



COMMONWEALTH OF PUERTO RICO  
OFFICE OF THE COMMISSIONER OF INSURANCE

August 28, 2006

RULING LETTER: N-A-8-76-2006

TO ALL DOMESTIC INSURERS, BROKERS, AGENTS, GENERAL AGENTS,  
ADJUSTERS, CONSULTANTS AND SOLICITORS AUTHORIZED TO TRANSACT  
INSURANCE EN PUERTO RICO

**NEW CHAPTER 9 OF THE PUERTO RICO INSURANCE CODE**

Dear Sirs and Madams:

Public Law No. 10 January 19, 2006, (hereinafter, "Law 10"), among other matters, repealed Chapter 9 of the Puerto Rico Insurance Code) and adopted a new Chapter 9.

The new Chapter 9 establishes the requirements for individuals seeking to obtain a license to underwrite insurance in Puerto Rico, and establishes the guidelines and rules for promoting fair competition.

Article 12 of Law 10 provides that the law will enter into effect immediately. However, on April 27, 2006, Public No. 78 was approved to postpone the effective date of Law 10 for 120 days from the date of approval of the law. Consequently, the provisions of Law 10 regarding the adoption of a new Chapter 9 became effective as of May 20, 2006.

We are issuing this Ruling Letter for the purpose of clarifying questions and concerns brought to the attention of the Office of the Commissioner of Insurance (hereinafter OCI) by some components of the insurance industry regarding the implementation of the new Chapter 9, as well as for establishing guidelines that will allow for an orderly transition and fulfillment of the new requirements of Chapter 9.

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## Intermediaries in the Distribution of Insurance Products

Public Law 10 **provides** that the terms "broker" and "agent" as used in the previous Chapter 9, be substituted with the terms "producer" and "authorized representative", respectively. This means that "producer", as the term is defined in Law 10, is equivalent to "broker". If a producer is appointed by an insurer, by means of a contract, the producer becomes an "authorized representative" of the latter, which is equivalent to being an agent. This is the case, because under Article 9.020 of the Insurance Code, by transacting insurance business, "the producer will not act as the authorized representative of the insurer, except when there is an appointment extended according to the provisions of Article 9.063 of this Chapter". (Our emphasis) Therefore, the producer, by the producer's acts, does not obligate the insurer with regard to an insurance risk, unless the producer becomes the authorized representative of the insurer for transactions involving one or more kinds of insurance for which the producers holds a license.

Furthermore, "authorized representative", under the provisions of Article 9.021 of the Insurance Code is defined as "... a producer that subscribes a contract with an insurer to negotiate insurance on his behalf, be it as employee or as independent contractor." (Our emphasis.)

Insurers who wish to appoint a producer as an authorized representative shall do so using the form for appointing authorized representatives designed by the OCI for that purpose, which is available on our website.<sup>1</sup> The form shall be filed **electronically** with the OCI within fifteen (15) days from the date of the execution of a contract for such purpose. Although it is not required that a copy of the contract be filed with the OCI, the insurer shall have the document available for inspection by the OCI on request.

Likewise, the insurer shall notify the OCI by **email** of any cancellation of a contract with an authorized representative, within fifteen (15) days from the date of cancellation, using the form for cancelling the appointment of an authorized producer designed by the OCI and available on our website.<sup>2</sup>

**It is important to make it very clear that once a producer decides to obtain an appointment as an "authorized representative," he or she may NO longer act as an authorized producer. If the insurer cancels the appointment of an authorized representative, the person may request that a producer license be issued, which will become effective after the OCI receives the cancellation of appointment form from the insurer.**

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<sup>1</sup> See the address on page 7 of this Ruling Letter.

<sup>2</sup> See the last page of this Ruling Letter.

For the purposes of implementing Law 10, beginning October 1, 2006, licensees holding an agent license will renew as authorized representatives, provided that the OCI receives one or more appointments along with the renewal application<sup>3</sup>, as provided in Article 9.063 of the Insurance Code. If such appointment is not received along with the renewal application it will be deemed that the application is for renewal of a producer license, so that the application should include the corresponding payment and the evidence of financial responsibility as required under Article 9.200 of the Insurance Code.

Likewise, licensees who currently hold a broker license should renew as producers, unless the OCI receives one or more appointments along with the renewal application, as provided in Article 9.063 of the Insurance Code, in which case the license will be renewed as an authorized representative.

### **General Agents**

Article 9.040 of the Insurance Code transfers the definition of "general agent" from Chapter 3 to Chapter 9, and provides for the general powers and operational functions with regard to servicing policies that may be contracted between the general agent and the insurer.

In this sense, the general agent is an operational arm of the insurer and as such shall be mindful of the insurer's interest. This is so much so that among the most important functions of the general agent are accepting applications and accepting business solicited or transacted by producers; calculating rates; issuing, ratifying and keeping records of endorsements; processing cancellations of policies; processing payments of commissions to producers and selecting risk according to the insurer's underwriting guidelines, among others. However, Section 9.040 of the Insurance code allows of an agent to hold a "producer" license at the same time even when the interests that each is called on to protect are incompatible. An insurance producer, unlike a general agent, answers to the insured and has duties to perform on behalf of the insured, as provided in Section 9.022 of the Insurance Code.

In view of the possibility that the incompatibility of interests could be prejudicial and a source of loss for consumers of insurance and damage the confidence consumers should have in the individuals who hold an insurance producer license, the OCI will issue producer licenses to general agents only if they are acting as authorized representatives, since only under those circumstances would the producer's work not be incompatible with the work of the general agent.<sup>4</sup>

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<sup>3</sup> As proof of appointment as an authorized representative, along with the renewal application you must submit the form designed by the OIC for this purpose, which is available on our website.

<sup>4</sup> Authorized representatives, unlike producers, contract with the insurer to transact insurance business on behalf of the insurer, Section 9.021 of the Insurance Code.

### **Incompatibility of licenses**

Under the provisions of Section 9.060, adopted in Law 10, no license will be issued to one person for more than one of the following classifications:

- Producer
- Solicitor
- Adjuster
- Consultant
- General Agent

Nevertheless, said section establishes certain exceptions, to wit, that a general agent may hold a producer license, provided that the agent is acting as an authorized representative. Likewise, an individual who is acting as an "authorized representative" may hold a dealer-broker license and both producers and authorized representatives may hold surplus lines broker licenses.

If there are dual licenses that are incompatible with each other under the aforementioned Section 9.060, such licenses will remain in effect until their renewal date, at which time the licensee will have to decide which license will be kept in effect. In sum, under the current legal situation, only the following combinations of licenses are permitted;

- a. Authorized representative - general agent, broker-dealer, and surplus lines broker.
- b. Producer - surplus lines brokers, negotiate insurance business.

### **Commissions**

The new Section 9.062 of the Insurance Code provides that payment of any commission or additional compensation to the authorized calculated commission, including, but not limited to, contingent commissions, may be only paid according to the standards established for that purpose by the OCI through rules or regulations. It is further provided that no person may accept as an incentive with regard to an insurance transaction any commission in excess of the calculated and authorized commission, according to the above, nor may any other type of prohibited emolument or incentive be accepted.

Based on the above, any compensation paid that does not comply with the provisions of this section or the respective regulations may be considered and illegal incentive prohibited under Section 27.100 of the Insurance Code.

### **Licenses for partnerships and corporations**

Section 9.160 of the Insurance Code provides that a partnership or corporation may only be issued a producer, general agent, or adjuster-consultant license.

One of the changes established in this Section is that when a person is designated to act as the authorized person for the license of a partnership or corporation, the person may not also represent another partnership or corporation, nor obtain a license of any kind in his or her personal capacity, until the appointment to act as an authorized representative of the partnership or corporation has expired.

It is further established that in the case of a corporation, only one director will need to appear on the license and comply with the requirements of the license as though he or she were an individual licensee, as a minimum requirement for the corporation to begin operations. Before it had been required that at least two directors should comply with such requirements.

Another of the changes provided in this section, as we mentioned before, is that a partnership or corporation is permitted to obtain a consultant license. As you will recall, previously only a natural person could hold a consultant's license.

Regarding the requirements provided for in Section 9.160 for the remaining directors, officers, and shareholders having a substantial financial interest in the corporation, we must make it clear that they shall comply with the requirements of Section 9.070 and not those of Section 9.170, as established in said section.

### **General Requirements for a Producer License**

Under Law 10, the age requirement for holding a producer license, as such or as an authorized representative, is being 21 years of age or having been legally emancipated.<sup>5</sup> With regard to the requirement of evidence of financial responsibility, the requirement will not be applicable to a producer who is an authorized representative, in view of the fact that the insurer or insurers on behalf of which the insurance contracts are being transacted will be liable for the acts of said producer.

### **Annual license fee**

Article 9 of Law 10 provides that "the terms agent and broker, used in the sections of the Insurance Code where the terms are mentioned and that have not been amended by this Law, will be substituted with the term "producer." It is further provided in the article that when the term "agent" is substituted for "producer" the term will have the

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<sup>5</sup> Section 9.170 of the Insurance Code.

meaning set forth in Section 9.021, *supra*.

Further to the above, the annual producer license fee will be:

<b>Individual Producer</b>	<b>525.00</b>
<b>Corporate Producer</b>	
<b>(i) with a premium volume of less than one million dollars</b>	<b>\$ 1,051.00</b>
<b>(ii) with a premium volume of more than one million dollars</b>	<b>\$ 2,103.00</b>
<b>Authorized representative</b>	
<b>(i) individual</b>	<b>\$ 157.00</b>
<b>(ii) corporate</b>	<b>\$ 315.00</b>

With regard to payment of licenses of partnerships and corporations, under paragraph (4) of Section 9.160 of the Insurance Code the OCI will collect for each individual in excess of three (3) the fees provided for in Section 7.010 of the Code for an individual license. Thus, for example, a corporation holding an authorized representative license under which the corporation should pay an annual fee of \$315 and with five (5) designees on the license, would pay \$157 for each additional person. That is to say, the amount to be paid would be  $\$315 + \$157 + \$157 = \$629$ . As an exception to the above, the Section provides that in the case of an adjuster or consultant license, the Commissioner may collect for each person in excess of one (1) who may be designated in the partnership or corporation license, the fees set forth in Section 7.010, *supra*, for an adjuster or consultant license, as the case may be.

### **Provisional Licenses**

Law 10, as approved on January 19, 2006 and amended on April 27, 2006, did not grant the OCI the power to issue a provisional license to an applicant while the applicant was pending the licensing examination for a regular insurance license. Therefore, applications for provisional licenses that had not been received before May 20, 2006 (the date on which Law 10 entered into effect), may not be processed.

Law No. 143, approved on August 2, 2006 ("Law 143"), amended Section 9.440 of the Insurance Code to once again grant the OCI the power to issue provisional producer licenses, as an authorized representative, to applicants for regular insurance licenses who are waiting to take the corresponding examination. Under said amendment, applicants for a provisional license should submit evidence that they are acting as

representatives of an insurer that is authorized to transact insurance business in Puerto Rico, in which case the applicant would not have to submit evidence of financial responsibility as required in Section 9.200 of the Insurance Code.

Likewise, Law 143 amends Section 9.450 of the Insurance Code to extend the effective period of the provisional license for 180 day to be counted from the day of issue or on receipt of a notice that the applicant failed the examination for the regular insurance license, whichever occurs first.

### **License Applications**

The application and renewal forms were revised and are available at our website [www.ocs.gobierno.pr](http://www.ocs.gobierno.pr), under Producer Service/forms.

The forms and orientation about the forms are also available at our Customer Service Unit from Monday to Friday from 8:00 AM to 3:00 PM. For internal administrative reasons related to processing calls, consultations, and applications we receive, the visiting public will not be seen after 3:00 PM, except by prior appointment.

Strict compliance of the provisions of this letter is required of all licensees and other components of the insurance industry.

Very truly yours,

SIGNED

Dorelisse Juarbe-Jiménez  
Commissioner of Insurance