

Government of Puerto Rico
OFFICE OF THE COMMISSIONER OF INSURANCE OF PUERTO RICO
Guaynabo, Puerto Rico

RULE 98
CREDIT FOR REINSURANCE

SECTION 1 - LEGAL BASIS

The Office of the Commissioner of Insurance of Puerto Rico adopts Rule No. 98 of the Regulations of the Puerto Rico Insurance Code, in accordance with the powers and faculties conferred in Public Law No. 77, enacted on June 19, 1957, as amended, 26 L.P.R.A. sec. 101, *et seq.*, known as the Puerto Rico Insurance Code, and the provisions of Public Law No. 170, enacted on August 12, 1988, as amended, known as the Uniform Administrative Procedures Act of Puerto Rico, 3 L.P.R.A. sec. 2101, *et seq.*

SECTION 2 – PURPOSE

The purpose of this rule is to establish the procedural rules and requirements that the Commissioner deems necessary to protect the interests of the insured, claimants, ceding insurers, assuming insurers, and the general public with regard to reinsurance transactions.

SECTION 3 – DEFINITIONS

The following terms will have the meanings set forth below, except when a different meaning may be clearly inferred from the text of any section of this Rule.

- A. Joint funds arrangements – means reinsurance agreements between two or more affiliated companies in which the participating companies share the underwriting proceeds on a predetermined basis.
- B. Accredited assuming insurer – means a reinsurer that is not authorized in Puerto Rico, which, under applicable provisions, may assume reinsurance.
- C. A clean, unconditional, and irrevocable letter of credit:
 - (i) Makes no reference to and is not conditioned on any other agreement, document or contract;
 - (ii) Provides that presentation of a sight draft, without any other document, will be sufficient for drawing funds on the letter of credit, and
 - (iii) May not be modified or revoked without the consent of the ceding insurer.

- D. United States – as defined in Section 3.020 of the Insurance Code, means United States of America, and when used to indicate location, also includes the territories of Hawaii, Alaska, and the District of Columbia.

SECTION 4– CREDITS FOR DOMESTIC CEDING INSURERS IN STATUTORY FINANCIAL STATEMENTS.

A reinsurance credit will be granted in the form of an asset or a reduction of liabilities for ceded reinsurance only if the assuming insurer complies with the requirements set forth in paragraphs A, B, C, D or E of this Section. The credit under Paragraphs A, B or C will only be allowed for types or classes of insurance for which the assuming insurer is licensed or is authorized to underwrite or assume insurance its state of domicile, or in the case of a subsidiary in the United States of a foreign assuming insurer, in the State in which the assuming insurer entered the United States and where the assuming insurer was granted a license to transact insurance or reinsurance business. The credit under paragraphs C or D will be allowed, only if the requirements set forth in paragraph F have been complied with.

- A. The credit will be allowed when the reinsurance is ceded to an assuming insurer holding a license to transact insurance or reinsurance business in Puerto Rico.
- B. (1) The credit will be allowed when the reinsurance is ceded to an assuming insurer accredited as such in Puerto Rico, subject to compliance with the following requirements:
- (a) Filing with the Commissioner evidence that the assuming insurer is submitting to the jurisdiction of Puerto Rico;
 - (b) Submitting to the authority of the Commissioner of Puerto Rico for the examination of its books and records;
 - (c) Holding a license to transact insurance or reinsurance business in a least one state, or in the case of a subsidiary in the United States of a foreign assuming insurer, the state of entry and authorization to transact insurance or reinsurance business in a least one state;
 - (d) Annually filing with the Commissioner a copy of the annual financial statement filed in the state of domicile and a copy of the most recent audited financial statement; and
 - (i) Maintaining a policyholder surplus of an amount of no less than \$20,000,000, and accreditation has not been denied by the Commissioner within ninety (90) days of the filing; or
 - (ii) Maintaining a policyholder surplus of an amount of less than \$20,000,000 and accreditation has been approved by the Commissioner.

