

Government of Puerto Rico
OFFICE OF THE COMMISSIONER OF INSURANCE

Guaynabo, Puerto Rico

RULE NO. 94

**STANDARDS AND AUTHORITY OF THE COMMISSIONER OF INSURANCE
WITH REGARD TO INSURERS SHOWING AN ADVERSE FINANCIAL
CONDITION**

SECTION 1. LEGAL BASIS

The Office of the Commissioner of Insurance Puerto Rico (OCS) adopts Rule No. 94 of the Puerto Rico Insurance Code, in accordance with the authority conferred by the provisions of Section 2.030 of the Public Law No. 77, enacted on June 19, 1957, as amended, known as the Puerto Rico Insurance Code, as well as the provisions of Public Law No. 170 of August 12, 1988, as amended, known as the Uniform Administrative Procedures Act.

SECTION 2. PURPOSE

The purpose of this Rule is to establish the standards that the Commissioner may use to identify insurers that have an adverse financial condition, to the detriment of the interests of policyholders or the public in general.

SECTION 3. SCOPE

This Rule will be applicable to all domestic and foreign insurers authorized by the OCI to write insurance in Puerto Rico.

SECTION 4. DEFINITION OF TERMS

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

- a) "Insurer" - Is the person who transacts insurance as defined in Section 1.050 of the Insurance Code. Without limiting the general sense of this definition, a

reciprocal insurance association, a mutual association, a health services organization or a group of any kind, organized for profit or not, engaged in executing insurance treaties, is an insurer.

- b) "Code" - means the Puerto Rico Insurance Code.
- c) "Commissioner" - Means the Commissioner of Insurance of Puerto Rico.

SECTION 5. STANDARDS

The following standards, separately or in a combination of two (2) or more, may be considered by the Commissioner in determining whether the operations of any insurer transacting insurance business in Puerto Rico is considered adverse and to the detriment of the interests of its policyholders, of its creditors or of the general public. The Commissioner may consider the following:

- a) Adverse results shown in the reports on the financial and market condition, audit reports and actuarial opinions, taking into consideration the reports submitted by the Admissions and Financial Analysis Division of the OCI.
- b) The Insurance Regulatory Information System (IRIS) of the National Association of Insurance Commissioners (NAIC) and other reports or tools used to evaluate the financial solvency of an insurer.
- c) If the insurer has taken the necessary measures, according to accepted actuarial standards for the expected cash flow required for contractual obligations and other expenses of the insurer, taking into account insurer's assets with regard to such reserves and other actuarial matters, including, but not limited to, the net earnings on investment of the assets and the expected revenue and retention under the policies or contracts.
- d) The ability to operate of a reinsurer that assumes the risk and if the insurer's reinsurance program provides sufficient protection for the excess, after taking into account the cash flow and the underwritten business, as well as the financial condition of the reinsurer that assumes the risk.
- e) If during the past twelve (12) months or a shorter period of time, the operational losses of an insurer, including, but not limited the net capital profit or loss, change in the non-admitted assets and cash dividends paid to shareholders, is greater than fifty percent (50%) of the remaining surplus of the insurer with regard to policyholders in excess of the required minimum.

- f) If in the past twelve (12) months or shorter period of time, the operational loss of an insurer, excluding net capital gains, is more than twenty percent (20%) of the remaining surplus of the insurer with regard to policyholders in excess of the required minimum.
- g) If the reinsurer, debtor or any entity belonging to the insurer's holding company is insolvent, or shows signs of being insolvent, or is in default with regard to the payment of its monetary or other obligations and in the opinion of the Commissioner this could affect the solvency of the insurer.
- h) Contingent debts, promises of payment or guarantees that either individually or as a whole amount to a sum that the Commissioner deems could affect the solvency of the insurer.
- i) If any person having a controlling interest in the insurer is in default with regard to the transfer or payment of net premiums to the insurer.
- j) Aging and recovery period of the accounts payable.
- k) If the insurer's management, including the officers, directors or any other person who directly or indirectly controls the operations of the insurer, fails to have and demonstrate the necessary competence and reputation to serve in the position.
- l) If the insurer's management has failed to respond to questions regarding the financial condition of the insurer or has provided incorrect, deceptive, or false information to answer the questions.
- m) If an insurer has failed to comply with the filing requirements of financial or holding company reports without providing the Commissioner with a satisfactory reason for such failure.
- n) If the insurer's management has submitted false or misleading financial statements or has disclosed false or misleading financial statements to lending institutions or the public at large, or has made false or misleading entries or omitted entries of material amounts in the insurer's books.
- o) If the insurer has grown rapidly and to the degree that the insurer lacks the financial and administrative capacity to fulfill its obligations within the established period of time.
- p) If the insurer has experienced cash flow or liquidity problems or it is foreseeable that the insurer will experience such in the near future.

- q) If the insurer's management has established reserves that do not comply with the minimum standards established by the Code and its Regulations, statutory accounting standards, actuarial principles or standards of practice.
- r) If the insurer's management repeatedly establishes loss reserves that result in an adverse development.
- s) If the transactions among affiliates, subsidiaries or persons who control the insurer, from whom the insurer receives assets or capital gains, or both, do not provide sufficient value, liquidity or diversity to ensure the capacity of the insurer to meet its obligations.
- t) Any other finding on the operations of the insurer that may be determined by the Commissioner as adverse or a risk for policyholders, creditors or the general public.

SECTION 6. AUTHORITY OF THE COMMISSIONER

A. For the purposes of determining the financial condition of the insurer, the Commissioner may:

- 1) Ignore any credit or receivable amount resulting from transactions with an insolvent or financially impaired reinsurer or a reinsurer under receivership.
- 2) Make the appropriate adjustments, including disapproving the values of assets attributed to investments or transactions with the parent company, subsidiaries or affiliates, as indicated in the NAIC Accounting Policies and Procedures Manual and in Chapter 6 of the Code.
- 3) Refuse to recognize the value of the accounts receivable if the capacity to collect these accounts is highly speculative, taking into account the aging of the account or the financial condition of the debtor.
- 4) Increase the debt of the insurer in an amount equal to any contingent debt, promise of payment or guarantee that has not been included, if there is a substantial risk that the insurer may have to pay its obligations within the next twelve (12) months.

B. If the Commissioner determines that the operations of the insurer that is authorized to transact insurance business in Puerto Rico may be adverse for its policyholders, creditors or the public at large, the Commissioner may issue an order requiring the following from the insurer:

- 1) Reducing the total amount of current and potential debt related to policy benefits using reinsurance;
- 2) Reducing, suspending or limiting the volume of business that is being accepted or renewed;
- 3) Reducing the overhead of insurance and commissions using specified methods.
- 4) Increasing capital and surplus of the insurer;
- 5) Suspending or limiting the declaration and payment of dividends to shareholders or policyholders.
- 6) Submitting reports on the market value of insurer's assets.
- 7) Limiting or withdrawing from certain investments or discontinuing certain investment practices to the degree deemed necessary by the Commissioner.
- 8) Documenting the sufficiency of rate levels with regard to insured risk.
- 9) Submitting interim financial reports in addition to regular annual reports.
- 10) Correcting deficiencies in corporate governance practices and adopting and using practices that are acceptable to the Commissioner.
- 11) Providing the Commissioner with a business plan for continuing to transact insurance business in Puerto Rico.
- 12) Regardless of any other provision of law that limits the frequency or adjustments of rates, the insurer must adjust the rates of any insurance product, other than life insurance, that is written by the insurer or any other that the Commissioner may deem necessary to improve the financial condition of the insurer.

C. An insurer subject to an order under Subsection B may request an administrative hearing to review the order. The notice of the hearing will be issued and the proceedings of the hearing will be conducted according to the provisions of Chapter 2 of the Code.

SECTION 7. JUDICIAL REVIEW

Any order or decision of the Commissioner will be subject to review as provided in Public Law No. 170, *supra*, and as established in Chapter 2 of the Code.

SECTION 8. SEVERABILITY

In any word, sentence, paragraph, subsection, section, or part of this Rule were found to be null and void by a Court of competent jurisdiction, the order of the Court will not affect nor invalidate the remaining provisions of this Rule and the effect of the order will be limited to the word, sentence, paragraph, subsection, section, or part that has been found to be void.

SECTION 9. EFFECT

The provisions of this Rule will enter into effect thirty (30) days after filing with the Puerto Rico Department of Statement, in accordance with the provisions of the Public Law No. 170, enacted on August 12, 1988, *supra*.

RAMON L. CRUZ COLON
COMMISSIONER OF INSURANCE

Date of approval:

Date of Filing with
the Department of State:

Date of Filing at
the Legislative Library: