



GOVERNMENT OF PUERTO RICO
Office of the Commissioner of Insurance

April 9, 2012

RULING LETTER NO.: 2012-137-D(E)

EXCHANGE OF INFORMATION

Dear Sirs and Madams:

The Office of the Commissioner of Insurance of Puerto Rico is charged by the government with administering public policy related to the insurance business in Puerto Rico, which requires us to reasonably interpret the Puerto Rico Insurance Code.

Section 2.030(1) of the Puerto Rico Insurance Code, 26 P.R.L.A. sec. 235(1), establishes that the Commissioner of Insurance of Puerto Rico has the express authority as conferred by the provisions of this Code or that are reasonably implicit in said provisions.

Chapter 45 of the Puerto Rico Insurance Code, regarding Risk-Based Capital, provides as follows in the pertinent part of Section 45.090 of the Puerto Rico Insurance Code, 26 P.R.L.A. sec. 4509, titled Confidentiality:

"(1) All risk-based capital plans and all corrective orders issued by the Commissioner pursuant to this chapter, or which is under the power or control of the Office of the Insurance Commissioner, shall not be open to public inspection.

(2) In order to be able to discharge his/her duties, the Commissioner:

- (a) May share documents, materials or other information - including documents, materials or information not open to public inspection, as provided in subsection (1) of this section - with other Commonwealth, federal and international agencies, with the NAIC [National Association of Insurance Commissioners] and its branches and subsidiaries, and with Commonwealth, federal and

international law enforcement authorities provided the latter do not render these open to public inspection.

- (b) May receive documents, materials or information - including documents, materials or information treated by other agencies as confidential and privileged information - from the NAIC [National Association of Insurance Commissioners] and its branches and subsidiaries and from regulatory or law enforcement officers from other foreign or local jurisdictions, and he/she shall maintain the confidentiality or the privilege of any document, material or information he/she has received whereby it is specified or construable that the same is confidential or privileged pursuant to the laws of the jurisdiction originating the document, material or information.
- (3) It shall not be construed that exchanging information with or furnishing information to the Commissioner, as set forth in subsection (2) of this section, constitutes a waiver of any privilege whatsoever, or that such action alters the category of a document, material or information so as to render the same open to public inspection."

Furthermore, Chapter 61 of the Puerto Rico Insurance Code, on International Insurers and Reinsurers, establishes the following in Section 61.250, 26 P.R.L.A. sec. 4325, titled Confidentiality:

- "(1) The information submitted to the Commissioner according to this chapter, and the regulations adopted thereunder by the Commissioner, shall be maintained confidential, except:
 - (a) When the disclosure of said information is required by law or court order, or
 - (b) by formal request from a domestic or foreign government agency in the exercise of its supervisory duties, when the Commissioner has grounds to believe that it is in the best public interest. In such cases, the information shall be provided or under a binding agreement with the government agency concerned to maintain the confidential nature of said information, provided that this exception shall in no case be extended to information regarding the clients of the international insurer.

- (c) The Commissioner may, at his/her discretion, disclose said information in all cases in which the disclosure is made for purposes of assisting the Commissioner or any other authority in the exercise of regulatory duties."

Accordingly, it is our view that the spirit of the law is that the provisions of Chapters 45 and 61 of the Puerto Rico Insurance Code cited above, regarding receiving and sharing documents, materials or information - including those that are not subject to public inspection - and confidentiality, are applicable to all documents, materials or information received and shared by the Commissioner of Insurance, and not only those related to risk-based capital or international insurers or reinsurers.

In view of the above, the Commissioner of Insurance, in handling any kind of information may:

- A. Enter into agreements or memorandums of understanding to regulate the exchange and/or use of information.
- B. Share documents, materials or other information, including documents, materials or other confidential and privileged information with other regulatory entities and enforcement agencies, whether they are state, federal, foreign or international bodies; the National Association of Insurance Commissioners (NAIC) and its affiliates and subsidiaries, subject to the receiving party agreeing to maintain the confidential and privileged status of such.
- C. Receive documents, materials or other information, including documents, materials or other confidential and privileged information, from other regulatory entities and enforcement agencies, whether they are state, federal, foreign or international bodies; the NAIC and its affiliates and subsidiaries. The Commissioner of Insurance shall maintain the confidential and privileged status of any document, material or other information received, by virtue of an agreement or memorandum of understanding for the exchange of information entered into under this Rule with notice and understanding that the document, material or other information is confidential or privileged under the laws of the jurisdiction of origin.
- D. The Office of the Commissioner of Insurance may only use documentation, materials or other information received under an agreement or memorandum of understanding related to the exchange of information for the purpose indicated in the request form and in the fulfillment of its functions.

E. If a request is received for confidential information obtained under an agreement or memorandum of understanding related to the exchange of information, the Office of the Commissioner of Insurance will request prior permission from the regulatory or international body that provided the information. In the event that it is a judicial request and consent is not granted, the Office of the Commissioner of Insurance will employ all reasonable legal means available to the Office to oppose the request or to maintain the confidentiality of the information.

Very truly yours,

SIGNED

Ramón L. Cruz Colón, CPCU, ARe, AU
Commissioner of Insurance