- (2) The credit will not be allowed for a domestic ceding insurer if the accreditation of the assuming insurer has been revoked by the Commissioner, upon written notice and hearing.
- C.
 - (1) The credit will be allowed when the reinsurance is ceded to an assuming insurer domiciled in a state whose requirements for the reinsurance credit are substantively similar to the requirements set forth in this Rule, or in the case of a subsidiary in the United States of a foreign assuming insurer, the state of entry to the United States of the assuming insurer or its subsidiary and
 - (a) Maintaining a policyholder surplus of an amount of no less than \$20,000,000; and
 - (b) Submitting to the authority of the Commissioner of Puerto Rico for the examination of its books and records.
 - (2) The requirement of subparagraph (1)(a) will not be applicable to reinsurance ceded and assumed through a joint fund in a holding company system.
- D.
 - (1) The credit will be allowed when the reinsurance is ceded to an assuming insurer that maintains a trust with a qualified financial institution in the United States for the payment of valid claims of its ceding insurers in the United States or Puerto Rico, including their assigns and successors in interest. So that the Commissioner may determine whether the trust has sufficient funds, the assuming insurer must file an annual financial report as established by the NAIC for licensed insurers. The assuming insurer will allow the Commissioner to examine its books and records, and will defray the cost of such examination.
 - (2)
 - (a) No reinsurance credit will be granted under this Paragraph, unless the contract or agreement establishing the trust and the amendments thereto have been approved by:
 - (i) the Commissioner of the state of domicile of the trust; or
 - (ii) the Commissioner of another state, who under the terms of the trust contract has accepted regulatory oversight with regard to said trust.
 - (b) Furthermore, the trust contract or agreement and its amendments must be filed with the Commissioner of the state of domicile of each of the beneficiaries of the ceding insurer of the trust. The trust contract or agreement shall provide that contested claims will be valid and executable when final judgment is entered by any Court of competent jurisdiction in the United States or Puerto Rico. The trust will vest legal title of its assets in its trustees, for the benefit of the ceding insurers of

the assuming insurer in the United States or Puerto Rico and the assigns and successors in interest of the ceding insurer. The trust and the assuming insurer will be subject to examination, as determined by the Commissioner.

- (c) The trust will operate for as long as the assuming insurer has obligations pending under reinsurance contracts related to the trust. No later than March 31 of each year, the trustee will file an annual financial report with the Commissioner, listing the investments of the trust as of the closing of the previous year and will certify the date of termination of the trust, if termination is planned, or certify that the trust will not terminate before December 31 of the current year.
- (3) The following requirements will be applicable to the different classes of assuming insurers:
- (a) The trust of a single assuming insurer will consist of the funds deposited in trust for an amount not less than the liabilities of the assuming insurer attributable to reinsurance ceded by ceding insurers in the United States or Puerto Rico, and, in addition, the assuming insurer will maintain a surplus in the trust of at least \$20,000,000.
 - (b) (i) In the case of a group that includes incorporated and individual insurers:
 - (I) In the case of the reinsurance ceded under a reinsurance agreement with an inception, amendment or renewal date on or after August 1, 1995, the trust will consist of funds held in a trust account of an amount that is not less than the liabilities of all of the members of the group attributable to the insurance ceded to any member of the group by ceding insurers domiciled in the United States;
 - (II) In the case of reinsurance ceded under a reinsurance agreement executed on or before July 31, 1995, and that has not been amended or renewed after that date, the trust account will be for an amount not less than the liabilities of all of the members of the group attributable to insurance underwritten in the United States; and
 - (III) In addition to the aforementioned trusts, the group will hold a surplus in trust of which \$100,000,000 will be held for the joint benefit of the ceding insurers domiciled in the United States of any member of the group while the trust is in existence; and
 - (ii) The incorporated members of the group will not be engaged in any other business activity other than underwriting insurance as members of the group and will be subject to the same level of

regulation and solvency control by the regulatory entity of the state of domicile of the group as are the unincorporated members.

(iii) Within ninety (90) days of the deadline for filing the annual financial report with the regulatory body of the state of domicile of the group, the group will submit every year to the Commissioner a certification by the regulatory body of the state of domicile on the solvency of each member or, if a certification is not available, financial statements prepared by independent certified public accountants, for each insurer that is a member of the group.

(c) In the case of a group of incorporated insurers that operate under joint management, the group:

(i) Must have underwritten insurance in a continuous manner, outside of the United States, during at least the three (3) years immediately preceding the date of the application for accreditation;

(ii) Must maintain a policyholder surplus of at least \$10,000,000,000;

(iii) Must maintain in trust an amount not less than the liabilities of all of the members of the group attributable to the insurance ceded by ceding insurers domiciled in the United States to any member of the group, under the reinsurance contracts executed on behalf of the group;

(iv) In addition, the group will maintain an excess in the joint fund of the trust, of which \$100,000,000 will be deposited for the joint benefit of the group of ceding insurers domiciled in the United States of any member of the group, as an additional security for the liabilities; and

(v) Within ninety (90) days of the deadline for filing the annual financial reports with the regulatory body of the state of domicile of the group, the group will submit every year to the Commissioner a certification by the regulatory body of the state of domicile on the solvency of each member or, if the certification is not available, financial statements prepared by independent certified public accountants, for each insurer that is a member of the group.

E. The credit will be granted when the reinsurance is ceded to an assuming insurer that does not comply with the requirements set forth in paragraphs A, B, C or D, only with regard to risks located in other jurisdictions where reinsurance is required by law or regulation.

- F. If the assuming insurer is not authorized or accredited to underwrite insurance or reinsurance in Puerto Rico, the credit allowed in paragraphs C and D will not be granted, unless the assuming insurer stipulates in the reinsurance agreement that:
- (a) The assuming insurer will submit to the jurisdiction of a Court of competent jurisdiction in any of the states of the United States or Puerto Rico and will comply with all of the requirements for the Court to assume jurisdiction, and will comply with the final judgment of the Court or Court of Appeals, in the event of an appeal, and;
 - (b) An authorized representative is designated to receive service of process in the event of legal action brought by the ceding firm or on its behalf.

The foregoing provision will not limit any obligation assumed by the parties to the reinsurance agreement to submit to the jurisdiction of any arbitration process, nor to avoid fulfillment of such obligation, if so provided under the contract.

- G. If the assuming insurer fails to comply with any of the requirements set forth in paragraphs A, B or C, the credit stipulated in paragraph D will not be allowed, unless the assuming insurer accepts the following conditions in the trust agreement:
- (1) Notwithstanding any other provision in the trust agreement, if the trust were insufficient because the amount held is less than that required in paragraph D(3), or if the grantor of the trust has been found to be insolvent or under receivership, rehabilitation, liquidation or similar proceedings, according to the laws of Puerto Rico or of the country of domicile, the trustee will comply with the orders of the Commissioner with regulatory oversight with regard to the trust or with the orders of a Court in which the trustee is order to convey all of the assets of the trust to the Commissioner with regulatory oversight.
 - (2) The assets will be distributed and the claims will be filed and assessed by the Commissioner with regulatory oversight according to the laws of the state of domicile of the trust that are applicable to the liquidation of domestic insurance companies.
 - (3) If the Commissioner with regulatory oversight determines that the assets of the trust or portion of such assets are not needed to satisfy the claims of ceding insurers in the United States or Puerto Rico with regard to the grantor of the trust, the assets or portion thereof will be returned by the Commissioner with regulatory oversight to the trustee for distribution in accordance with the terms of the trust agreement.
 - (4) The grantor will waive all rights which under the laws of the United States may be in conflict with this Section.

SECTION 5-ASSUMING INSURERS AUTHORIZED IN PUERTO RICO

As set forth in Paragraph A of Section 4, the Commissioner may allow the reinsurance credit to be ceded by a domestic insurer to an assuming insurer that is authorized to transact insurance or reinsurance business in Puerto Rico as of the date for which the reinsurance credit is claimed on the financial statement.

SECTION 6 - CREDIT FOR REINSURANCE- ACCREDITED ASSUMING INSURERS

A. As set forth in paragraph B of Section 4, the Commissioner may allow the reinsurance credit to be ceded by a domestic insurer to an assuming insurer that is authorized in Puerto Rico as of the date on which the reinsurance credit is being claimed on the financial statement, subject to compliance with the following requirements:

- (1) Filing a duly completed Form AR-1, attached to this Rule;
- (2) Filing with the Commissioner a certified copy of the certificate of authority or other acceptable evidence of authorization to transact insurance or reinsurance business in at least one state of the United States or, in the case of a subsidiary in the United States of a foreign assuming insurer, authorization to transact insurance or reinsurance business in at least one state of the United States;
- (3) Annually submitting to the Commissioner a copy of the financial report that is filed with the Commissioner of Insurance of the state of domicile or, in the case of a foreign assuming insurer, a copy of the financial statement filed in the state where the assuming insurer was admitted and authorized in the United States to transact insurance or reinsurance business, and a copy of the assuming insurer's most recent audited financial statement and the assuming insurer will:
 - (a) Maintain a policyholder surplus of an amount no less than \$20,000,000, the accreditation of which has not been denied by the Commissioner within ninety (90) days of filing; or
 - (b) Maintain a policyholder surplus of less than \$20,000,000, the accreditation of which has been approved by the Commissioner.

B. If the Commissioner determines that the assuming insurer has not complied with or has failed to maintain the qualification requirements, the Commissioner may revoke the accreditation, upon due notice and hearing. The credit will not be granted to the domestic ceding insurer if the accreditation of the assuming insurer has been revoked by the Commissioner.

SECTION 7 - CREDIT FOR REINSURANCE - ASSUMING INSURERS DOMICILED AND AUTHORIZED IN ANOTHER STATE

- A. As set forth in Section 4, paragraph C, the Commissioner may allow the reinsurance credit to be ceded by a domestic insurer to an assuming insurer domiciled and authorized in another state of the United States as of the date on which the reinsurance credit is claimed on the financial report, subject to compliance with the following requirements:
- (1) The assuming insurer is domiciled in a state whose requirements regarding reinsurance credits are substantively similar to the laws of Puerto Rico or, in the case of a subsidiary of a foreign insurer in the United States, the state where the assuming insurer was authorized has such requirements;
 - (2) Maintaining a policyholder surplus of at least \$20,000,000; and
 - (3) Filing a duly completed Form AR-1 with the Commissioner, which is attached to this Rule.
- B. The provisions of this Section will not be applicable to surplus ceded and accepted under the contract of a joint fund between insurers within a holding company system.

As used in this Section, the term "substantively similar requirements" means requirements with regard to the reinsurance credit that the Commissioner deems are equal to or exceed the requirements set forth in this Rule.

SECTION 8- REINSURANCE CREDIT - ASSUMING INSURERS WITH FUNDS HELD IN TRUST

- A. As set forth in paragraph D of Section 4, the Commissioner may allow the reinsurance credit to be ceded by a domestic insurer to an assuming insurer, that, as of the date on which the credit is claimed on the financial report, and subsequently during the time the credit is being claimed, maintains a trust fund in the amount indicated below in a qualified financial institution in the United States for the payment of valid claims of ceding insurers domiciled in the United States, and of their assigns and successors in interest.
- Assuming insurers will file an annual financial report containing essentially the same information required for the annual report by the National Association of Insurance Commissioners (NAIC) for authorized insurers, to enable the Commissioner to determine whether the trust has sufficient funds.
- B. The following requirements will be applicable to assuming insurers:

- (1) The trust fund of a single assuming insurer will consist of funds held in trust of an amount not less than the liabilities of the assuming insurer attributable to reinsurance ceded by insurers domiciled in the United States or Puerto Rico. In addition, the assuming insurer will maintain in the trust a surplus of no less than \$20,000,000.
- (2) (a) the trust fund of a group comprised of both incorporated and non-incorporated individual underwriters will include the following:
 - (i) With regard to reinsurance ceded under a reinsurance agreement with an inception, amendment or renewal date on or after August 1, 1995, funds in an amount at least equivalent to the liabilities of the members of the group attributable to the insurance ceded to any member of the group by ceding insurers domiciled in the United States;
 - (ii) With regard to reinsurance ceded under a reinsurance agreement with an inception date on or before July 31, 1995, and that has not been amended or renewed after that date, funds in an amount at least equivalent to the liabilities attributable to insurance underwritten in the United States; and
 - (iii) In addition to the funds deposited in the trust, the group will maintain a surplus deposited in the trust, of which the amount of \$100,000,000 will be for the joint benefit of the ceding insurers of any member of the group, domiciled in the United States or Puerto Rico, while the account is in existence.
- (b) The incorporated members of the group will not be engaged in any other business activity other than underwriting insurance as members of the group and will be subject to the same level of regulation and solvency control by the regulatory entity of the state of domicile of the group as are the unincorporated members. Within ninety (90) days of the deadline for filing the annual financial report with the regulatory body of the state of domicile of the group, the group will submit to the Commissioner:
 - (i) An annual certification by the regulatory body of the state of domicile on the solvency of each underwriter that is a member of the group; or
 - (ii) if a certification is not available, financial statements prepared by independent certified public accountants, for each insurer that is a member of the group
- (3) (a) The trust fund of a group of incorporated insurers, under joint management, whose members hold a combined policyholder surplus of more than \$10,000,000,000 and that have transacted insurance

business continuously outside of the United States or Puerto Rico at least during the preceding three (3) years from the application for accreditation:

- (i) Shall have funds deposited in trust in an amount equivalent at least to the liabilities of the assuming insurers attributable to the insurance ceded to any member of the group by ceding insurers domiciled in the United States or Puerto Rico, under reinsurance contracts issued to the group;
- (ii) Shall maintain a trusteed surplus of which \$100,000,000 shall be held jointly for the benefit of the ceding insurers domiciled in the United States or Puerto Rico of any member of the group, and
- (iii) Shall file a duly completed Form AR-1 and shall certify that any member examined will assume the cost of the examination.

(b) Within ninety (90) days of the deadline for filing financial reports with the regulatory agency of the group's state of domicile, the group will file with the Commissioner an annual certification by the regulatory agency with regard to the solvency of each member underwriter, and financial reports prepared by independent certified public accountants for each member underwriter of the group.

C. (1) The reinsurance credit will not be granted unless the Commissioner of the state of domicile of the trust has approved the kind of trust and the amendments to such, or the trust has been approved by the Commissioner of another state, who under terms of the trust agreement has assumed regulatory oversight with regard to the trust. In addition, documentation of the kind of trust and any amendment to such will be filed with the Commissioner of each state of domicile of the ceding insurer's beneficiaries. The trust agreement will provide as follows:

- (a) Contested claims will be valid and executable with regard to the funds of the trust thirty (30) days after a final judgment has been entered in a Court of any of the states of the United States or Puerto Rico;
- (b) Title of the assets of the trust will be vested in the trustee for the benefit of the ceding insurers of the grantor in the United States or Puerto Rico and of their assigns and successors in interest;
- (c) The trust will be subject to examination, as may be determined by the Commissioner;
- (d) The trust will remain in effect for such time as the assuming insurer, or any member or ex-member of a group of insurers may have outstanding obligations, under the reinsurance agreement that is the object of the trust; and

- (e) On or before March 31 of every year, the trustee will file a financial report with the Commissioner showing the balance and investments of the trust at the closing of the previous year. The trustee will certify the termination date of the trust, if such is planned, or certify that the trust will not be terminated before December 31 of the current year.
- (2)
 - (a) Notwithstanding any provision of the trust agreement, if the funds of the trust were insufficient because the amount is not the amount required in this Section or if the grantor has declared insolvency or has submitted to receivership, rehabilitation, liquidation or any other similar proceedings, under Puerto Rico laws, or under laws of the country of domicile, the trustee will comply with the order of the Commissioner with regulatory authority with regard to the trust or the order of the Court of competent jurisdiction in which the trustee is ordered to transfer all of the assets of the trust to the Commissioner or other designated receiver.
 - (b) The assets will be distributed and the claims will be filed with and valued by the Commissioner with regulatory oversight and, under the laws of the state of domicile of the trust applicable to the liquidation of domestic insurance companies.
 - (c) If the Commissioner with regulatory authority over the assets of the trust determines that the assets in the fiduciary fund are greater than those needed to satisfy the claims of the trust beneficiaries, the Commissioner may return the assets, or portion thereof, to the receiver, so that the receiver may distribute the assets according to the trust agreement.
 - (d) The ceding insurer shall waive any right otherwise available to it under U.S. law that is inconsistent with this Section.
- D. For the purposes of this Rule, the term “liabilities” will mean the gross liabilities of the insurer attributable to reinsurance ceded by insurers domiciled in the United States or Puerto Rico that are not otherwise secured by acceptable means, and will include:
 - (1) For business ceded by domestic insurers authorized to write accident and health, and property and casualty insurance:
 - (a) Losses and allocated loss expenses paid by the ceding insurer, recoverable from the assuming insurer;
 - (b) Reserves for losses reported and outstanding;
 - (c) Reserves for losses incurred but not reported;
 - (d) Reserves for allocated loss expenses; and
 - (e) Unearned premiums.

- (2) For business ceded by domestic insurers authorized to write life, health and annuity insurance:
 - (a) Aggregate reserves for life policies and contracts net of policy loans and net due and deferred premiums;
 - (b) Aggregate reserves for accident and health policies;
 - (c) Deposit funds and other liabilities without life or disability contingencies; and
 - (d) Liabilities for policy and contract claims
- E. Assets deposited in trusts established pursuant to this section shall be valued according to their fair market value and shall consist only of cash in U.S. dollars, certificates of deposit issued by a U.S. or Puerto Rico financial institution, clean, irrevocable, and unconditional letters of credit ("evergreen") issued or confirmed by a U.S. or Puerto Rico financial institution, and investments of the type specified in this section, 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.

No more than twenty percent (20%) of the total of the investments in the trust may be foreign investments authorized under subparagraphs (1)(e), (3), (6)(b) or (7), of this subsection, and no more than ten percent (10%) of the total of the investments in the trust may be securities denominated in foreign currencies. For purposes of this Section, a depository receipt denominated in U.S. dollars and representing rights conferred by a foreign investment shall be classified as a foreign investment denominated in a foreign currency. The assets of a trust established to satisfy the requirements of this Section 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 Government of United States or by any agency or instrumentality of the United States Government;
 - (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 Subparagraphs (b) and (c) of this paragraph if the obligations shall be by law 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 paragraph 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 (SVO);
- (2) Obligations that are issued in the United States or Puerto Rico, 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 of such obligations, provided that they:
- (a) Are rated A or higher (or the equivalent) by a securities rating agency recognized by the SVO, 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 insurer (other than the investing insurer or a parent company, subsidiary or affiliate of the investing insurer) authorized to insure obligations in Puerto Rico and, after considering the insurance, are rated AAA (or the equivalent) by a securities rating agency recognized by the SVO; or
 - (c) Have been designation Class One or Two by the SVO;
- (3) Obligations issued, assumed or guaranteed by a solvent institution outside of the United States or Puerto Rico 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 SVO;
- (4) An investment made pursuant to the provisions of Paragraph (1), (2) or (3) of this subsection 8E 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 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; and

- (d) Preferred or guaranteed shares issued or guaranteed by a solvent U.S. or Puerto Rico institution are permissible investments if all of the institution's obligations are eligible as investments under Paragraphs (2)(a) and (2)(c) of this subsection 8E, but shall not exceed two percent (2%) of the assets of the trust.

(5) For the purposes of this Section:

- (a) "Mortgage-related securities means an obligation that is rated AA or higher (or the equivalent) by a securities rating agency recognized by the SVO and that either:
 - (i) Represents ownership of one 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:
 - I. 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
 - II. 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 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 Items (i)(I) and (i)(II) of this subsection.

- (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) Equity interests.
 - (a) Investments in common shares or partnership interests of a solvent U.S. or Puerto Rico 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 National Association of Securities Dealers, Inc. A trust shall not invest in equity interests under this paragraph 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, if:
 - (i) All of its obligations are rated A or higher, or the equivalent, by a rating agency recognized by the SVO; 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 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 paragraph, when added to the aggregate cost of other investments in equity interests then held pursuant to this paragraph, 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 SVO.
- (8) 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:
 - (i) Invests at least ninety percent (90%) of its assets in the types of securities that qualify as an investment under Paragraph (1), (2) or (3) of this subsection 8E or invests in securities that are determined by the Commissioner to be substantively similar to the types of securities set forth in Paragraphs (1), (2) or (3) of this subsection 8E; or
 - (ii) Invests at least ninety percent (90%) of its assets in the types of equity interests that qualify as an investment under Paragraph (6)(a) of this subsection 8E;
 - (b) Investments made by a trust in investment companies under this paragraph shall not exceed the following limitations:
 - (i) An investment in an investment company qualifying under Subparagraph 8 (a)(i) above 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; and
 - (ii) Investments in an investment company qualifying under Subparagraph (a)(ii) of this paragraph 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 pursuant to Paragraph (6)(a) of this subsection 8E.
- (9) 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 trust agreement 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.
 - (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 and/or willful misconduct.

- F. A specific security provided to a ceding insurer by an assuming insurer pursuant to Section 10 of this regulation 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 pursuant to this section.

SECTION 9- CREDIT FOR REINSURANCE REQUIRED BY LAW

The Commissioner may allow credit for reinsurance ceded by a domestic insurer to an assuming insurer not meeting the requirements of paragraphs A, B, C and D of Section 4, but only as to the insurance of risks located in jurisdictions where the reinsurance is required by the applicable law or regulation of that jurisdiction. As used in this section, "jurisdiction" means state, district or territory of the United States and any lawful national government.

SECTION 10 - ASSET OR REDUCTION FROM LIABILITY FOR REINSURANCE CEDED TO AN UNAUTHORIZED ASSUMING INSURER NOT MEETING THE REQUIREMENTS OF SECTIONS 5 THROUGH 9.

- A. The Commissioner may allow a reduction from liability for reinsurance ceded by a domestic insurer to an assuming insurer not meeting the requirements of Section 4 in an amount not exceeding the liabilities carried by the ceding insurer. The reduction shall be in the amount of funds held 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 under the reinsurance contract.

The security shall be held in any of the states of the United States or Puerto Rico 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 or Puerto Rico financial institution. This security may be in the form of any of the following:

- (1) US dollars;
- (2) Securities listed by the SVO and qualifying as admitted assets;
- (3) Clean, irrevocable, unconditional and "evergreen" letters of credit issued or confirmed by a qualified United States institution, effective as of December 31 of the year for which filing is being made, and in the possession of, or in trust for, 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) institution's subsequent failure to meet applicable standards of issuer acceptability, continue to be

acceptable as security until their expiration, extension, renewal, modification or amendment, whichever first occurs; or

- (4) Any other form of security acceptable to the Commissioner.
- B. An admitted asset or a reduction from liability for reinsurance ceded to an unauthorized assuming insurer pursuant to this section shall be allowed only when the requirements of Section 14 and the applicable portions of Sections 11, 12 and 13 of this Rule have been satisfied

SECTION 11 – TRUST AGREEMENTS UNDER SECTION 10

- A. For the purposes of 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 paragraph B(11), means:
 - (a) Reinsured losses and allocated loss expenses paid by the ceding company, but not recovered from the assuming insurer;
 - (b) Reserves for reinsured losses reported and pending resolution;
 - (c) Reserves for reinsured losses incurred but not reported; and
 - (d) Reserves for allocated reinsured loss expenses and unearned premiums.
- B. Conditions.
 - (1) The trust agreement shall be entered into between the beneficiary, the grantor and a trustee, which shall be a qualified United States or Puerto Rico financial institution.
 - (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 or Puerto Rico.
 - (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 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 in paragraph (11) of this subsection 11(B).
- (5) The trust agreement shall be established for the sole benefit of the beneficiary.
 - (6) The trust agreement shall require the trustee to:
 - (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 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; and
 - (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 written notification of termination shall be delivered by the trustee to the beneficiary at least thirty (30) days, prior to termination of the trust account.
 - (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 the use of the trust corpus for the purpose of paying commissions 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 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.
- (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, 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 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 pay to the assuming insurer any amounts held in the trust account that exceed 102 percent (102%) of the actual amount required to fund the assuming insurer's obligations under the specific reinsurance agreement; or
 - (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 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 U.S. financial institution apart from its general assets, in trust for such uses and purposes specified in Subparagraphs 11(a) and 11(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 Section 10 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 the following purposes:

(a) To pay or reimburse the ceding insurer for:

(i) The assuming insurer's share under the specific reinsurance agreement of 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) The assuming insurer's share under the specific reinsurance agreement of 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; or

(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 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. or Puerto Rico financial institution apart from its general assets, in trust for the uses and purposes specified in Subparagraphs 12(a) and 12(b) as may remain executory after withdrawal and for any period after the termination date

(13) The reinsurance agreement may contain the provisions required in Subsection D(1)(b) of this section, provided these required conditions are included in the trust agreement.

C. 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 the beneficiary and grantor receive the notice and that the trustee may be removed by the grantor by delivery to the trustee and the beneficiary of a written notice of removal, effective not less than ninety

(90) days after the trustee and the beneficiary receive 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 interest or dividends shall be either forwarded promptly upon receipt to the grantor or deposited in a separate account established in the grantor's name
- (3) The trustee may be authorized 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) of this section.
- (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. Said transfer may be conditioned upon the trustee receiving, other specified assets prior or simultaneously to such transfer.
- (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 to the grantor.

D. Additional conditions applicable to reinsurance agreements:

- (1) The reinsurance agreement may provide that:
 - (a) The assuming insurer must enter into a trust agreement and establish a trust account for the benefit of the ceding insurer, and specify what the agreement is to cover;
 - (b) 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 or Puerto Rico bank and payable in United States dollars, and investments permitted by the Insurance Code 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 ten percent (10%) of total investments. The reinsurance agreement may further specify the types

of investments to be deposited. Where a trust agreement is entered into in conjunction with a reinsurance agreement covering risks other than life, annuities and accident and health, then the trust agreement may contain the provisions required by this paragraph in lieu of including such provisions in the reinsurance agreement;

- (c) Prior to depositing assets with the trustee, the assuming insurer will execute assignments or endorsements in blank, or transfer legal title to the trustee of all shares, obligations or any other assets requiring assignments, in order that the ceding insurer, or the trustee upon the direction of the ceding insurer, may whenever necessary negotiate these assets without consent or signature from the assuming insurer or any other entity;
 - (d) All settlements of account between the ceding insurer and the assuming insurer must be made in cash or its equivalent; and
 - (e) 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 may 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 pay or reimburse the ceding insurer for:
 - (I) The assuming insurer's share under the specific reinsurance agreement 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) 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; and
 - (III) Any other amounts necessary to secure the credit or reduction from liability for reinsurance taken by the ceding insurer.
 - (ii) 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.
- (2) The reinsurance agreement also may contain provisions that:

- (a) Give the assuming insurer the right to seek approval from the ceding insurer, which shall not be unreasonably or arbitrarily withheld, 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 no less than 102 percent (102%) of the required amount.
- (b) Provide for the return of any amount withdrawn in excess of the actual amounts required for Paragraph (1)(e) of this Section 11, and for interest payments at a rate not in excess of the prime rate of interest on the amounts held pursuant to Paragraph (1)(e) of this Section 11;
- (c) Permit the award by any arbitration panel or court of competent jurisdiction of:
 - (i) Interest at a rate different from that provided in Subparagraph (b);
 - (ii) Court or arbitration costs;
 - (iii) Attorneys' fees; and
 - (iv) Any other reasonable expense.
- (3) Financial reporting. 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 Commissioner in compliance with the provisions of this Rule. 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) Existing agreements. Notwithstanding the effective date of this Rule, any trust agreement or reinsurance agreement will have to fully comply with the provisions of 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 shall not be construed to affect any actions or rights that the Commissioner may take or possess pursuant to the provisions of the laws of Puerto Rico.

SECTION 12. LETTERS OF CREDIT UNDER SECTION 10

- A. The letter of credit must be clean, irrevocable, unconditional and issued or confirmed by a qualified United States. The letter of credit shall contain an issue date and expiration date and shall stipulate that the beneficiary need only draw a sight draft under the letter of credit and present it to obtain funds and that no other document need be presented. The letter of credit also shall 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 this Rule.
- B. The heading of the letter of credit may include a boxed section containing the name of the applicant and other appropriate notations to provide a reference for the letter of credit. The boxed section shall be clearly marked to indicate that such information is for internal identification purposes only.
- C. 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 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 no less than thirty (30) days notice prior to expiration date or nonrenewal.
- E. The letter of credit shall state whether it is subject to and governed by the laws of Puerto Rico or the Uniform Customs and Practice for Documentary Credits of the International Chamber of Commerce (Publication 500), or any successor publication, and all drafts drawn thereunder shall be presentable at a the offices 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 provide for an extension of time to draw against the letter of credit in the event that one or more of the occurrences specified in Article 17 of Publication 500 or any other successor publication, occur.
- G. The letter of credit shall be issued or confirmed by a qualified United States or Puerto Rico financial institution authorized to issue letters of credit. To be considered a qualified United States or Puerto Rico financial institution the institution must be:
 - (1) Organized under laws of the United States, any of its states or Puerto Rico or in the case of an United States office of a foreign banking organization holding a license therefrom;

- (2) Be regulated, supervised, and examined by federal or state authority of the United States or Puerto Rico with regulatory authority over banks and trust companies; and
 - (3) The Commissioner or the SVO have determined that it is in compliance with the financial and legal requirements that are considered necessary and appropriate for the regulation of the quality of financial institutions.
- 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; and
 - (2) The “evergreen clause” shall provide for thirty (30) days notice prior to expiration date for nonrenewal.
- I. Reinsurance agreement provisions.
 - (1) The reinsurance agreement in conjunction with which the letter of credit is obtained may contain provisions that:
 - (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 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 provisions in the agreement, and shall be utilized by the ceding insurer or its successors in interest only for one or more of the following reasons:
 - (i) To pay or reimburse the ceding insurer for:
 - (I) The assuming insurer’s share under the specific reinsurance agreement of premiums returned, but not yet recovered from the assuming insurers, to the owners of policies reinsured under the reinsurance agreement on account of cancellations of such policies;
 - (II) The assuming insurer’s share, under the specific reinsurance agreement, of surrenders and benefits or losses paid by the ceding insurer, but not yet recovered from the assuming insurers, under the terms and provisions of the policies reinsured under the reinsurance agreement; and

- (III) Any other amounts necessary to secure the credit or reduction from liability for reinsurance taken by the ceding insurer;
- (ii) 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 specific reinsurance 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. or Puerto Rico financial institution apart from its general assets, in trust for such uses and purposes specified in Subsection (1)(b)(i) as may remain executory for any period after the termination date.
- (c) All of the provisions of Paragraph (1) of this subsection shall be applied without diminution because of insolvency on the part of the ceding insurer or assuming insurer.
- (2) Nothing contained Paragraph (1) of this subsection 12 (I) shall preclude the ceding insurer and assuming insurer from providing for:
 - (a) An interest payment, at a rate not in excess of the prime rate of interest, on the amounts held pursuant to subparagraph (1)(b) of this subsection 12 (I); or
 - (b) The return of any amounts drawn down on the letters of credit in excess of the actual amounts required for in subparagraph (2)(a) above or any amounts that are subsequently determined not to be due.

SECTION 13. OTHER CREDITS

A ceding insurer may take credit for unencumbered funds withheld by the ceding insurer in the United States or Puerto Rico subject to withdrawal solely by the ceding insurer and under its exclusive control.

SECTION 14. REINSURANCE CONTRACTS

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 Sections 5 through 9 of this Rule unless the reinsurance agreement

- A. Includes an appropriate insolvency clause under Title 40 of the Puerto Rico Insurance Code; and
- B. Includes a provision in accordance with Section 4 under which the assuming insurer, if an unauthorized assuming insurer, has submitted to the jurisdiction of

an alternative dispute resolution panel or court of competent jurisdiction within the United States, has agreed to comply with all requirements necessary to give the court or panel jurisdiction, has designated an agent upon whom service of process may be effected, and has agreed to abide by the final decision of the court or panel.

SECTION 15. APPLICABLE CONTRACTS

In order for a reinsurance credit to be granted to a ceding insurer, any new or renewal reinsurance transaction carried out after this Rule has entered into effect must comply with the requirements set forth herein.

SECTION 16. SEVERABILITY

If any word, sentence, paragraph, subparagraph, section or part of this Rule is held to be null or invalid by a Court of competent jurisdiction, the order will not affect the remaining provisions of this Rule, and its effect will be limited to such word, sentence, paragraph, subparagraph, section or part held to be invalid.

SECTION 17. EFFECTIVE DATE

This Rule will be effective thirty (30) days after filing with the Puerto Rico Department of State, in accordance with the provisions of Public Law No. 170, *supra*. No insurer or assuming insurer may continue to use the services of a reinsurance intermediary after the effective date of this Rule, unless such use is in accordance with the provisions herein.

RAMÓN L. CRUZ COLÓN COMMISSIONER OF INSURANCE

Date of approval:

Date of Filing

Department of State:

Date of filing at

The Legislative Library: