

Government of Puerto Rico
OFFICE OF THE COMMISSIONER OF INSURANCE
Guaynabo, Puerto Rico
RULE 97
REINSURANCE INTERMEDIARIES

SECTION 1. LEGAL BASIS

The Office of the Commissioner of Insurance of Puerto Rico (OCS) hereby adopts Rule 97 of the Regulations of the Insurance Code, titled “Reinsurance Intermediaries,” under Section 2.030 of Public Law No. 77, enacted on June 19, 1957, as amended, known as the Puerto Rico Insurance Code, and Public Law No. 170, enacted on August 12, 1988, as amended, known as the Puerto Rico Uniform Administrative Procedures Act.

This Rule is adopted in accordance with model law #790, “Reinsurance Intermediary Model Act,” as recommended by the National Association of Insurance Commissioners (NAIC).

SECTION 2. PURPOSE

The purpose of this Rule is to set forth the provisions regarding the relationship between reinsurance intermediaries and insurers and reinsurers, as well as the obligations and responsibilities of the parties involved in this relationship, so that the risk ceded by domestic insurers through reinsurance treaties with reinsurers and that are placed through these intermediaries may be adequately protected. This in turn will protect the best interests of insurance consumers.

The Rule is applicable to domestic insurers and reinsurance intermediaries. International insurers are exempted from the provisions of this Rule.

SECTION 3. DEFINITION OF TERMS

- A. “Actuary” means a person who is an accredited member of the American Academy of Actuaries or has similar accreditation that is acceptable for the Commissioner.
- B. “Insurer” means a person who is engaged in underwriting insurance as defined in Section 1.050 of the Insurance Code. Without constituting any limitation to the general meaning of the above definition, reciprocal insurance associations, mutual associations, health service organizations or any group of any kind, whether for profit or not for profit, engaged in transacting insurance contracts are insurers.
- C. “Reinsurance intermediary-manager” means a person, firm, association or corporation that, whether designated by this term or by a similar term, has the authority to undertake or manage part or all of the reinsurance business assumed by a reinsurer (including the management of a division, department or separate office of such), and acts as an agent of the reinsurer, except the following:

- (1) An employee of the reinsurer;
 - (2) A US manager of a US branch of a foreign insurer.
 - (3) An underwriting manager, who under contract manages all or part of the reinsurance operations of the reinsurer, is under common control with the reinsurer, subject to the provisions of Holding Company Systems, and is not compensated based on the volume of written premium.
 - (4) The manager of a group, association, joint fund or insurers' organization that participate in joint underwriting or reinsurance, only if the group, association, joint fund or insurers' organization (as defined by its members) is subject to examination by the Commissioner of Insurance of the state where the main office of the manager is located.
- D. "Qualified United States or Puerto Rico Financial institution" means an institution that:
- (1) Is organized or authorized by license, under the laws of Puerto Rico or the United States;
 - (2) Is regulated, supervised, and examined by the Office of the Commissioner of Financial Institutions (OCIF) or by federal entities that have regulatory authority with regard to banks and trusts; and
 - (3) Has been determined by the Commissioner or by the "Securities Valuation Office" of the NAIC, to be in compliance with necessary and appropriate financial condition standards and whose letters of credit are acceptable to the Commissioner.
- E. "Reinsurance Intermediary" means a producer, reinsurance intermediary or reinsurance intermediary-manager, as defined in paragraphs G and C of this Section.
- F. "Controlling person" means a person, firm, association or corporation that, directly or indirectly, has the power to direct or cause to be directed the management, control or activities of the Reinsurance Intermediary.
- G. "Reinsurance Intermediary-producer" means a person, who is not an officer or employee of the ceding insurer, firm, association or corporation that solicits, negotiates, cedes or retrocedes reinsurance on behalf of the ceding insurer, and who does not act as a reinsurance intermediary-manager of the insurer.

- H. “Reinsurer” means a person, firm, association or corporation that is duly authorized in Puerto Rico, under the applicable provisions of the Insurance Code and its Regulations, as an insurer with authority to assume reinsurance.

SECTION 4. LICENSING

- A. No person, firm, association or corporation as a Reinsurance Intermediary-producer in Puerto Rico without passing an examination and holding license issued for that purpose by the OCI, as required in Ruling Letter No. 2011-117-SP dated December 7, 2010.
- (1) If the interested party has offices in Puerto Rico, whether directly or as a member or employee of a firm or association or as an officer, director or employee of a corporation, the party must be authorized by the OCI to do business as a Reinsurance Intermediary-producer in Puerto Rico.
- B. No person, firm, association or corporation may act a reinsurance intermediary-manager without passing an examination and holding license issued for that purpose by the OCI, as required in Ruling Letter No. 2011-117-SP dated December 7, 2010.
- C. The Commissioner may require resident reinsurance producers and reinsurance intermediary-managers subject to subparagraphs A and B to:
- (1) Post a bond for the amount required by the Commissioner; or
- (2) Maintain a professional liability policy, issued by an authorized insurer, for an amount required by the Commissioner.
- D. (1) The Commissioner may issue a reinsurance intermediary license to any person, firm, association or corporation that has complied with the provisions of this Rule. A license issued to a firm or association will authorize all of the members of the firm or association and any employee designated to act as a reinsurance intermediary under the license, provided they comply in all respects as though they were individual licensees. Such individuals must be named in the license application and in any other supplementary document. A license issued to a corporation will authorize all designated officers and employees and directors to act as reinsurance intermediaries on behalf of the corporation, provided they comply in all respects as though they were individual licensees. These individuals must be named in the license application and in any other supplementary document.
- (2) The Commissioner may issue a license to a non-resident reinsurance intermediary if:
- (a) The person currently holds a license as a reinsurance intermediary or as an insurance producer in his or her US state of domicile;

- (b) The person has filed a license application and paid the filing fees;
 - (c) The person has submitted to the Commissioner of Insurance, the license application filed in his or her US state of domicile, or an application as may designated as appropriate by the Commissioner; and
 - (d) The person's US state of domicile grants non-resident insurance licenses to residents of Puerto Rico based on the same authorization requirements.
- E. The Commissioner may refuse to issue a reinsurance intermediary license if in the judgment of the Commissioner, the applicant, any person named in the application, or any member, principal, officer or director of the applicant, is deemed untrustworthy, or any controlling person is considered untrustworthy to act as a reinsurance intermediary, or if any of the persons mentioned above has given just cause for revoking or suspending such license, or has failed to comply with any requirement for the issue thereof. On receiving a written application from any of these persons, the Commissioner will proceed to prepare a summary of the reasons for denying the license. This document will be considered confidential.
- F. Attorneys who are duly licensed in Puerto Rico will be exempted from the provisions of this Section when they are acting in their professional capacity.

SECTION 5. REQUIREMENTS FOR REINSURANCE INTERMEDIARY-PRODUCER CONTRACTS

Transactions between a reinsurance producer Intermediary and the insurer represented by the producer may be carried out further to written authorization, whether a Broker of Record Letter (BOR) or similar agreement, specifying the responsibilities of the parties. The authorization must be filed with the Commissioner and include at least the following items:

- A The insurer may terminate the authority of the reinsurance intermediary-producer at any time.
- B. The reinsurance intermediary-producer will also render accounts to the insurer accurately detailing all material transactions, including information necessary to support all commissions, charges, and other fees received by or owing to the reinsurance intermediary broker, and remit all funds due to the insurer within thirty (30) days of receipt.
- C. All funds collected for the insurer's account will be held by the reinsurance intermediary in a fiduciary capacity, in a bank that is a qualified United States or Puerto Rico financial institution, and as defined in this Rule.

- D. The reinsurance intermediary-producer shall comply with the provisions of Section 6 of this Rule.
- E. The reinsurance intermediary-producer will comply with all requirements for the cession and retrocession of all risks.
- F. The reinsurance intermediary-producer will disclose to the insurer any relationship with any reinsurer to whom business will be ceded or retroceded.

SECTION 6. BOOKS AND RECORDS OF REINSURANCE INTERMEDIARY-PRODUCERS

- A. The reinsurance intermediary-producer must keep complete records of each transaction, for at least ten (10) years after the expiration of each and every reinsurance contract transacted. The records will include the following:
 - (1) Type of contract, limits, underwriting restrictions, classes or risks and territory;
 - (2) Period of coverage, including effective and expiration dates, cancellation provisions, and notice required of cancellation;
 - (3) Record of any payment made or received under the reinsurance contract;
 - (4) Rate used to compute the reinsurance premium;
 - (5) Names and addresses of the reinsurers assuming the risk;
 - (6) Rates used for all reinsurance commissions, including the commissions on any retrocessions handled by the reinsurance intermediary-producer;
 - (7) Related correspondence and memoranda;
 - (8) Proof of placement or Placement Slip;
 - (9) Details regarding retrocessions handled by the reinsurance intermediary-producer, including the identity of retrocessionaires and percentage of each contract assumed or ceded;
 - (10) Financial records, including but not limited to, premium and loss accounts; and
 - (11) When the reinsurance intermediary-producer places a reinsurance contract on behalf of an authorized ceding insurer :

- (a) Direct written evidence from the reinsurer assuming the risk showing that the reinsurer has agreed to assume the risk, whether a Cover Note, a Placement Slip or a reinsurance contract, or
 - (b) If placed through a representative of the assuming reinsurer, other than an employee, written evidence that the reinsurer has delegated binding authority to the representative.
- B. The insurer will have access and the right to copy and audit all accounts and records maintained by the reinsurance intermediary-producer related to its business in a form usable by the insurer.

SECTION 7. DUTIES OF INSURERS USING THE SERVICES OF A REINSURANCE INTERMEDIARY-PRODUCER

- A. An insurer shall not engage the services of any person, firm, association or corporation to act as a reinsurance intermediary-producer on its behalf unless the person is licensed under the provisions of the Section 4A of this Rule.
- B. An insurer may not employ an individual who is employed by a reinsurance intermediary-producer with which it transacts business, unless the reinsurance intermediary-producer is under common control with the insurer and subject to the provisions for Holding Company Systems.
- C. The insurer shall annually obtain a copy of statements of the financial condition of each reinsurance intermediary-producer with which it transacts business.

SECTION 8. REQUIREMENTS FOR REINSURANCE INTERMEDIARY-MANAGER CONTRACT PROVISIONS

Transactions between a reinsurance intermediary-manager and the reinsurer it represents may be entered into pursuant only to a written contract specifying the responsibilities of each party, which must be approved by the reinsurer's board of directors. At least thirty (30) days before the reinsurer assumes or cedes business through the producer, a copy of the approved contract must be filed with the Commissioner for approval. The contract must provide the following, at a minimum:

- A. The reinsurer may terminate the contract for cause upon written notice to the reinsurance intermediary-manager. The reinsurer may immediately suspend the authority of the reinsurance intermediary-manager to assume or cede risks during the pendency of any dispute regarding the cause for termination
- B. The reinsurance intermediary-manager must render accounts to the reinsurer, accurately detailing all material transactions, including information necessary to support all

commissions, charges, and other fees received by or owing to the reinsurance intermediary manager, and must remit all funds due under the contract to the reinsurer at least monthly

- C. All funds collected for the reinsurer's account must be held by the reinsurance intermediary manager in a fiduciary capacity in a bank which is a qualified United States or Puerto Rico financial institution, as defined for the purposes of this Rule. The reinsurance intermediary manager may retain no more than three (3) months' estimated claims payments and allocated loss adjustment expenses. The reinsurance intermediary manager shall also maintain a separate bank account for each reinsurer which it represents.
- D. For at least ten (10) years after expiration of each contract of reinsurance transacted by the reinsurance intermediary manager, the reinsurance intermediary manager must keep a complete record of each transaction, including the following:
- (1) Type of contract, limits, underwriting restrictions, classes or risks and territory;
 - (2) Period of coverage, including effective and expiration dates, cancellation provisions and notice required of cancellation, and disposition of outstanding reserves on covered risks;
 - (3) Record of any payment made or received under the reinsurance contract;
 - (4) Rate used to compute the reinsurance premium;
 - (5) Names and addresses of the reinsurers;
 - (6) Rates used for all reinsurance commissions, including the commissions on any retrocessions handled by the reinsurance intermediary -manager;
 - (7) Related correspondence and memoranda;
 - (8) Proof of placement or Placement Slip;
 - (9) Details regarding retrocessions handled by the reinsurance intermediary--manager, as set forth in Section 10D of this Rule, including the identity of retrocessionaires and percentage of each contract assumed or ceded;
 - (10) Financial records, including but not limited to, premium and loss accounts; and
 - (11) When the reinsurance intermediary-manager places a reinsurance contract on behalf of an authorized ceding insurer:

- (a) Direct written evidence from the reinsurer assuming the risk showing that the reinsurer has agreed to assume the risk, whether a Cover Note, a Placement Slip or a reinsurance contract, or
 - (b) If placed through a representative of the assuming reinsurer, other than an employee, written evidence that the reinsurer has delegated binding authority to the representative.
- E. The reinsurer will have access and the right to copy all accounts and records maintained by the reinsurance intermediary manager related to its business with the reinsurer in a form usable by the reinsurer.
- F. The contract may not be ceded in part or in any of its parts by the reinsurance intermediary-manager.
- G. The reinsurance intermediary-manager will comply with all underwriting and rate standards established by the insurer for accepting, denying or ceding any risk.
- H. The rates, terms and purpose of the commissions, charges and other fees that the reinsurance intermediary-manager may impose on the reinsurer are established.
- I. If the contract allows the reinsurance intermediary-manager to decide claims on behalf of the reinsurer:
 - (1) All claims will be reported to the reinsurer within a period of thirty (30) days to be counted from the date of receipt by the reinsurance intermediary-manager;
 - (2) A copy of the claim file will be sent to the reinsurer at its request or as soon as it becomes known that the claim:
 - (a) has the potential to exceed the lesser of an amount determined by the Commissioner or the limit set by the reinsurer;
 - (b) involves a coverage dispute;
 - (c) may exceed the reinsurance intermediary-manager claims settlement authority;
 - (d) is open for more than six (6) months; or
 - (e) is closed by payment of the lesser of an amount set by the Commissioner or an amount set by the reinsurer;
 - (3) All claim files will be the joint property of the reinsurer and reinsurance intermediary-manager. However, upon an order of liquidation of the reinsurer the

files shall become the sole property of the reinsurer or its estate. The reinsurance intermediary-manager shall have reasonable access to and the right to copy the files on a timely basis.

- (4) Any settlement authority granted to the reinsurance intermediary-manager may be terminated for cause upon the reinsurer's written notice to the reinsurance intermediary-manager, or upon the termination of the contract. The reinsurer may suspend the settlement authority during the pendency of the dispute regarding the cause of termination.
- J. If the contract provides for a sharing of interim profits by the reinsurance intermediary-manager, that the contract shall provide interim profits will not be paid until one (1) year after the end of each underwriting period for property business and five (5) years after the end of each underwriting period for casualty business, or a later time period set by the Commissioner for specified lines of insurance, and not until the adequacy of reserves on remaining claims has been verified pursuant to Section 10C of this Rule.
- K. The reinsurance intermediary-manager will annually provide the reinsurer with a statement of its financial condition prepared by an independent certified public accountant.
- L. The reinsurer shall periodically or at least semi-annually conduct an on-site review of the underwriting and claims processing operations of the reinsurance intermediary-manager.
- M. The reinsurance intermediary-manager will disclose to the reinsurer any relationship it has with any insurer prior to ceding or assuming any business with the insurer pursuant to this contract.
- N. Within the scope of its actual or apparent authority the acts of the reinsurance intermediary-manager shall be considered to be the acts of the reinsurer on whose behalf it is acting.

SECTION 9. PROHIBITED ACTS

The reinsurance intermediary-manager may not:

- A. Cede retrocessions on behalf of the reinsurer, except that the reinsurance intermediary-manager may cede facultative retrocessions pursuant to obligatory facultative agreements if the contract with the reinsurer contains reinsurance underwriting guidelines for facultative retrocessions. The guidelines shall include a list of reinsurers with which automatic agreements are in effect, and for each listed reinsurer, the coverages and amounts or percentages that may be reinsured, and commission schedules
- B. Commit the reinsurer to participate in reinsurance syndicates;

- C. Appoint any producer without assuring that the producer is lawfully licensed to transact the type of reinsurance for which the producer is appointed;
- D. Without prior approval of the reinsurer, pay or commit the reinsurer to pay a claim, net of retrocessions, that exceeds the lesser of an amount specified by the reinsurer or 1% of the reinsurer's policyholder's surplus as of December 31 of the last complete calendar year;
- E. Collect any payment from a retrocessionaire or commit the reinsurer to any claim settlement with a retrocessionaire, without prior approval of the reinsurer. If prior approval is given, a report shall be promptly forwarded to the reinsurer;
- F. Jointly employ an individual who is employed by the reinsurer unless the reinsurance intermediary-manager is under common control with the reinsurer subject to the provisions regarding Holding Company Systems, or
- G. Appoint an assistant reinsurance intermediary-manager.

SECTION 10. DUTIES OF REINSURERS USING THE SERVICES OF REINSURANCE INTERMEDIARY-MANAGERS

- A. A reinsurer may not engage the services of any person, firm, association, or corporation to act as a reinsurance intermediary-manager on its behalf unless the person is authorized under the provisions of Section 4B of this Rule.
- B. The reinsurer shall annually obtain a copy of statements of the financial condition of each reinsurance intermediary-manager which the reinsurer has engaged, which shall be prepared by an independent certified public accountant in a form acceptable to the Commissioner.
- C. If a reinsurance intermediary-manager establishes loss reserves, the reinsurer shall annually obtain the opinion of an actuary attesting to the adequacy of loss reserves established for losses incurred and outstanding on business produced by the reinsurance intermediary-manager. This opinion must be submitted in addition to any other certification of the reserve that may be required.
- D. Binding authority for all retrocessional contracts or participation in reinsurance syndicates shall rest with an officer of the reinsurer, who may not be affiliated with the reinsurance intermediary-manager.
- E. Within thirty (30) days of termination of a contract with a reinsurance intermediary-manager, the reinsurer shall provide written notification of the termination to the Commissioner.

- F. A reinsurer may not appoint to its board of directors, any officer, director, employee, controlling shareholder, or subproducer of its reinsurance intermediary-manager. This subsection does not apply to relationships governed by provisions related to Holding Company Systems.

SECTION 11. AUTHORITY FOR EXAMINATIONS

- A. All reinsurance intermediaries will be subject to examination by the Commissioner.
- B. An reinsurance intermediary-manager may be examined as though the manager were the reinsurer.

SECTION 12. COMPLIANCE WITH ORDERS

- A. Reinsurance intermediary producers or managers will comply with all orders of a Court of competent jurisdiction or duly constituted arbitration panel that may require the production of non-privileged documents, or the testimony of an employee or other individual who is under the control of the producer or reinsurance intermediary-manager, with regard to any reinsurance transaction of for which it acted as a producer or reinsurance intermediary-manager.

Compliance shall be subject to the right of the producer or reinsurance intermediary-manager and of the parties to the reinsurance transaction to object to the court or arbitration panel concerning the nature or scope of the documents or testimony or the time within which it must comply with the order. Failure to comply with the order shall be deemed to be a material non-compliance with this Rule.

SECTION 13. PENALTIES AND RESPONSIBILITIES

- A. If the Commissioner finds that the reinsurance intermediary or any other person has materially failed to comply with the provisions of this Rule or any order entered under the Rule, the Commissioner may impose the following sanctions or penalties:
- (1) For each separate violation, a civil penalty in an amount not exceeding (\$5,000).
 - (2) Revocation or suspension of the reinsurance intermediary's license; and
 - (3) If it is deemed that as a consequence of the failure to comply, the insurer or reinsurer has suffered any loss or damage, the Commissioner may bring civil action on behalf of the reinsurer or insurer and their policyholders and creditors, for indemnity for the benefit of the reinsurer or insurer and their policyholders and creditors or seek any other appropriate remedy.

- B. If a rehabilitation or liquidation order has been issued for the insurer, under the provisions of Title 40 of the Insurance Code, and the liquidator finds that the reinsurance intermediary or any other person has failed to materially comply with the provisions of this Rule or any order entered under this Rule, and the insurer has suffered any loss or damage therefor, the liquidator may bring civil action seeking indemnity or other appropriate sanctions for the benefit of the insurer.
- C. Nothing contained in this section affects the right of the Commissioner to impose any other penalties provided in the Insurance Code.
- D. Nothing contained in this Rule is intended to limit or restrict the rights of policyholders, claimants, creditors, or any person; nor does it confer any rights to such persons.

SECTION 14. RECIPROCITY

- A. The Commissioner may forego certain requirements for non-resident applicants who hold a valid reinsurance intermediary license in another US state or jurisdiction of domicile.
- B. Compliance by a non-resident reinsurance intermediary with any continuing education requirement in the intermediary's state of domicile, if any, for producers or reinsurance intermediaries, will constitute compliance with the continuing education requirements in Puerto Rico, provided the non-resident producer's US state or jurisdiction of domicile recognizes that its continuing education requirements for insurance and reinsurance are likewise satisfied for Puerto Rico intermediaries.

SECTION 15. SERVICE OF PROCESS

It will be deemed that by accepting a license as a reinsurance intermediary in Puerto Rico, the intermediary is consenting to the jurisdiction of the Commissioner and the courts of Puerto Rico with regard to all activities carried out under such license. It is further deemed that the intermediary has designated the Commissioner as its representative for any service of process. Each and every authorized reinsurance intermediary must advise the Commissioner of the name and address of the resident individual acting as its contact, to whom the Commissioner may deliver notices, orders or any other process. The reinsurance intermediary must notify the Commissioner in writing and in a timely manner regarding any change in the contact person who will receive service of process and such change will not enter into effect until it is acknowledged by the Commissioner.

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 enter into effect thirty (30) days after filing at the Puerto Rico Department of State, under the provisions of Public Law No. 170, enacted on August 12, 1988, *supra*. No insurer or reinsurer may continue to use the services of a reinsurance intermediary after the effective date of this Rule, except according to the provisions herein.

RAMÓN L. CRUZ COLÓN
COMMISSIONER OF INSURANCE

Date of approval:

Date of Filing

With the Department of State:

Date of Filing

with the Legislative Library: