurer's liabilities attributable to reinsurance ceded by U.S. ceding insurers covered by the trust.

(3) The trust fund for a group, including incorporated and individual unincorporated underwriters, shall consist of the following:

(A) For reinsurance ceded under reinsurance agreements with an inception, amendment, or renewal date on or after January 1, 1993, funds in trust in an amount not less than the respective underwriters' several liabilities attributable to business ceded by U.S. domiciled ceding insurers to any underwriter of the group.

(B) For reinsurance ceded under reinsurance agreements with an inception date on or before December 31, 1992, and not amended or renewed after that date, notwithstanding the other provisions of this rule, funds in trust in an amount not less than the respective underwriters' several insurance and reinsurance liabilities attributable to business written in the United States.

In addition, the group shall maintain a trustee surplus of which one hundred million dollars (\$100,000,000) shall be held jointly for the benefit of the United States ceding insurers of any member of the group for all the years of account. The incorporated members of the group shall not be engaged in any business other than underwriting as a member of the group and shall be subject to the same level of solvency regulation and control by the group's domiciliary regulator as are the unincorporated members. The group shall within ninety

(90) days after its financial statements are due to be filed with the group's domiciliary regulator, provide to the commissioner an annual certification by the group's domiciliary regulator of the solvency of each underwriter member of the group or if a certification is unavailable, a financial statement, prepared by independent public accountants, of each underwriter member of the group.

(4) The trust fund for a group of incorporated insurers under common administration, whose members possess aggregate policyholders surplus of ten billion dollars (\$10,000,000,000) (calculated and reported in substantially the same manner as prescribed by the annual statement instructions and Accounting Practices and Procedures Manual of the National Association of Insurance Commissioners **(NAIC)**) and that has continuously transacted an insurance business outside the United States for at least three (3) years immediately prior to making application for accreditation, shall consist of funds in trust in an amount not less than the assuming insurer's liabilities attributable to business ceded by United States ceding insurers to any members of the group pursuant to reinsurance contracts issued in the name of such group and, in addition, the group shall maintain a joint trusteed surplus of which one hundred million dollars (\$100,000,000) shall be held jointly for the benefit of United States ceding insurers of any member of the group. The group shall do the following:

(A) File a properly executed Form AR-1 as evidence of the submission to this state's authority to examine the books and records of any of its members.

(B) Certify that any member examined will bear the expense of any such examination.

(C) Make available to the commissioner of the department of insurance annual certifications by the members' domiciliary regulators and their independent public accountants of the solvency of each member of the group within ninety (90) days after its financial statements are due to be filed with the group's domiciliary regulator.

(c) The trust shall be established in a form approved by the commissioner of the department of insurance and complying with ~~IC 27-6-10-11~~ [IC 27-6-10.1-2](#) and this section. The trust instrument shall provide the following:

(1) Contested claims shall be valid and enforceable out of funds in trust to the extent remaining unsatisfied thirty (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 the grantor's United States policyholders and ceding insurers, their assigns, and successors in interest.

(3) The trust shall be subject to examination as determined by the commissioner of the department of insurance.

(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.

(5) No later than February 28 of each year, the trustees of the trust shall do the following:

(A) Report to the commissioner of the department of insurance in writing setting forth the balance in the trust and listing the trust's investments at the preceding year end.

(B) Certify the date of termination of the trust, if so planned, or certify that the trust shall not expire prior to the next following December 31.

(6) No amendment to the trust shall be effective unless reviewed and approved in advance by the commissioner of the department of insurance.

(d) 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 this subsection 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, the trustee shall comply with an order of the commissioner with regulatory oversight over the trust or with an order of a court of competent jurisdiction directing the trustee to transfer to the commissioner of the department of insurance with regulatory oversight over the trust or other designated receiver all of the assets of the trust fund.

(e) The assets shall be distributed by and claims shall be filed with and valued by the commissioner with regulatory oversight over the trust in accordance with the laws of the state in which the trust is domiciled applicable to the liquidation of domestic insurance companies.

(f) If the commissioner with regulatory 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 U.S. beneficiaries of the trust, the commissioner with regulatory oversight over the trust shall return the assets, or any part thereof, to the trustee for distribution in accordance with the trust agreement.

(g) The grantor shall waive any right otherwise available to it under U.S. law that is inconsistent with this

provision.

(h) For purposes of this section, "liabilities" means the assuming insurer's gross liabilities attributable to reinsurance ceded by U.S. domiciled insurers, excluding liabilities that are otherwise secured by acceptable means, and shall include the following:

(1) For business ceded by domestic insurers authorized to write accident and health, and property and casualty insurance, the following:

- (A) Losses and allocated loss expenses paid by the ceding insurer, recoverable from the assuming insurer.
- (B) Reserves for the following:
  - (i) Losses reported and outstanding.
  - (ii) Losses incurred but not reported.
  - (iii) Allocated loss expenses.
- (C) Unearned premiums.

(2) For business ceded by domestic insurers authorized to write life, health, and annuity insurance, the following:

- (A) Aggregate reserves for the following:
  - (i) Life policies and contracts net of policy loans and net due and deferred premiums.
  - (ii) Accident and health policies.
- (B) Deposit funds and other liabilities without life or disability contingencies.
- (C) Liabilities for policy and contract claims.

(i) Assets deposited in trusts established under ~~IC 27-6-10-11~~ [IC 27-6-10.1-2](#) and this section shall be valued according to their current fair market value and shall consist only of cash in U.S. dollars, certificates of deposit issued by a U.S. financial institution, as defined in ~~IC 27-6-10-5~~, [IC 27-6-10.1-4](#), clean, irrevocable, unconditional, and "evergreen" letters of credit issued or confirmed by a qualified U.S. financial institution, as defined in ~~IC 27-6-10-5~~, [IC 27-6-10.1-4](#), and investments of the type specified in this subsection, but investments in or issued by an entity controlling, controlled by, or under common control with either the grantor or beneficiary of the trust shall not exceed five percent (5%) of total investments. Not more than twenty percent (20%) of the total of the investments in the trust may be foreign investments authorized under subdivision (1)(E), (3), (6)(B), or (7), and not more than ten percent (10%) of the total of the investments in the trust may be securities denominated in foreign currencies. For purposes of applying the preceding sentence, a depository receipt denominated in U.S. dollars and representing rights conferred by a foreign security shall be classified as a foreign investment denominated in a foreign currency. The assets of a trust established to satisfy the requirements of ~~IC 27-6-10-11~~ [IC 27-6-10.1-2](#) shall be invested only as follows:

(1) Government obligations that are not in default as to principal or interest, that are valid and legally authorized, and that are issued, assumed, or guaranteed by:

- (A) the United States or by any agency or instrumentality of the United States;
- (B) a state of the United States;
- (C) a territory, possession, or other governmental unit of the United States;
- (D) an agency or instrumentality of a governmental unit referred to in clauses (B) and (C) if the obligations shall be by law (statutory or otherwise) payable, as to both principal and interest, from taxes levied, or by law required to be levied, or from adequate special revenues pledged or otherwise appropriated, or by law required to be provided for making these payments, but shall not be obligations eligible for investment under this subdivision if payable solely out of special assessments on properties benefited by local improvements;
- or
- (E) the government of any other country that is a member of the Organization for Economic Cooperation and Development and whose government obligations are rated A or higher, or the equivalent, by a rating agency recognized by the Securities Valuation Office of the NAIC.

(2) Obligations that are issued in the United States, or that are dollar denominated and issued in a non-U.S. market, by a solvent U.S. institution (other than an insurance company) or that are assumed or guaranteed by a solvent U.S. institution (other than an insurance company) and that are not in default as to principal or interest if the obligations:

- (A) are rated A or higher (or the equivalent) by a securities rating agency recognized by the Securities Valuation Office of the NAIC or, if not so rated, are similar in structure and other material respects to other obligations of the same institution that are so rated;
- (B) are insured by at least one (1) authorized insurer (other than the investing insurer or a parent, subsidiary, or affiliate of the investing insurer) licensed to insure obligations in this state and, after considering the insurance, are rated AAA (or the equivalent) by a securities rating agency recognized by the Securities Valuation Office of the NAIC; or
- (C) have been designated as Class One or Class Two by the Securities Valuation Office of the NAIC.

- (3) Obligations issued, assumed, or guaranteed by a solvent non-U.S. institution chartered in a country that is a member of the Organization for Economic Cooperation and Development or obligations of U.S. corporations issued in a non-U.S. currency, provided that in either case the obligations are rated A or higher (or the equivalent) by a rating agency recognized by the Securities Valuation Office of the NAIC.
- (4) An investment made under subdivision (1), (2), or (3) shall be subject to the following additional limitations:
- (A) An investment in or loan upon the obligations of an institution other than an institution that issues mortgage-related securities shall not exceed five percent (5%) of the assets of the trust.
  - (B) An investment in any one (1) mortgage-related security shall not exceed five percent (5%) of the assets of the trust.
  - (C) The aggregate total investment in mortgage-related securities shall not exceed twenty-five percent (25%) of the assets of the trust.
  - (D) Preferred or guaranteed shares issued or guaranteed by a solvent U.S. institution are permissible investments if all of the institution's obligations are eligible as investments under subdivision (2)(A) and (2)(C), but shall not exceed two percent (2%) of the assets of the trust.
- (5) As used in this rule:
- (A) "mortgage-related security" means an obligation that is rated AA or higher (or the equivalent) by a securities rating agency recognized by the Securities Valuation Office of the NAIC and that either:
    - (i) represents ownership of one (1) or more promissory notes or certificates of interest or participation in the notes (including any rights designed to assure servicing of, or the receipt or timeliness of, receipt by the holders of the notes, certificates, or participation of amounts payable under the notes, certificates, or participation), that:
      - (AA) are directly secured by a first lien on a single parcel of real estate, including stock allocated to a dwelling unit in a residential cooperative housing corporation, upon which is located a dwelling or mixed residential and commercial structure, or on a residential manufactured home as defined in 42 U.S.C.A. Section 5402(6), whether the manufactured home is considered real or personal property under the laws of the state in which it is located; and
      - (BB) were originated by a savings and loan association, savings bank, commercial bank, credit union, insurance company, or similar institution that is supervised and examined by a federal or state housing authority, or by a mortgagee approved by the Secretary of Housing and Urban Development pursuant to 12 U.S.C.A. Sections 1709 and 1715-b, or, where the notes involve a lien on the manufactured home, by an institution or by a financial institution approved for insurance by the Secretary of Housing and Urban Development pursuant to 12 U.S.C.A. Section 1703; or
    - (ii) is secured by one (1) or more promissory notes or certificates of deposit or participations in the notes (with or without recourse to the insurer of the notes) and, by its terms, provides for payments of principal in relation to payments, or reasonable projections of payments, or notes meeting the requirements of item (i)(AA) and (i)(BB); and
  - (B) "promissory note", when used in connection with a manufactured home, shall also include a loan, advance, or credit sale as evidenced by a retail installment sales contract or other instrument.
- (6) The following for equity interests:
- (A) Investments in common shares or partnership interests of a solvent U.S. institution are permissible if:
    - (i) its obligations and preferred shares, if any, are eligible as investments under this subsection; and
    - (ii) the equity interests of the institution (except an insurance company) are registered on a national securities exchange as provided in the Securities Exchange Act of 1934, 15 U.S.C. 78a to 78kk or otherwise registered pursuant to that Act, and, if otherwise registered, price quotations for them are furnished through a nationwide automated quotations system approved by the Financial Industry Regulatory Authority, or successor organization. A trust shall not invest in equity interests under this subdivision an amount exceeding one percent (1%) of the assets of the trust even though the equity interests are not so registered and are not issued by an insurance company.
  - (B) Investments in common shares of a solvent institution organized under the laws of a country that is a member of the Organization for Economic Cooperation and Development are permissible if:
    - (i) all its obligations are rated A or higher (or the equivalent) by a rating agency recognized by the Securities Valuation Office of the NAIC; and
    - (ii) the equity interests of the institution are registered on a securities exchange regulated by the government of a country that is a member of the Organization for Economic Cooperation and Development.
  - (C) An investment in or loan upon any one (1) institution's outstanding equity interests shall not exceed one percent (1%) of the assets of the trust. The cost of an investment in equity interests made pursuant to this subdivision, when added to the aggregate cost of other investments in equity interests then held pursuant to this subdivision, shall not exceed ten percent (10%) of the assets in the trust.
- (7) Obligations issued, assumed, or guaranteed by a multinational development bank, provided the obligations are rated A or higher (or the equivalent) by a rating agency recognized by the Securities Valuation Office of

the NAIC.

(8) The following for investment companies:

(A) Securities of an investment company registered pursuant to the Investment Company Act of 1940, 15 U.S.C. 80a, are permissible investments if the investment company invests at least ninety percent (90%) of its assets in the types of:

(i) securities that qualify as investment under subdivision (1), (2), or (3) or invests in securities that are determined by the commissioner to be substantively similar to the types of securities set forth in subdivision (1), (2), or (3); or

(ii) equity interests that qualify as an investment under subdivision (6)(A).

(B) Investments made by a trust in investment companies under this subdivision shall not exceed the following limitations:

(i) An investment in an investment company qualifying under clause (A)(i) shall not exceed ten percent (10%) of the assets in the trust and the aggregate amount of investment in qualifying investment companies shall not exceed twenty-five percent (25%) of the assets in the trust.

(ii) Investments in an investment company qualifying under clause (A)(ii) shall not exceed five percent (5%) of the assets in the trust and the aggregate amount of investment in qualifying investment companies shall be included when calculating the permissible aggregate value of equity interests under subdivision (6)(A).

(9) The following for letters of credit:

(A) In order for a letter of credit to qualify as an asset of the trust, the trustee shall have the right and the obligation pursuant to the deed of trust or some other binding agreement (as duly approved by the commissioner), to immediately draw down the full amount of the letter of credit 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.

(B) The trust agreement shall provide that the trustee shall be liable for its negligence, willful misconduct, or lack of good faith. The failure of the trustee to draw against the letter of credit in circumstances where such draw would be required shall be deemed to be negligence or willful misconduct, or both.

(j) A specific security provided to a ceding insurer by an assuming insurer under section 8 of this rule shall be applied, until exhausted, to the payment of liabilities of the assuming insurer to the ceding insurer holding the specific security prior to, and as a condition precedent for, presentation of a claim by the ceding insurer for payment by a trustee of a trust established by the assuming insurer under this section.

*(Department of Insurance; [760 IAC 1-56-7](#); filed Nov 14, 1994, 9:50 a.m.: 18 IR 871; readopted filed Sep 14, 2001, 12:22 p.m.: 25 IR 531; readopted filed Nov 27, 2007, 4:01 p.m.: [20071226-IR-760070717RFA](#); readopted filed Nov 26, 2013, 3:43 p.m.: [20131225-IR-760130479RFA](#); filed Dec 16, 2013, 9:14 a.m.: [20140115-IR-760130006FRA](#); readopted filed Nov 19, 2019, 9:18 a.m.: [20191218-IR-760190497RFA](#))*

SECTION 7. [760 IAC 1-56-7.5](#) IS AMENDED TO READ AS FOLLOWS:

**[760 IAC 1-56-7.5](#) Credit for reinsurance; certified reinsurers**

**Authority:** [IC 27-1-3-7](#); [IC 27-6-10.1-5](#)

**Affected:** [IC 5-14-3-4](#); [IC 27-6-10.1](#)

Sec. 7.5. (a) Under [IC 27-6-10-11.5](#), [IC 27-6-10.1-2](#), the commissioner 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. 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 commissioner. The security shall be in a form consistent with the provisions of [IC 27-6-10-11.5](#), [IC 27-6-10.1-2](#) and [IC 27-6-10-14](#), [IC 27-6-10.1-3](#) and section 10, 11, or 12 of this rule. The amount of security required in order for full credit to be allowed shall correspond with the following requirements:

(1)	Ratings	Security Required
	Secure – 1	0%
	Secure – 2	10%
	Secure – 3	20%
	Secure – 4	50%
	Secure – 5	75%
	Vulnerable – 6	100%

(2) Affiliated reinsurance transactions shall receive the same opportunity for reduced security requirements as

all other reinsurance transactions.

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

(4) In order to facilitate the prompt payment of claims, a certified reinsurer shall not be required to post security for catastrophe recoverables for a period of one (1) year from the date of the first instance of a liability reserve entry by the ceding company as a result of a loss from a catastrophic occurrence as recognized by the commissioner. The one (1) year deferral period is contingent upon the certified reinsurer continuing to pay claims in a timely manner. Reinsurance recoverables for only the following lines of business as reported on the **National Association of Insurance Commissioners** (NAIC) annual financial statement related specifically to the catastrophic occurrence will be included in the deferral:

- (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.

(5) 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 prior to the effective date of the certification of the assuming insurer that is subsequently amended after the effective date of the certification of the assuming insurer, 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 from and after the effective date of the amendment or new contract.

(6) Nothing in this section 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 section.

(b) The procedure for certification shall be as follows:

(1) The commissioner shall post notice on the insurance department's website promptly upon receipt of any application for certification, including instructions on how members of the public may respond to the application. The commissioner may not take final action on the application until at least thirty (30) days after posting the notice required by this subdivision.

(2) The commissioner shall issue written notice to an assuming insurer that has made application and been approved as a certified reinsurer. Included in such notice shall be the rating assigned the certified reinsurer in accordance with subsection (a). The commissioner shall publish a list of all certified reinsurers and their ratings.

(3) In order to be eligible for certification, the assuming insurer shall meet the following requirements:

(A) The assuming insurer must be domiciled and licensed to transact insurance or reinsurance in a qualified jurisdiction, as determined by the commissioner under subsection (c).

(B) The assuming insurer must maintain capital and surplus, or its equivalent, of not less than two hundred fifty million dollars (\$250,000,000) calculated in accordance with subdivision (4)(H). 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 two hundred fifty million dollars (\$250,000,000) and a central fund containing a balance of at least two hundred fifty million dollars (\$250,000,000).

(C) The assuming insurer must maintain financial strength ratings from two (2) or more rating agencies deemed acceptable by the commissioner. These ratings shall be based on interactive communication between the rating agency and the assuming insurer and shall not be based solely on publicly available information. These financial strength ratings will be one (1) factor used by the commissioner in determining the rating that is assigned to the assuming insurer. Acceptable rating agencies include the following:

- (i) Standard & Poor's.
- (ii) Moody's Investors Service.
- (iii) Fitch Ratings.
- (iv) A.M. Best Company.
- (v) Any other nationally recognized statistical rating organization.

(D) The certified reinsurer must comply with any other requirements reasonably imposed by the commissioner.

(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 rating from an acceptable rating agency. The maximum rating that a certified reinsurer may be assigned will correspond to its financial strength rating as outlined in the table below. The commissioner shall use the lowest financial strength rating received from an approved rating agency in establishing the maximum rating of a certified reinsurer. A failure to obtain or maintain at least two (2) financial strength ratings from acceptable rating agencies will result in loss of eligibility for certification.

Ratings	Best	S&P	Moody's	Fitch
Secure – 1	A++	AAA	Aaa	AAA
Secure – 2	A+	AA+, AA, AA-	Aa1, Aa2, Aa3	AA+, AA, AA-
Secure – 3	A	A+, A	A1, A2	A+, A
Secure – 4	A-	A-	A3	A-
Secure – 5	B++, B+	BBB+, BBB, BBB-	Baa1, Baa2, Baa3	BBB+, BBB, BBB-
Vulnerable – 6	B, B-, C++, C+, C, C-, D, E, F	BB+, BB, BB-, B+, B, B-, CCC, CC, C, D, R	Ba1, Ba2, Ba3, B1, B2, B3, Caa, Ca, C	BB+, BB, BB-, B+, B, B-, CCC+, CC, CCC-, DD

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

(D) For certified reinsurers not domiciled in the U.S., a review annually of Form CR-F (for property/casualty reinsurers) or Form CR-S (for life and health reinsurers).

(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 ninety (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 report of the independent auditor on the financial statements of the insurance enterprise, on the basis described in clause (H).

(H) For certified reinsurers not domiciled in the U.S., audited financial statements, ~~(audited U.S. GAAP basis if available, audited IFRS basis statements are allowed but must include an audited footnote reconciling equity and net income to a U.S. GAAP basis, or, with the permission of the state insurance commissioner, audited IFRS statements with reconciliation to U.S. GAAP certified by an officer of the company),~~ regulatory filings, and actuarial opinion (as filed with the non-U.S. jurisdiction supervisor, **with a translation into English**). Upon the initial application for certification, the commissioner will consider audited financial statements for the last ~~three (3)~~ **two (2)** years filed with its non-U.S. jurisdiction supervisor.

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

(J) A certified reinsurer's participation in any solvent scheme of arrangement, or similar procedure, which involves U.S. ceding insurers. The commissioner shall receive prior notice from a certified reinsurer that proposes participation by the certified reinsurer in a solvent scheme of arrangement.

(K) Any other information deemed relevant by the commissioner.

(5) Based on the analysis conducted under subdivision (4)(E) of a certified reinsurer's reputation for prompt payment of claims, the commissioner may make appropriate adjustments in the security the certified reinsurer is required to post to protect its liabilities to U.S. ceding insurers, provided that the commissioner shall, at a minimum, increase the security the certified reinsurer is required to post by one (1) rating level under subdivision (4)(A) if the commissioner finds that:

(A) more than fifteen percent (15%) of the certified reinsurer's ceding insurance clients have overdue reinsurance recoverables on paid losses of ninety (90) days or more that:

(i) are not in dispute; and

(ii) exceed one hundred thousand dollars (\$100,000) for each cedent; or

(B) the aggregate amount of reinsurance recoverables on paid losses that are not in dispute that are overdue by ninety (90) days or more exceeds fifty million dollars (\$50,000,000).

(6) The assuming insurer must submit a properly executed Form CR-1, as established in section 16 of this

rule, as evidence of its submission to the jurisdiction of this state, appointment of the commissioner as an agent for service of process in this state, and agreement to provide security for one hundred percent (100%) of the assuming insurer's liabilities attributable to reinsurance ceded by U.S. ceding insurers if it resists enforcement of a final U.S. judgment. The commissioner shall not certify any assuming insurer that is domiciled in a jurisdiction that the commissioner has determined does not adequately and promptly enforce final U.S. judgments or arbitration awards.

(7) The certified reinsurer must agree to meet applicable information filing requirements as determined by the commissioner, both with respect to an initial application for certification and on an ongoing basis. All information submitted by certified reinsurers that are not otherwise public information subject to disclosure shall be exempted from disclosure under [IC 5-14-3-4](#) and shall be withheld from public disclosure. The applicable information filing requirements are as follows:

(A) Notification within ten (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 or CR-S, as applicable.

(C) Annually, the report of the independent auditor on the financial statements of the insurance enterprise, on the basis described in clause (D).

(D) Annually, **the most recently** audited financial statements, ~~(audited U.S. GAAP basis if available, audited IFRS basis statements are allowed but must include an audited footnote reconciling equity and net income to a U.S. GAAP basis, or, with the permission of the state insurance commissioner, audited IFRS statements with reconciliation to U.S. GAAP certified by an officer of the company)~~, regulatory filings, and actuarial opinion (as filed with the certified reinsurer's supervisor, **with a translation into English**). Upon the initial certification, audited financial statements for the last ~~three (3)~~ **two (2)** years filed with the certified reinsurer's supervisor.

(E) At least annually, an updated list of all disputed and overdue reinsurance claims regarding reinsurance assumed from U.S. domestic ceding insurers.

(F) A certification from the certified reinsurer's domestic regulator that the certified reinsurer is in good standing and maintains capital in excess of the jurisdiction's highest regulatory action level.

(G) Any other information that the commissioner may reasonably require.

(8) If a certified reinsurer experiences a change in rating or the commissioner revokes the certified reinsurer's certification, the following apply:

(A) In the case of a downgrade by a rating agency or other disqualifying circumstance, the commissioner shall, upon written notice, assign a new rating to the certified reinsurer in accordance with the requirements of subdivision (4)(A).

(B) The commissioner shall have 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 commissioner to reconsider the certified reinsurer's ability or willingness to meet its contractual obligations.

(C) If the rating of a certified reinsurer is upgraded by the commissioner, the certified reinsurer may meet the security requirements applicable to its new rating on a prospective basis, but the commissioner 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 commissioner, the commissioner 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 commissioner, the assuming insurer shall be required to post security in accordance with section ~~40~~ **9** of this rule 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 section 7 of this rule, the commissioner 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 (3) months for all reinsurance ceded to that certified reinsurer, unless the reinsurance is found by the commissioner to be at high risk of uncollectibility.

(c) The following apply with respect to qualified jurisdictions:

(1) If, upon conducting an evaluation under this section with respect to the reinsurance supervisory system of any non-U.S. assuming insurer, the commissioner determines that the jurisdiction qualifies to be recognized as a qualified jurisdiction, the commissioner shall publish notice and evidence of such recognition in an appropriate manner. The commissioner 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 a non-U.S. assuming insurer is eligible to be recognized as a qualified jurisdiction, the commissioner shall evaluate the reinsurance supervisory system of the non-U.S. jurisdiction, both initially and on an ongoing basis, and consider the rights, benefits, and the extent of reciprocal recognition afforded by the non-U.S. jurisdiction to reinsurers licensed and domiciled in the U.S. The commissioner 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 commissioner as eligible for certification. A qualified jurisdiction must agree to share information and cooperate with the commissioner with respect to all certified reinsurers domiciled within that jurisdiction. Additional factors to be considered in determining whether to recognize a qualified jurisdiction, in the discretion of the commissioner, 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 assuming insurers in the domiciliary 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 domiciliary regulator's willingness to cooperate with U.S. regulators in general and the commissioner in particular.

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

(G) Any documented evidence of substantial problems with the enforcement of final U.S. judgments in the domiciliary jurisdiction. A jurisdiction will not be considered to be a qualified jurisdiction if the commissioner has determined that it does not adequately and promptly enforce final U.S. 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.

(I) Any other matters deemed relevant by the commissioner.

(3) A list of qualified jurisdictions shall be published through the NAIC committee process. The commissioner shall consider this list in determining qualified jurisdictions. If the commissioner approves a jurisdiction as qualified that does not appear on the list of qualified jurisdictions, the commissioner shall provide thoroughly documented justification with respect to the criteria provided under subdivision (2)(A) through (2)(I).

(4) U.S. jurisdictions that meet the requirements for accreditation under the NAIC financial standards and accreditation program shall be recognized as qualified jurisdictions.

(d) The following apply to the recognition of certification issued by an NAIC accredited jurisdiction:

(1) If an applicant for certification has been certified as a reinsurer in an NAIC accredited jurisdiction, the commissioner has the discretion to defer to that jurisdiction's certification, and to defer to the rating assigned by that jurisdiction, if the assuming insurer submits a properly executed Form CR-1 and such additional information as the commissioner requires. The assuming insurer shall be considered to be a certified reinsurer in this state.

(2) Any change in the certified reinsurer's status or rating in the other jurisdiction shall apply automatically in this state as of the date it takes effect in the other jurisdiction. The certified reinsurer shall notify the commissioner of any change in its status or rating within ten (10) days after receiving notice of the change.

(3) The commissioner may withdraw recognition of the other jurisdiction's rating at any time and assign a new rating in accordance with subsection (b)(8)(A).

(4) The commissioner may withdraw recognition of the other jurisdiction's certification at any time, with written notice to the certified reinsurer. Unless the commissioner suspends or revokes the certified reinsurer's certification in accordance with subsection (b)(8)(B), the certified reinsurer's certification shall remain in good standing in this state for a period of three (3) months, which shall be extended if additional time is necessary to consider the assuming insurer's application for certification in this state.

(e) In addition to the clauses required under section 13 of this rule, 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.

(f) The commissioner shall comply with all reporting and notification requirements that may be established by the NAIC with respect to certified reinsurers and qualified jurisdictions.

(g) The NAIC Model Laws, Regulations and Guidelines, Vol. V, pages ~~786-37~~ **786-32** through ~~786-43~~, **786-38**,

Credit for Reinsurance Model Regulation (~~January 2012~~) (**Summer 2019**) are hereby incorporated by reference as if fully set out herein as the format for Form CR-F and Form CR-S described in subsection (b)(4)(D) and (b)(7)(B).

(Department of Insurance; [760 IAC 1-56-7.5](#); filed Dec 16, 2013, 9:14 a.m.: [20140115-IR-760130006FRA](#); readopted filed Nov 19, 2019, 9:18 a.m.: [20191218-IR-760190497RFA](#))

SECTION 8. [760 IAC 1-56-7.8](#) IS ADDED TO READ AS FOLLOWS:

**[760 IAC 1-56-7.8](#) Credit for reinsurance; reciprocal jurisdictions**

Authority: [IC 27-1-3-7](#); [IC 27-6-10.1-5](#)

Affected: [IC 5-14-3-4](#); [IC 27-6-10.1](#)

Sec. 7.8. (a) Pursuant to [IC 27-6-10.1-2\(F\)\(1\)](#), the commissioner shall allow credit for reinsurance ceded by a domestic insurer to an assuming insurer that is licensed to write reinsurance by, and has its head office or is domiciled in, a reciprocal jurisdiction, and which meets the other requirements of this rule.

(b) A reciprocal jurisdiction is a jurisdiction, as designated by the commissioner pursuant to subsection (d), that meets one (1) of the following:

- (1) A non-U.S. jurisdiction that is subject to an in-force covered agreement with the United States, each within its legal authority, or, in the case of a covered agreement between the United States and the European Union, is a member state of the European Union. For purposes of this subsection, a "covered agreement" is an agreement entered into pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act, 31 U.S.C. §§ 313 and 314, that is currently in effect or in a period of provisional application and addresses the elimination, under specified conditions, of collateral requirements as a condition for entering into any reinsurance agreement with a ceding insurer domiciled in this state or for allowing the ceding insurer to recognize credit for reinsurance;
- (2) A U.S. jurisdiction that meets the requirements for accreditation under the National Association of Insurance Commissioners (NAIC) financial standards and accreditation program; or
- (3) A qualified jurisdiction, as determined by the commissioner pursuant to [IC 27-6-10.1-2\(E\)\(3\)](#) and section 7.5(c) of this rule, which is not otherwise described in subdivision (1) or (2), and which the commissioner determines meets all of the following additional requirements:

- (A) Provides that an insurer which has its head office or is domiciled in such qualified jurisdiction shall receive credit for reinsurance ceded to a U.S. domiciled assuming insurer in the same manner as credit for reinsurance is received for reinsurance assumed by insurers domiciled in such qualified jurisdiction.
- (B) Does not require a U.S. domiciled assuming insurer to establish or maintain a local presence as a condition for entering into a reinsurance agreement with any ceding insurer subject to regulation by the non-U.S. jurisdiction or as a condition to allow the ceding insurer to recognize credit for such reinsurance.
- (C) Recognizes the U.S. state regulatory approach to group supervision and group capital, by providing written confirmation by a competent regulatory authority, in such qualified jurisdiction, that insurers and insurance groups that are domiciled or maintain their headquarters in this state or another jurisdiction accredited by the NAIC shall be subject only to worldwide prudential insurance group supervision, including worldwide group governance, solvency and capital, and reporting, as applicable, by the commissioner or the commissioner of the domiciliary state, and will not be subject to group supervision at the level of the worldwide parent undertaking of the insurance or reinsurance group by the qualified jurisdiction.
- (D) Provides written confirmation by a competent regulatory authority in such qualified jurisdiction that information regarding insurers and their parent, subsidiary, or affiliated entities, if applicable, shall be provided to the commissioner in accordance with a memorandum of understanding or similar document between the commissioner and such qualified jurisdiction, including, but not limited to, the International Association of Insurance Supervisors Multilateral Memorandum of Understanding or other multilateral memoranda of understanding coordinated by the NAIC.

(c) Credit shall be allowed when the reinsurance is ceded from an insurer domiciled in this state to an assuming insurer meeting each of the following conditions:

- (1) The assuming insurer must be licensed to transact reinsurance by, and have its head office or be domiciled in, a reciprocal jurisdiction.

(2) The assuming insurer must have and maintain on an ongoing basis minimum capital and surplus, or its equivalent, calculated on at least an annual basis as of the preceding December 31 or at the annual date otherwise statutorily reported to the reciprocal jurisdiction, and confirmed as set forth in subdivision (7) according to the methodology of its domiciliary jurisdiction, in the following amounts:

(A) Not less than two hundred fifty million dollars (\$250,000,000).

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

(i) minimum capital and surplus equivalents (net of liabilities) or own funds of the equivalent of at least two hundred fifty million dollars (\$250,000,000); and

(ii) a central fund containing a balance of the equivalent of at least two hundred fifty million dollars (\$250,000,000).

(3) The assuming insurer must have and maintain on an ongoing basis a minimum solvency or capital ratio, as applicable, as follows:

(A) If the assuming insurer has its head office or is domiciled in a reciprocal jurisdiction as defined in subsection (b)(1), the ratio specified in the applicable covered agreement.

(B) If the assuming insurer is domiciled in a reciprocal jurisdiction as defined in subsection (b)(2), a risk-based capital (RBC) ratio of three hundred percent (300%) of the authorized control level, calculated in accordance with the formula developed by the NAIC.

(C) If the assuming insurer is domiciled in a reciprocal jurisdiction as defined in subsection (b)(3), after consultation with the reciprocal jurisdiction and considering any recommendations published through the NAIC Committee Process, such solvency or capital ratio as the commissioner determines to be an effective measure of solvency.

(4) The assuming insurer must agree to and provide adequate assurance, in the form of a properly executed Form RJ-1, as set forth in section 17 of this rule, of its agreement to the following:

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

(B) The assuming insurer must consent in writing to the jurisdiction of the courts of this state and to the appointment of the commissioner as agent for service of process. The commissioner may also require that such consent be provided and included in each reinsurance agreement under the commissioner's jurisdiction.

(C) Nothing in this provision shall limit or in any way alter the capacity of parties to a reinsurance agreement to agree to alternative dispute resolution mechanisms, except to the extent such agreements are unenforceable under applicable insolvency or delinquency laws.

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

(E) Each reinsurance agreement must include a provision requiring the assuming insurer to provide security in an amount equal to one hundred percent (100%) of the assuming insurer's liabilities attributable to reinsurance ceded pursuant to that agreement if the assuming insurer resists enforcement of a final judgment that is enforceable under the law of the jurisdiction in which it was obtained or a properly enforceable arbitration award, whether obtained by the ceding insurer or by its legal successor on behalf of its estate, if applicable.

(F) The assuming insurer must confirm that it is not presently participating in any solvent scheme of arrangement, which involves this state's ceding insurers, and agrees to notify the ceding insurer and the commissioner and to provide one hundred percent (100%) security to the ceding insurer consistent with the terms of the scheme, should the assuming insurer enter into such a solvent scheme of arrangement. Such security shall be in a form consistent with the provisions of [IC 27-6-10.1-2\(E\)](#) and [IC 27-6-10.1-3](#) and section 10, 11, or 12 of this rule. For purposes of this rule, the term "solvent scheme of arrangement" means a foreign or alien statutory or regulatory compromise procedure subject to requisite majority creditor approval and judicial sanction in the assuming insurer's home jurisdiction, either to finally commute liabilities of duly noticed classed members or creditors of a solvent debtor, or to reorganize or restructure the debts and obligations of a solvent debtor on a final basis, and which may be subject to judicial recognition and enforcement of the arrangement by a governing authority outside the ceding insurer's home jurisdiction.

(G) The assuming insurer must agree in writing to meet the applicable information filing requirements as set forth in subdivision (5).

(5) The assuming insurer or its legal successor must provide, if requested by the commissioner, on behalf of itself and any legal predecessors, the following documentation to the commissioner:

(A) For the two (2) years preceding entry into the reinsurance agreement and on an annual basis thereafter, the assuming insurer's annual audited financial statements, in accordance with the

applicable law of the jurisdiction of its head office or domiciliary jurisdiction, as applicable, including the external audit report.

(B) For the two (2) years preceding entry into the reinsurance agreement, the solvency and financial condition report or actuarial opinion, if filed with the assuming insurer's supervisor.

(C) Prior to entry into the reinsurance agreement and not more than semi-annually thereafter, an updated list of all disputed and overdue reinsurance claims outstanding for ninety (90) days or more, regarding reinsurance assumed from ceding insurers domiciled in the United States.

(D) Prior to entry into the reinsurance agreement and not more than semi-annually thereafter, information regarding the assuming insurer's assumed reinsurance by ceding insurer, ceded reinsurance by the assuming insurer, and reinsurance recoverable on paid and unpaid losses by the assuming insurer to allow for the evaluation of the criteria set forth in subdivision (6).

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

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

(B) More than fifteen percent (15%) of the assuming insurer's ceding insurers or reinsurers have overdue reinsurance recoverable on paid losses of ninety (90) days or more which are not in dispute and which exceed for each ceding insurer one hundred thousand dollars (\$100,000), or as otherwise specified in a covered agreement.

(C) The aggregate amount of reinsurance recoverable on paid losses which are not in dispute, but are overdue by ninety (90) days or more, exceeds fifty million dollars (\$50,000,000), or as otherwise specified in a covered agreement.

(7) The assuming insurer's supervisory authority must confirm to the commissioner on an annual basis that the assuming insurer complies with the requirements set forth in subdivisions (2) and (3).

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

(d) The commissioner shall timely create and publish a list of reciprocal jurisdictions in the following manner:

(1) A list of reciprocal jurisdictions is published through the NAIC Committee Process. The commissioner's list shall include any reciprocal jurisdiction as defined under subsection (b)(1) and (b)(2) and shall consider any other reciprocal jurisdiction included on the NAIC list. The commissioner may approve a jurisdiction that does not appear on the NAIC list of reciprocal jurisdictions as provided by applicable law, regulation, or in accordance with criteria published through the NAIC Committee Process.

(2) The commissioner may remove a jurisdiction from the list of reciprocal jurisdictions upon a determination that the jurisdiction no longer meets one (1) or more of the requirements of a reciprocal jurisdiction, as provided by applicable law, rule, or in accordance with a process published through the NAIC Committee Process, except that the commissioner shall not remove from the list a reciprocal jurisdiction as defined under subsection (b)(1) and (b)(2). Upon removal of a reciprocal jurisdiction from this list, credit for reinsurance ceded to an assuming insurer domiciled in that jurisdiction shall be allowed, if otherwise allowed pursuant to [IC 27-6-10.1](#) or this rule.

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

(1) If an NAIC accredited jurisdiction has determined that the conditions set forth in subsection (c) have been met, the commissioner has the discretion to defer to that jurisdiction's determination, and add such assuming insurer to the list of assuming insurers to which cessions shall be granted credit in accordance with this subsection. The commissioner may accept financial documentation filed with another NAIC accredited jurisdiction or with the NAIC in satisfaction of the requirements of subsection (c).

(2) When requesting that the commissioner defer to another NAIC accredited jurisdiction's determination, an assuming insurer must submit a properly executed Form RJ-1 and additional information as the commissioner may require. A state that has received such a request will notify other states through the NAIC Committee Process and provide relevant information with respect to the determination of eligibility.

(f) If the commissioner determines that an assuming insurer no longer meets one (1) or more of the requirements under this section, the commissioner may revoke or suspend the eligibility of the assuming

insurer for recognition under this rule in the following manner:

(1) While an assuming insurer's eligibility is suspended, no reinsurance agreement issued, amended, or renewed after the effective date of the suspension qualifies for credit except to the extent that the assuming insurer's obligations under the contract are secured in accordance with section 9 of this rule.

(2) If an assuming insurer's eligibility is revoked, no credit for reinsurance may be granted after the effective date of the revocation with respect to any reinsurance agreements entered into by the assuming insurer, including reinsurance agreements entered into prior to the date of revocation, except to the extent that the assuming insurer's obligations under the contract are secured in a form acceptable to the commissioner and consistent with the provisions of section 9 of this rule.

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

(1) communicate with the ceding insurer, the assuming insurer, and the assuming insurer's supervisory authority that the assuming insurer no longer satisfies one (1) of the conditions listed in subsection (c);

(2) provide the assuming insurer with thirty (30) days from the initial communication to submit a plan to remedy the defect, and ninety (90) days from the initial communication to remedy the defect, except in exceptional circumstances in which a shorter period is necessary for policyholder and other consumer protection;

(3) after the expiration of ninety (90) days or less, as set out in subdivision (2), if the commissioner determines that no action or insufficient action was taken by the assuming insurer, the commissioner may impose any of the requirements as set out in this subsection; and

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

(h) If subject to a legal process of rehabilitation, liquidation, or conservation, as applicable, the ceding insurer, or its representative, may seek and, if determined appropriate by the court in which the proceedings are pending, may obtain an order requiring that the assuming insurer post security for all outstanding liabilities.

(Department of Insurance; [760 IAC 1-56-7.8](#))

SECTION 9. [760 IAC 1-56-8](#) IS AMENDED TO READ AS FOLLOWS:

**[760 IAC 1-56-8](#) Credit reinsurance required by law**

Authority: [IC 27-1-3-7](#); [IC 27-6-10.1-5](#)

Affected: [IC 27-6-10.1](#)

Sec. 8. Under [IC 27-6-10-13](#) [IC 27-6-10.1-3](#), the commissioner of the department of insurance shall allow credit for reinsurance ceded by a domestic insurer to an assuming insurer not meeting the requirements of [IC 27-6-10-8](#), [IC 27-6-10-9](#), [IC 27-6-10-10](#), [IC 27-6-10-11](#), or [IC 27-6-10-11.5](#), [IC 27-6-10.1-2](#), but only with respect to the insurance of risks located in jurisdictions where such reinsurance is required by the applicable law or regulation of that jurisdiction. As used in this section, "jurisdiction" means any state, district, or territory of the United States and any lawful national government.

(Department of Insurance; [760 IAC 1-56-8](#); filed Nov 14, 1994, 9:50 a.m.: 18 IR 872; readopted filed Sep 14, 2001, 12:22 p.m.: 25 IR 531; readopted filed Nov 27, 2007, 4:01 p.m.: [20071226-IR-760070717RFA](#); readopted filed Nov 26, 2013, 3:43 p.m.: [20131225-IR-760130479RFA](#); filed Dec 16, 2013, 9:14 a.m.: [20140115-IR-760130006FRA](#); readopted filed Nov 19, 2019, 9:18 a.m.: [20191218-IR-760190497RFA](#))

SECTION 10. [760 IAC 1-56-9](#) IS AMENDED TO READ AS FOLLOWS:

**[760 IAC 1-56-9](#) Reduction from liability for reinsurance ceded to an unauthorized assuming insurer**

Authority: [IC 27-1-3-7](#); [IC 27-6-10.1-5](#)

Affected: [IC 27-6-10.1](#)

Sec. 9. (a) Under ~~IC 27-6-10-14~~, [IC 27-6-10.1-3](#), the commissioner of the department of insurance shall allow a reduction from liability for reinsurance ceded by a domestic insurer to an assuming insurer not meeting the requirements of [IC 27-6-10-8](#), [IC 27-6-10-9](#), [IC 27-6-10-10](#), [IC 27-6-10-11](#), or ~~IC 27-6-10-11.5~~ [IC 27-6-10.1-2](#) in an amount not exceeding the liabilities carried by the ceding insurer. Such reduction shall be in the amount of funds held by or on behalf of the ceding insurer, including funds held in trust for the exclusive benefit of the ceding insurer, under a reinsurance contract with such assuming insurer as security for the payment of obligations thereunder. Such security must be held in the United States subject to withdrawal solely by, and under the exclusive control of, the ceding insurer or, in the case of a trust, held in a qualified United States financial institution as defined in ~~IC 27-6-10-6~~. [IC 27-6-10.1-4](#).

(b) The security required by subsection (a) may be in the form of any of the following:

(1) Cash.

(2) Securities listed by the Securities Valuation Office of the National Association of Insurance Commissioners, including those deemed exempt from filing as defined by the Purposes and Procedures Manual of the Securities Valuation Office, and qualifying as admitted assets.

(3) Clean, irrevocable, unconditional, and evergreen letters of credit issued or confirmed by a qualified United States institution, as defined in ~~IC 27-6-10-5~~, [IC 27-6-10.1-3](#), effective no later than December 31 of the year for which filing is being made, and in the possession of the ceding company on or before the filing date of its annual statement. Letters of credit meeting applicable standards of issuer acceptability as of the dates of their issuance (or confirmation) shall, notwithstanding the issuing (or confirming) institutions' 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.

(4) Any other form of security acceptable to the commissioner of the department of insurance.

(c) An admitted asset or reduction from liability for reinsurance ceded to an unauthorized assuming insurer under subsection (b)(1), (b)(2), or (b)(3) shall be allowed only when the requirements of section **13 of this rule and the applicable portions of section** 10, 11, or 12 of this rule are met.

*(Department of Insurance; [760 IAC 1-56-9](#); filed Nov 14, 1994, 9:50 a.m.: 18 IR 872; readopted filed Sep 14, 2001, 12:22 p.m.: 25 IR 531; readopted filed Nov 27, 2007, 4:01 p.m.: [20071226-IR-760070717RFA](#); readopted filed Nov 26, 2013, 3:43 p.m.: [20131225-IR-760130479RFA](#); filed Dec 16, 2013, 9:14 a.m.: [20140115-IR-760130006FRA](#); readopted filed Nov 19, 2019, 9:18 a.m.: [20191218-IR-760190497RFA](#))*

SECTION 11. [760 IAC 1-56-10](#) IS AMENDED TO READ AS FOLLOWS:

**[760 IAC 1-56-10](#) Trust agreements qualified under section 9 of this rule**

**Authority:** [IC 27-1-3-7](#); [IC 27-6-10.1-5](#)

**Affected:** [IC 27-6-10.1-4](#)

Sec. 10. (a) The following definitions apply throughout this section:

(1) "Beneficiary" means the entity for whose sole benefit the trust has been established and any successor of the beneficiary by operation of law. If a court of law appoints a successor in interest to the named beneficiary, then the named beneficiary includes and is limited to the court appointed domiciliary receiver (including conservator, rehabilitator, or liquidator).

(2) "Grantor" means the entity that has established a trust for the sole benefit of the beneficiary. When established in conjunction with a reinsurance agreement, the grantor is the unlicensed, unaccredited assuming insurer.

(3) "Obligations", as used in subsection (b)(11), means the following:

(A) Reinsured losses and allocated loss expenses paid by the ceding insurer, but not recovered from the assuming insurer.

(B) Reserves for the following:

(i) Reinsured losses reported and outstanding.

(ii) Reinsured losses incurred but not reported.

(iii) Allocated reinsured loss expenses and unearned premiums.

(b) The following are required conditions:

(1) The trust agreement shall be entered into between the beneficiary, the grantor, and the trustee, which shall be a qualified United States financial institution as defined in ~~IC 27-6-10-6~~. [IC 27-6-10.1-4](#).



- (2) The trust agreement shall create a trust account into which assets shall be deposited.
- (3) All assets in the trust account shall be held by the trustee at the trustee's office in the United States.
- (4) The trust agreement shall provide that:
  - (A) 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;
  - (B) 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;
  - (C) it is not subject to any conditions or qualifications outside of the trust agreement; and
  - (D) it shall not contain references to any other agreements or documents except as provided for under ~~subdivision~~ **subdivisions (11) and (12)**.
- (5) The trust agreement shall be established for the sole benefit of the beneficiary.
- (6) The trust agreement shall require the trustee to do the following:
  - (A) Receive assets and hold all assets in a safe place.
  - (B) 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.
  - (C) Furnish to the grantor and the beneficiary a statement of all assets in the trust account upon its inception and at intervals no less frequently than the end of each calendar quarter.
  - (D) Notify the grantor and the beneficiary within ten (10) days of any deposits to or withdrawals from the trust account.
  - (E) Upon written demand of the beneficiary, immediately take any and all steps necessary to transfer absolutely and unequivocally 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.
  - (F) Allow no substitutions or withdrawals of assets from the trust account, except on written instructions from the beneficiary except that the trustee may, without the consent of but with notice to the beneficiary, upon call or maturity of any trust asset, withdraw such asset upon condition that the proceeds are paid into the trust account.
- (7) The trust agreement shall provide 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.
- (8) The trust agreement shall be made subject to and governed by the laws of the state in which the trust is domiciled.
- (9) The trust agreement shall prohibit invasion of the trust corpus for the purpose of paying compensation to, or reimbursing the expenses of, the trustee. In order for a letter of credit to qualify as an asset of the trust, the trustee shall have the right and the obligation pursuant to the deed of trust or some other binding agreement (as duly approved by the commissioner), to immediately draw down the full amount of the letter of credit 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.
- (10) The trust agreement shall provide that the trustee shall be liable for its own negligence, willful misconduct, or lack of good faith. The failure of the trustee to draw against the letter of credit in circumstances where such draw would be required shall be deemed to be negligence or willful misconduct, or both.
- (11) Notwithstanding other provisions of this rule, when a trust agreement is established in conjunction with a reinsurance agreement covering risks other than life, annuities, and accident and health, where it is customary practice to provide a trust agreement for a specific purpose, such a trust agreement may, notwithstanding any other conditions in this rule, provide that the ceding insurer shall 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, for any of the following purposes:
  - (A) To pay or reimburse the ceding insurer for the assuming insurer's share under the specific reinsurance agreement regarding any losses and allocated loss expenses 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.
  - (B) To make payment to the assuming insurer of any amounts held in the trust account that exceed one hundred two percent (102%) of the actual amount required to fund the assuming insurer's obligations under the specific reinsurance agreement.
  - (C) Where the ceding insurer has received notification of termination of the trust account and where the assuming insurer's entire obligations under the specific reinsurance agreement remain unliquidated and undischarged for ten (10) days prior to the termination date, to withdraw amounts equal to the obligations and deposit those amounts in a separate account, in the name of the ceding insurer in any qualified United States financial institution as defined in [IC 27-6-10-6 IC 27-6-10.1-4](#) apart from its general assets, in trust for such uses and purposes specified in clauses (A) and (B) as may remain executory after such withdrawal and for any period after the termination date.

(12) Notwithstanding other provisions of this rule, when a trust agreement is established to meet the requirements of this section **9 of this rule** in conjunction with a reinsurance agreement covering life, annuities, or accident and health risks, where it is customary to provide a trust agreement for a specific purpose, the trust agreement may provide that the ceding insurer shall 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 any of the following purposes:

(A) To pay or reimburse the ceding insurer for the assuming insurer's share under the specific reinsurance agreement of:

- (i) premiums returned, but not yet recovered from the assuming insurer, to the owners of policies reinsured under the reinsurance agreement on account of cancellations of the policies; and
- (ii) surrenders and benefits or losses paid by the ceding insurer, but not yet recovered from the assuming insurer, under the terms and provisions of the policies reinsured under the reinsurance agreement.

(B) To pay to the assuming insurer amounts held in the trust account in excess of the amount necessary to secure the credit or reduction from liability for reinsurance taken by the ceding insurer.

(C) Where the ceding insurer has received notification of termination of the trust and where the assuming insurer's entire obligations under the specific reinsurance agreement remain unliquidated and undischarged ten (10) days prior to the termination date, to withdraw amounts equal to the assuming insurer's share of liabilities, to the extent that the liabilities have not yet been funded by the assuming insurer, and deposit those amounts in a separate account, in the name of the ceding insurer in any qualified U.S. financial institution apart from its general assets, in trust for the uses and purposes specified in clauses (A) and (B) as may remain executory after withdrawal and for any period after the termination date.

(13) Either the reinsurance agreement or the trust agreement must stipulate 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, and investments permitted by [IC 27](#) or any combination of the above, provided 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 five percent (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 subdivision must be included in the reinsurance agreement.

(c) The following are permitted conditions:

(1) The trust agreement may provide 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 beneficiary of the 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.

(2) The grantor may have the full and unqualified right to vote any shares of stock in the trust account and 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 dividend shall be either forwarded promptly upon receipt to the grantor or deposited in a separate account established in the grantor's name.

(3) The trustee may be given authority to invest, and accept substitutions of, any funds in the account, provided that no investment or 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 that the trustee determines are at least equal in market value to the assets withdrawn and that are consistent with the restrictions in subsection (d)(1)(B).

(4) The trust agreement may provide that the beneficiary may at any time designate a party to which all or part of the trust assets are to be transferred. Such transfer may be conditioned upon the trustee receiving, prior to or simultaneously, other specified assets.

(5) The trust agreement may provide that, upon termination of the trust account, all assets not previously withdrawn by the beneficiary shall, with written approval by the beneficiary, be delivered over to the grantor.

(d) The following are additional conditions applicable to reinsurance agreements:

(1) A reinsurance agreement, which is entered into in conjunction with a trust agreement and the establishment of a trust account, may contain provisions that do the following:

(A) Require the assuming insurer to enter into a trust agreement and to establish a trust account for the benefit of the ceding insurer, specifying what the agreement is to cover.

(B) 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.

(C) Require that all settlements of account between the ceding insurer and the assuming insurer be made in cash or its equivalent.

(D) 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 by the ceding insurer at any time, notwithstanding any other provisions in the reinsurance agreement, and 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, without diminution because of insolvency on the part of the ceding insurer or the assuming insurer, only for the following purposes:

(i) To reimburse the ceding insurer for the assuming insurer's share of premiums returned, but not yet recovered from the assuming insurer, to the owners of policies reinsured under the reinsurance agreement because of cancellations of such policies.

(ii) To reimburse the ceding insurer for the assuming insurer's share of surrenders and benefits or losses paid by the ceding insurer pursuant to the provisions of the policies reinsured under the reinsurance agreement.

(iii) To pay or reimburse the ceding insurer for any other amounts necessary to secure the credit or reduction from liability for reinsurance taken by the ceding insurer.

(iv) To make payment to the assuming insurer of amounts held in the trust account in excess of the amount necessary to secure the credit or reduction from liability for reinsurance taken by the ceding insurer.

(2) The reinsurance agreement may also contain provisions that do the following:

(A) Give the assuming insurer the right to seek approval from the ceding insurer to withdraw from the trust account all or any part of the trust assets and transfer those assets to the assuming insurer, provided:

(i) the assuming insurer shall, at the time of withdrawal, replace the withdrawn assets with other qualified assets having a market value equal to the market value of the assets withdrawn so as to maintain at all times the deposit in the required amount; or

(ii) after withdrawal and transfer, the market value of the trust account is not less than one hundred two percent (102%) of the required amount.

The ceding insurer shall not unreasonably or arbitrarily withhold its approval.

(B) Provide for the return of any amount withdrawn in excess of the actual amounts required for subdivision (1)(D) and for interest payments at a rate not in excess of the prime rate of interest on such amounts.

(C) Permit the award by any arbitration panel or court of competent jurisdiction of:

(i) interest at a rate different from that provided in clause (B);

(ii) court or arbitration costs;

(iii) attorney's fees; and

(iv) any other reasonable expenses.

(3) A trust agreement may be used to reduce any liability for reinsurance ceded to an unauthorized assuming insurer in financial statements required to be filed with the department of insurance in compliance with this rule when established on or before the date of filing of the financial statement of the ceding insurer. Further, the reduction for the existence of an acceptable trust account may be up to the current fair market value of acceptable assets available to be withdrawn from the trust account at that time, but such reduction shall be no greater than the specific obligations under the reinsurance agreement that the trust account was established to secure.

(4) Notwithstanding the effective date of this rule, any trust agreement or underlying reinsurance agreement in existence prior to December 31, 2013, will continue to be acceptable until December 31, 2014, at which time the agreements will have to be in full compliance with this rule for the trust agreement to be acceptable.

(5) The failure of any trust agreement to specifically identify the beneficiary as defined in subsection (a)(1) shall not be construed to affect any actions or rights that the commissioner of the department of insurance may take or possess pursuant to the provisions of the laws of this state.

*(Department of Insurance; [760 IAC 1-56-10](#); filed Nov 14, 1994, 9:50 a.m.: 18 IR 873; readopted filed Sep 14, 2001, 12:22 p.m.: 25 IR 531; readopted filed Nov 27, 2007, 4:01 p.m.: [20071226-IR-760070717RFA](#); readopted filed Nov 26, 2013, 3:43 p.m.: [20131225-IR-760130479RFA](#); filed Dec 16, 2013, 9:14 a.m.: [20140115-IR-760130006FRA](#); errata filed Feb 26, 2014, 8:59 a.m.: [20140326-IR-760140064ACA](#); readopted filed Nov 19, 2019, 9:18 a.m.: [20191218-IR-760190497RFA](#))*

SECTION 12. [760 IAC 1-56-11](#) IS AMENDED TO READ AS FOLLOWS:

**[760 IAC 1-56-11](#) Letters of credit qualified under section 9 of this rule**

**Authority:** [IC 27-1-3-7](#); [IC 27-6-10.1-5](#)

**Affected:** [IC 27-6-10.1-4](#)

Sec. 11. (a) The letter of credit must be clean, irrevocable, and unconditional and issued or confirmed by a qualified United States financial institution as defined in ~~[IC 27-6-10-5](#)~~. [IC 27-6-10.1-4](#). The letter of credit shall:

- (1) contain an issue date and date of expiration;
- (2) 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; and
- (3) indicate that it is not subject to any condition or qualifications outside of the letter of credit.

In addition, the letter of credit itself shall not contain reference to any other agreements, documents, or entities, except as provided in subsection (i)(1). As used in this section, "beneficiary" means the domestic insurer for whose benefit the letter of credit has been established and any successor of the beneficiary by operation of law. If a court of law appoints a successor in interest to the named beneficiary, then the named beneficiary includes, and is limited to, the court appointed domiciliary receiver (including conservator, rehabilitator, or liquidator).

(b) The heading of the letter of credit may include a boxed section that contains 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) The letter of credit shall contain a statement to the effect that the obligation of the qualified United States financial institution under the letter of credit is in no way contingent upon reimbursement with respect thereto.

(d) The term of the letter of credit shall be for at least one (1) year and shall contain an evergreen clause that prevents the expiration of the letter of credit without due notice from the issuer. The evergreen clause shall provide for a period of not less than a thirty (30) day notice prior to expiry date or nonrenewal.

(e) The letter of credit shall state whether it is subject to and governed by the laws of this state or the Uniform Customs and Practice for Documentary Credits of the International Chamber of Commerce Publication 600 (UCP 600) or International Standby Practices of the International Chamber of Commerce Publication 590 (ISP98), or any successor publication, and all drafts drawn thereunder shall be presentable at an office in the United States of a qualified United States financial institution.

(f) If the letter of credit is made subject to the Uniform Customs and Practice for Documentary Credits of the International Chamber of Commerce (Publication 500), or any successor publication, then the letter of credit shall specifically address and make provisions for an extension of time to draw against the letter of credit in the event that one (1) or more of the occurrences specified in Article 17 of Publication 500, or any successor publication, occur.

(g) The letter of credit shall be issued or confirmed by a qualified United States financial institution authorized to issue letters of credit under ~~[IC 27-6-10-5](#)~~. [IC 27-6-10.1-4](#).

(h) If the letter of credit is issued by a qualified United States financial institution authorized to issue letters of credit, other than a qualified United States financial institution as described in subsection (g), then the following additional requirements shall be met:

- (1) The issuing qualified United States financial institution shall formally designate the confirming qualified United States financial institution as its agent for the receipt and payment of the drafts.
- (2) The evergreen clause shall provide for a thirty (30) day notice prior to expiration date for nonrenewal.

(i) Reinsurance agreement provisions shall be as follows:

(1) The reinsurance agreement in conjunction with which the letter of credit is obtained may contain provisions that do the following:

- (A) Require the assuming insurer to provide letters of credit to the ceding insurer and specify what they are to cover.
- (B) Stipulate that the assuming insurer and the ceding insurer agree that the letter of credit provided by the assuming insurer pursuant to the provisions of the reinsurance agreement may be drawn upon at any time, notwithstanding any other provision in the agreement, and shall be utilized by the ceding insurer or its successors in interest only for one (1) or more of the following reasons:

- (i) To reimburse the ceding insurer for the assuming insurer's share of premiums returned to the owners of policies reinsured under the reinsurance agreement on account of cancellations of such policies.
- (ii) To reimburse the ceding insurer for the assuming insurer's share of surrenders and benefits or losses paid by the ceding insurer under the terms and provisions of the policies reinsured under the reinsurance agreement.

(iii) To pay any other amounts necessary to secure the credit or reduction from liability for reinsurance taken by the ceding insurer.

(iv) Where the letter of credit will expire without renewal or be reduced or replaced by a letter of credit for a reduced amount and where the assuming insurer's entire obligations under the reinsurance agreement remain unliquidated and undischarged ten (10) days prior to the termination date, to withdraw amounts equal to the assuming insurer's share of the liabilities, to the extent that the liabilities have not yet been funded by the assuming insurer and exceed the amount of any reduced or replacement letter of credit, and deposit those amounts in a separate account in the name of the ceding insurer in a qualified U.S. financial institution apart from its general assets, in trust for such uses and purposes specified in items (i) through (iii) as may remain after withdrawal and for any period after the termination date.

(C) This subdivision shall be applied without diminution because of insolvency on the part of the ceding insurer or assuming insurer.

(2) Nothing contained in subdivision (1) shall preclude the ceding insurer and assuming insurer from providing for either or both of the following:

(A) An interest payment, at a rate not in excess of the prime rate of interest, on the amounts held under subdivision (1)(B).

(B) The return of any amounts drawn down on the letters of credit in excess of the actual amounts required in subdivision (1)(B) or any amounts that are subsequently determined not to be due.

*(Department of Insurance; [760 IAC 1-56-11](#); filed Nov 14, 1994, 9:50 a.m.: 18 IR 876; errata filed Mar 9, 1995, 3:00 p.m.: 18 IR 1837; readopted filed Sep 14, 2001, 12:22 p.m.: 25 IR 531; readopted filed Nov 27, 2007, 4:01 p.m.: [20071226-IR-760070717RFA](#); readopted filed Nov 26, 2013, 3:43 p.m.: [20131225-IR-760130479RFA](#); filed Dec 16, 2013, 9:14 a.m.: [20140115-IR-760130006FRA](#); readopted filed Nov 19, 2019, 9:18 a.m.: [20191218-IR-760190497RFA](#))*

SECTION 13. [760 IAC 1-56-13](#) IS AMENDED TO READ AS FOLLOWS:

### **[760 IAC 1-56-13](#) Reinsurance contract**

**Authority:** [IC 27-1-3-7](#); [IC 27-6-10.1-5](#)

**Affected:** [IC 27-6-10.1](#); [IC 27-9](#)

Sec. 13. Credit will not be granted, **nor an asset or reduction from liability allowed**, to a ceding insurer for reinsurance effected with assuming insurers meeting the requirements of section 4, 5, 6, 7, 7.5, **7.8**, or **8 9** of this rule or otherwise in compliance with ~~[IC 27-6-10-7](#)~~ [IC 27-6-10.1-2](#) after the adoption of this rule unless the reinsurance agreement includes the following:

(1) A proper insolvency clause, which stipulates that reinsurance is payable directly to the liquidator or successor without diminution regardless of the status of the ceding company, under [IC 27-9](#).

(2) A provision under ~~[IC 27-6-10-12](#)~~, [IC 27-6-10.1-3](#), whereby the assuming insurer, if an unauthorized assuming insurer has:

(A) submitted to the jurisdiction of an alternative dispute resolution panel or court of competent jurisdiction within the United States;

(B) agreed to comply with all requirements necessary to give such court or panel jurisdiction;

(C) designated an agent upon whom service of process may be effected; and

(D) agreed to abide by the final decision of such court or panel.

(3) A proper reinsurance intermediary clause, if applicable, that stipulates that the credit risk for the intermediary is carried by the assuming insurer.

*(Department of Insurance; [760 IAC 1-56-13](#); filed Nov 14, 1994, 9:50 a.m.: 18 IR 877; readopted filed Sep 14, 2001, 12:22 p.m.: 25 IR 531; readopted filed Nov 27, 2007, 4:01 p.m.: [20071226-IR-760070717RFA](#); readopted filed Nov 26, 2013, 3:43 p.m.: [20131225-IR-760130479RFA](#); filed Dec 16, 2013, 9:14 a.m.: [20140115-IR-760130006FRA](#); readopted filed Nov 19, 2019, 9:18 a.m.: [20191218-IR-760190497RFA](#))*

SECTION 14. [760 IAC 1-56-17](#) IS ADDED TO READ AS FOLLOWS:

Sec. 17. Form RJ-1, Certificate of Reinsurer Domiciled in Reciprocal Jurisdiction, shall be as follows:

**FORM RJ-1**

**CERTIFICATE OF REINSURER DOMICILED IN RECIPROCAL JURISDICTION**

I, (name of officer, title of officer) of (name of assuming insurer), the assuming insurer under a reinsurance agreement with one or more insurers domiciled in (name of state), in order to be considered for approval in this state, hereby certify that (name of assuming insurer) ("Assuming Insurer"):

1. Submits to the jurisdiction of any court of competent jurisdiction in the State of Indiana for the adjudication of any issues arising out of the reinsurance agreement, 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. The assuming insurer agrees that it will include such consent in each reinsurance agreement, if requested by the commissioner. 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 to arbitrate their disputes if such an obligation is created in the agreement, except to the extent such agreements are unenforceable under applicable insolvency or delinquency laws.
2. Designates the Insurance Commissioner of the State of Indiana as its lawful attorney in and for the State of Indiana upon whom may be served any lawful process in any action, suit or proceeding in this state arising out of the reinsurance agreement instituted by or on behalf of the ceding insurer.
3. Agrees to pay all final judgments, wherever enforcement is sought, obtained by a ceding insurer, that have been declared enforceable in the territory where the judgment was obtained.
4. Agrees to provide prompt written notice and explanation if it falls below the minimum capital and surplus or capital or surplus ratio, or if any regulatory action is taken against it for serious noncompliance with applicable law.
5. Confirms that it is not presently participating in any solvent scheme of arrangement, which involves insurers domiciled in the State of Indiana. If the assuming insurer enters into such an arrangement, the assuming insurer agrees to notify the ceding insurer and the commissioner, and to provide 100% security to the ceding insurer consistent with the terms of the scheme.
6. Agrees that in each reinsurance agreement it will provide security in an amount equal to 100% of the assuming insurer's liabilities attributable to reinsurance ceded pursuant to that agreement if the assuming insurer resists enforcement of a final U.S. judgment, that is enforceable under the law of the territory in which it was obtained, or a properly enforceable arbitration award whether obtained by the ceding insurer or by its resolution estate, if applicable.
7. Agrees to provide the documentation in accordance with [760 IAC 1-56-7.8\(c\)\(5\)](#), if requested by the commissioner.

Dated: \_\_\_\_\_

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

BY: \_\_\_\_\_

(name of officer)

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

(Department of Insurance; [760 IAC 1-56-17](#))

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