

Commonwealth of Puerto Rico
Office of the Insurance Commissioner

INDEX OF THE RULES AND REGULATIONS PERTAINING TO THE
UNDERWRITING AND/OR BROKERAGE OF FOREIGN
RISK INSURANCE BY INTERNATIONAL BANKING ENTITIES

INDEX

<u>Article</u>	<u>Page</u>
I. Title	1
II. Authority	1
III. Scope and Application.....	1
IV. Definitions	1-3
V. Foreign Risk.....	3
Requirements for an International Banking Entity to Underwrite Foreign Risk.....	3
Requirements for an International Banking Entity to Act as a Broker for Foreign Risk.....	3-4
Requirements Prior to Authorization by the Commissioner of Insurance.....	4-6
VI. Loss-Reserve Discounting.....	6-7
VII. Revocation of Authorization.....	7-8
VIII. Accounts and Records.....	8
IX. Reports.....	8
X. Supervision.....	9
XI. Administrative Actions and Penalties.....	9-10
XII. Expenses of Examination.....	10
XIII. Confidentiality	10
XIV. Surrender of Authorization.....	10
XV. Separability Clause.....	10-11
XVI. Exclusion Clause.....	11
XVII. Effectiveness.....	11
XVIII. Date of Approval.....	11

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**RULES AND REGULATIONS PERTAINING TO THE UNDERWRITING AND/OR
BROKERAGE OF FOREIGN RISK INSURANCE IN PUERTO RICO
BY INTERNATIONAL BANKING ENTITIES**

ARTICLE 1. TITLE

These rules and regulations shall be known as the Rules and Regulations pertaining to the Underwriting or Brokerage of Foreign Risk Insurance by International Banking Entities, to which Section 12-a, Subsections 10 and 11 of the International Banking Center Regulatory Act, Act No. 52 of August 11, 1989, hereinafter known as the Act, makes reference to.

ARTICLE 2. AUTHORITY

The Office of the Insurance Commissioner of Puerto Rico issues these rules and regulations pursuant to the authority conferred by Section 12-a, Subsections 10 and 11 of the Act, and in compliance with Act 170 of August 12, 1989, as amended.

ARTICLE 3. SCOPE AND APPLICATION

These rules and regulations shall govern the establishment, authorization, operation and supervision of the International Banking Entities established in Puerto Rico, which are dedicated to the Underwriting or Brokerage of Foreign Risk Insurance pursuant to Section 12-a, Subsections 10 and 11 of the Act.

ARTICLE 4. DEFINITIONS

For the purposes of these rules and regulations the following terms are defined as follows:

- a) Commissioner - The Commissioner of Financial Institutions as established by Act No. 4 of October 11, 1985.
- b) Insurance Commissioner - The Insurance Commissioner of Puerto Rico as established by Act No. 77 of June 19, 1957.
- c) Act - International Banking Center Regulatory Act, Act No. 52 of August 11, 1989.

- d) International Banking Entity (IBE) - Any person, who is not an individual, incorporated or organized under the laws of Puerto Rico, the United States, or of a foreign country or a unit of said person, to whom a license has been issued in accordance with Section 7 of the Act and which will be dedicated to the Underwriting or Brokerage of Foreign Risk Insurance.
- e) Rules and Regulations of the Commissioner - The Rules adopted by the Commissioner of Financial Institutions in accordance with Section 3 of the Act.
- f) Foreign Risk - Any insurable person or object which resides or is located outside of Puerto Rico or any insurable act or object which is to be executed outside of Puerto Rico.
- g) Foreign Risk Insurer - Any insurer which insures or reinsures persons or objects which reside, are located, or are to be performed outside of Puerto Rico.
- h) Foreign Risk Insurance Broker - Any individual, firm or corporation which by compensation as an independent contractor, in any manner solicits, negotiates, or procures insurance or reinsurance or the renewal or continuance thereof on behalf of the insureds or prospective insureds other than himself, and not on behalf of an insurer, a reinsurer or agent.
- i) Foreign Risk Insurance Underwriting - Includes any of the following functions:
 - 1) Granting of an insurance or reinsurance contract.
 - 2) Insure or reinsure foreign risk exclusively.
 - 3) Business transactions subsequent to the granting of an insurance or reinsurance contract or those which arise from said contract.
- j) Acceptable Financial Guarantees - A minimum of five hundred thousand U.S. dollars (\$500,000) in unencumbered assets which includes three hundred thousand U.S. dollars (\$300,000) as set forth by the Act, whose assets shall consist of the following: deposits in the Government Development Bank for Puerto

Rico, or banks in Puerto Rico (including branches and subsidiaries of the United States or Foreign Banks) but not including affiliates of the IBE; bonds or obligations of the Government of Puerto Rico, its municipalities or instrumentalities; bonds and obligations of the Government of the United States, any state of the United States, the District of Columbia, or any political subdivision or agency thereof, or any other real or personal property owned by the IBE and held in Puerto Rico.

Market values and depreciable property held by the IBE shall be included for its market value for the purposes of this subsection.

ARTICLE 5. FOREIGN RISK - Requirements for its Underwriting or

Brokerage.

- 1) In order for an IBE to devote itself to the underwriting of foreign risk insurance in Puerto Rico, the requirements thereof shall be the following:
 - a) The IBE must have been organized as set forth by the International Banking Center Regulatory Act.
 - b) The directors and officers thereof must be competent and trustworthy.
 - c) The IBE must comply with Sections 5 and 6 of the Act and hold and maintain a minimum paid-up capital of one million U.S. dollars (\$1,000,000), allowing that the Insurance Commissioner may require that the same be increased up to the maximum as set forth by the Act.
 - d) It must hold no less than five hundred thousand U.S. dollars (\$500,000) in unencumbered assets. These include the three hundred thousand dollars as set forth by the Act, which shall be physically held in Puerto Rico, entrusted to the Insurance Commissioner and/or those financially acceptable warranties which are deemed to be acceptable by the Insurance Commissioner of Puerto Rico.
- 2) In order for an IBE to devote itself to the brokerage of foreign risk insurance, the requirements thereof shall be the following:
 - a) The IBE must have been authorized and organized according to the Act.

- b) It must hold no less than three hundred thousand U.S. dollars (\$300,000) in financially acceptable warranties, which shall be physically held in Puerto Rico and which shall be entrusted to the Insurance Commissioner as a guarantee of faithful compliance to his duties as a broker.
- 3) The license issued to the IBE by the Commissioner should take into account the previous authorization by the Insurance Commissioner so that it may be able to dedicate itself to the Underwriting or Brokerage of Foreign Risk Insurance by virtue of Section 12-a, subsections 10 and 11 of the Act.
- 4) Said authorization shall be applied for by the IBE in the forms provided for it by the Commissioner. The IBE shall fill out said forms, and the same shall be forwarded by the Commissioner or his authorized representative to the Insurance Commissioner's Office accompanied by the appropriate documents. The Insurance Commissioner shall approve or deny the authorization in order for the IBE to dedicate itself to the Underwriting or Brokerage of Foreign Risk Insurance within sixty (60) days from the date of the filing of the application and all of the appropriate documents. Within said sixty (60) days and with notice to the applicant IBE, the Insurance Commissioner may extend the term to consider the approval or denial of the authorization for an additional sixty (60) days.
- 5) The IBE that proposes to dedicate itself to the Underwriting or Brokerage of Foreign Risk Insurance shall comply with the following requirements prior to the procurement of an authorization to conduct business in Puerto Rico:
 - a) Present to the Insurance Commissioner a copy of the application for permission to organize, as previously submitted to the Commissioner.
 - b) The members of the board of directors or their officers shall submit a sworn statement indicating that they shall dedicate themselves to the Underwriting or Brokerage of Foreign Risk Insurance.
 - c) Submit any other information which the Insurance Commissioner deems to be reasonably pertinent.

- d) The title of the IBE shall not resemble nor be similar to the title of any other IBE in such a way that it would confuse or would result as being misleading or fraudulent.
- 6) The Insurance Commissioner's Office shall not issue the authorization to any IBE unless the same complies with that which has already been arranged in these rules and regulations, with the rules and regulations of the Act, with the Act itself, or fails to submit or provide any other information that the insurance Commissioner of Puerto Rico could reasonably request in order to analyze the application for authorization.
- 7) No authorization issued by the Insurance Commissioner's Office according to that which has already been arranged in these rules and regulations may be sold, assigned, transferred, pledged, or otherwise used as an encumbrance. If the authorization granted to the IBE by the Insurance Commissioner is revoked, the Commissioner shall be notified about said revocation within ten (10) days from the date of the revocation.
- 8) Each authorization issued according to that which has already been arranged in these rules and regulations shall be effective only and exclusively for the Underwriting or Brokerage of liabilities or objects that reside, are located, or which may occur outside of Puerto Rico.
- 9) A. An IBE authorized by the Act to dedicate itself to the Underwriting or Brokerage of Foreign Risk Insurance shall give the Insurance Commissioner 30 days prior notice of any sale, encumbrance, assignment, merger, exchange, or transfer of ten percent (10%) or more of its shares, interest or co-partnership in its capital to one person or to a group of persons acting in concert, be it in one transaction or in a series of transactions carried out for that purpose, or which results in the possession or control by any person or group of persons acting in concert of ten percent 10% or more of the shares, interest or co-partnership in said IBE's capital. Once the transaction authorized by the Insurance Commissioner has been concluded, the International Banking Entity shall

notify the Commissioner as well as the Insurance Commissioner the details or particulars of the same, within ten (10) days beginning on the effective date of said transaction.

B. Notwithstanding what has been expressed in the previous paragraph, a parent company may sell, transfer, encumber, merge, exchange or otherwise transfer all said IBE's shares, interest or capital to any other person, who is not an individual, who belongs, is an owner, or has common ownership of said parent company, without prior authorization by the Insurance Commissioner.

C. Any sale, encumbrance, assignment, merger, exchange or other transferral which is carried out in violation of these rules and regulations or of which the Insurance Commissioner has a just cause to believe that it affects the IBE or the public interest, shall be sufficient cause for the revocation of the authorization granted to it.

10. The IBE shall not be able to directly or indirectly place, underwrite, insure, or reinsure risks or objects which reside, are located or which are to be executed in Puerto Rico, or participate in arrangements or agreements of reciprocity or retrocession which cover or are related to said risks or objects, or assign insurance or assume reinsurance of an insurer authorized to conduct or who is conducting insurance business in Puerto Rico. The IBE shall only be able to underwrite as an insurer or place as a broker, risks which qualify as foreign risks at the moment of coverage and during the time the policy is effective.

ARTICLE 6 - LOSS RESERVE DISCOUNTING

- 1) An IBE which is dedicated only to the underwriting of foreign risks insurance is authorized to do loss-reserve discountings in any of the following cases:
 - a) Where both the amount of the loss provisions and the payment dates of the losses are fixed;
 - b) Where neither the amount of the loss provisions nor the payment dates of the losses are fixed but the IBE's approved

auditor is of opinion that that amount and those dates are reasonably ascertainable either in the records of the IBE itself or in those of any group of companies of which the insurer is a member. The opinion of said auditor shall be subject to the scrutiny of the Insurance Commissioner;

- 2) Where loss provisions are discounted as allowed by paragraph (1) above, the directors of the IBE shall determine that a proper amount has been set aside by the IBE for possible variations in the ultimate amount of the losses, the payment dates of the losses and the applicable interest rates.

ARTICLE 7. - REVOCATION OF AUTHORIZATION

Any authorization granted to an IBE dedicated to the Underwriting or Brokerage of Foreign Risk Insurance, as specified in Article 5 of these rules and regulations, shall be revoked by the Insurance Commissioner for any of the following reasons:

1. The IBE becomes insolvent. The generally accepted accounting principles (GAAP) will be used to determine the financial situation of the IBE to that effect or upon discovery by the Insurance Commissioner or by the Commissioner itself that the continuance of the IBE's business in this jurisdiction will be dangerous to the policyholders or to the general public.
2. The IBE has not complied with these rules and regulations.
3. The IBE does not comply with any of the following margin of solvency requirements, if it is an IBE dedicated only to the underwriting of Foreign Risk Insurance:
 - a) Keep at any time in its first financial year, assets which exceed the amount of its liabilities by \$250,000;
 - b) Keep at any time in its first financial year, assets which exceed the amount of its liabilities:
 - 1) by U.S. \$250,000, where the premium income of the IBE in the preceding financial year did not exceed, U.S. \$1,500,000;
 - 1i) by 1/5 of the premium income for the preceding financial year, where the premium income exceeded U.S. \$1,500,000 but did not exceed U.S. \$10,000,000.

- iii) by the aggregate of U.S.\$2,000,000, and 1/10 of the amount by which the premium income in that financial year exceeds U.S. \$10,000,000, where the premium income for that year exceeded U.S.\$10,000,000.

ARTICLE 8 - ACCOUNTS AND RECORDS

In addition to what is set forth by Section 14 of the Act, each IBE shall keep its accounting books and financial statements according to the generally accepted accounting principles (GAAP) for all transactions related to foreign risk insurance.

The IBE shall keep the accounting books, contracts, correspondence, records and such other related document in Puerto Rico up to date, so that its financial situation may be easily determined.

An IBE dedicated to other transactions besides the Underwriting or Brokerage of Foreign Risk Insurance shall keep such transactions in properly separated records.

ARTICLE 9 - REPORTS

In addition to what is set forth by Section 15 of the Act, and in accordance to it, all IBE's shall annually, before the thirty-first day of March file with the Insurance Commissioner a true statement, certified by a Public Accountant licensed to practice in Puerto Rico, of its financial condition, transactions, and affairs as of December 31st.

On said statement the IBE shall submit with regard to the insurance business the following information:

- a) Opinion of a Public Accountant licensed to practice in Puerto Rico about the financial situation of the IBE.
- b) Statement of financial condition.
- c) Statement of revenues and expenses with regard to its operations.
- d) Statement of changes in the financial situation; notes, calls or observations about said financial statement.
- e) Reports about the evaluation of internal controls, prepared by a public accountant licensed to practice in Puerto Rico.

An IBE dedicated to other transactions permitted by the Act, besides the Underwriting or Brokerage of Foreign Risk Insurance, shall submit the reports required herewith separately.

ARTICLE 10 - SUPERVISION

The Insurance Commissioner shall supervise, regulate and examine the IBE's dedicated to the Underwriting or Brokerage of Foreign Risk Insurance. For these purposes the Insurance Commissioner shall examine the books and accounts of the IBE at least once every three (3) years.

The Insurance Commissioner shall furnish a preliminary written report of its findings to the Commissioner. Said report will be conditioned to the objections presented by the party affected by its contents.

Subsequently the Insurance Commissioner shall furnish a copy of the report to the investigated party, before its filing with the Commissioner as a final document. The party examined shall be allowed twenty (20) days to present objections and request a hearing. The Insurance Commissioner shall hold a hearing to take into consideration said person's objections to the report as proposed, and it shall not be available for public inspection until after said hearing has been held and until the modifications, if any, would have been made, which the Insurance Commissioner deems necessary as a result of the hearing.

Said hearing shall be held according to Act 170 of August 12, 1988, as amended, also known as the "Commonwealth of Puerto Rico Uniform Administrative Procedures Act".

ARTICLE 11. ADMINISTRATIVE ACTIONS AND PENALTIES

a) Orders to Cease and Desist

The Insurance Commissioner may issue orders to cease and desist, and may take the administrative actions it deems necessary, when someone is about to violate or has violated any provision of these rules and regulations, or when someone is acting against the public interest or against a private person.

Upon issuance of a cease and desist order, the party adversely affected may request a formal hearing, which shall be held according to Act 170 of August 12, 1988, as amended, also known as the "Commonwealth of Puerto Rico Uniform Administrative Procedures Act".

b) Penalties

Any violation to these rules and regulations, or to any legal order issued by the Insurance Commissioner, shall be subject to the

provisions of Article 7 of these rules and regulations and to the administrative fines deemed necessary by the Insurance Commissioner which shall not be less than five hundred U.S. dollars (\$500) for each violation, provided that the total of fines imposed for each violation shall not exceed five thousand U.S. dollars (\$5,000).

ARTICLE 12. EXPENSES OF EXAMINATION

The Insurance Commissioner shall charge an already examined IBE the amount of two hundred U.S. dollars (\$200) for each day or fraction of it, for each examiner on each examination as set forth by Section 3(a), subsection 2 of the Act, and by Article 1 of Act No. 66 of May 27, 1976, as amended.

ARTICLE 13. CONFIDENTIALITY

Information obtained by the Insurance Commissioner through any investigation or report shall be kept confidential and shall not be revealed to any person or authority other than in compliance with a lawfully issued judicial or administrative subpoena, or unless the information was filed for public inspection according to Article 10 of these rules and regulations.

Statistical data may be published as long as said information thereof is issued in a consolidated or aggregate manner, or that information which the Insurance Commissioner believes convenient to make public.

ARTICLE 14. SURRENDER OF AUTHORIZATION

An IBE may not surrender the authorization issued by the Insurance Commissioner, unless it has notified in writing its intention and the reasons to do so to the Insurance Commissioner, at least 45 days prior to the date on which the IBE proposes to surrender its authorization.

The Insurance Commissioner shall approve or deny said surrender after proper evaluation.

Notwithstanding, the IBE will remain subject to the jurisdiction of the Insurance Commissioner's Office with regard to the unsatisfied responsibilities and obligations related to foreign risk insurance.

ARTICLE 15. SEPARABILITY CLAUSE

Should any word, clause, paragraph, article or part of these rules and regulations be declared null or void by a court of competent jurisdiction,

the order issued thereby will not affect nor invalidate the rest of these rules and regulations, but rather its effect will be limited to that word, clause, paragraph, article, or part of it which is so declared.

ARTICLE 16. EXCLUSION CLAUSE

The provisions of the Insurance Code of Puerto Rico, Act No. 77 of June 19, 1957, are not applicable to the IBE's dedicated to the Underwriting or Brokerage of Foreign Risk Insurance. Said entities will be subject only to the provisions of the Act and of these rules and regulations.

ARTICLE 17. EFFECTIVENESS

These rules and regulations shall become effective thirty (30) days after its filing with the Department of State of the Commonwealth of Puerto Rico in compliance with the provisions of Act No. 170 of August 12, 1988, as amended, known as the "Commonwealth of Puerto Rico Uniform Administrative Procedures Act".

ARTICLE 18. DATE OF APPROVAL

Approved in San Juan, Puerto Rico, on this 2 day of January, 1991.

Miguel A. Villafaña Neriz
Insurance Commissioner