

**Effective 5/3/2023**

**31A-17-404 Credit allowed a domestic ceding insurer against reserves for reinsurance.**

- (1)
  - (a) Subject to Subsections (1)(b) and (c), a domestic ceding insurer is allowed credit for reinsurance as either an asset or a reduction from liability for reinsurance ceded only if the reinsurer meets the requirements of Subsection (3), (4), (5), (6), (7), (8), or (9).
  - (b) Credit is allowed under Subsection (3), (4), or (5) only with respect to a cession of a kind or class of business that the assuming insurer is licensed or otherwise permitted to write or assume:
    - (i) in the assuming insurer's state of domicile; or
    - (ii) in the case of a United States branch of an alien assuming insurer, in the state through which the assuming insurer is entered and licensed to transact insurance or reinsurance.
  - (c) Credit is allowed under Subsection (5) or (6) only if the applicable requirements of Subsection (11) are met.
- (2) A domestic ceding insurer is allowed credit for reinsurance ceded:
  - (a) only if the reinsurance is payable in a manner consistent with Section 31A-22-1201;
  - (b) only to the extent that the accounting:
    - (i) is consistent with the terms of the reinsurance contract; and
    - (ii) clearly reflects:
      - (A) the amount and nature of risk transferred; and
      - (B) liability, including contingent liability, of the ceding insurer;
  - (c) only to the extent the reinsurance contract shifts insurance policy risk from the ceding insurer to the assuming reinsurer in fact and not merely in form; and
  - (d) only if the reinsurance contract contains a provision placing on the reinsurer the credit risk of all dealings with intermediaries regarding the reinsurance contract.
- (3) A domestic ceding insurer is allowed a credit if the reinsurance is ceded to an assuming insurer that is licensed to transact insurance or reinsurance in this state.
- (4)
  - (a) A domestic ceding insurer is allowed a credit if the reinsurance is ceded to an assuming insurer that is accredited by the commissioner as a reinsurer in this state.
  - (b) An insurer is accredited as a reinsurer if the insurer:
    - (i) files with the commissioner evidence of the insurer's submission to this state's jurisdiction;
    - (ii) submits to the commissioner's authority to examine the insurer's books and records;
    - (iii)
      - (A) is licensed to transact insurance or reinsurance in at least one state; or
      - (B) in the case of a United States branch of an alien assuming insurer, is entered through and licensed to transact insurance or reinsurance in at least one state;
    - (iv) files annually with the commissioner a copy of the insurer's:
      - (A) annual statement filed with the insurance department of the insurer's state of domicile; and
      - (B) most recent audited financial statement; and
    - (v)
      - (A)
        - (I) has not had the insurer's accreditation denied by the commissioner within 90 days after the day on which the insurer submits the information required by this Subsection (4); and
        - (II) maintains a surplus with regard to policyholders in an amount not less than \$20,000,000;or
      - (B)

- (I) has the insurer's accreditation approved by the commissioner; and
  - (II) maintains a surplus with regard to policyholders in an amount less than \$20,000,000.
- (c) Credit may not be allowed a domestic ceding insurer if the assuming insurer's accreditation is revoked by the commissioner after a notice and hearing.
- (5)
- (a) A domestic ceding insurer is allowed a credit if:
    - (i) the reinsurance is ceded to an assuming insurer that is:
      - (A) domiciled in a state meeting the requirements of Subsection (5)(a)(ii); or
      - (B) in the case of a United States branch of an alien assuming insurer, is entered through a state meeting the requirements of Subsection (5)(a)(ii);
    - (ii) the state described in Subsection (5)(a)(i) employs standards regarding credit for reinsurance substantially similar to those applicable under this section; and
    - (iii) the assuming insurer or United States branch of an alien assuming insurer:
      - (A) maintains a surplus with regard to policyholders in an amount not less than \$20,000,000; and
      - (B) submits to the authority of the commissioner to examine the insurer's books and records.
  - (b) The requirements of Subsections (5)(a)(i) and (ii) do not apply to reinsurance ceded and assumed pursuant to a pooling arrangement among insurers in the same holding company system.
- (6)
- (a) A domestic ceding insurer is allowed a credit if the reinsurance is ceded to an assuming insurer that maintains a trust fund:
    - (i) created in accordance with rules made by the commissioner pursuant to Title 63G, Chapter 3, Utah Administrative Rulemaking Act; and
    - (ii) in a qualified United States financial institution for the payment of a valid claim of:
      - (A) a United States ceding insurer of the assuming insurer;
      - (B) an assign of the United States ceding insurer; and
      - (C) a successor in interest to the United States ceding insurer.
  - (b) To enable the commissioner to determine the sufficiency of the trust fund described in Subsection (6)(a), the assuming insurer shall:
    - (i) report annually to the commissioner information substantially the same as that required to be reported on the National Association of Insurance Commissioners Annual Statement form by a licensed insurer; and
    - (ii)
      - (A) submit to examination of its books and records by the commissioner; and
      - (B) pay the cost of an examination.
  - (c)
    - (i) Credit for reinsurance may not be granted under this Subsection (6) unless the form of the trust and any amendment to the trust is approved by:
      - (A) the commissioner of the state where the trust is domiciled; or
      - (B) the commissioner of another state who, pursuant to the terms of the trust instrument, accepts principal regulatory oversight of the trust.
    - (ii) The form of the trust and an amendment to the trust shall be filed with the commissioner of every state in which a ceding insurer beneficiary of the trust is domiciled.
    - (iii) The trust instrument shall provide that a contested claim is valid and enforceable upon the final order of a court of competent jurisdiction in the United States.
    - (iv) The trust shall vest legal title to the trust's assets in one or more of the trust's trustees for the benefit of:

- (A) a United States ceding insurer of the assuming insurer;
  - (B) an assign of the United States ceding insurer; or
  - (C) a successor in interest to the United States ceding insurer.
- (v) The trust and the assuming insurer are subject to examination as determined by the commissioner.
- (vi) The trust shall remain in effect for as long as the assuming insurer has an outstanding obligation due under a reinsurance agreement subject to the trust.
- (vii) No later than February 28 of each year, the trustee of the trust shall:
- (A) report to the commissioner in writing the balance of the trust;
  - (B) list the trust's investments at the end of the preceding calendar year; and
  - (C)
    - (I) certify the date of termination of the trust, if so planned; or
    - (II) certify that the trust will not expire before the following December 31.
- (d) The following requirements apply to the following categories of assuming insurer:
- (i) For a single assuming insurer:
- (A) the trust fund shall consist of funds in trust in an amount not less than the assuming insurer's liabilities attributable to reinsurance ceded by United States ceding insurers; and
  - (B) the assuming insurer shall maintain a trusteed surplus of not less than \$20,000,000, except as provided in Subsection (6)(d)(ii).
- (ii)
- (A) At any time after the assuming insurer has permanently discontinued underwriting new business secured by the trust for at least three full years, the commissioner with principal regulatory oversight of the trust may authorize a reduction in the required trusteed surplus, but only after a finding, based on an assessment of the risk, that the new required surplus level is adequate for the protection of United States ceding insurers, policyholders, and claimants in light of reasonably foreseeable adverse loss development.
  - (B) The risk assessment may involve an actuarial review, including an independent analysis of reserves and cash flows, and shall consider all material risk factors, including, when applicable, the lines of business involved, the stability of the incurred loss estimates, and the effect of the surplus requirements on the assuming insurer's liquidity or solvency.
  - (C) The minimum required trusteed surplus may not be reduced to an amount less than 30% of the assuming insurer's liabilities attributable to reinsurance ceded by United States ceding insurers covered by the trust.
- (iii) For a group acting as assuming insurer, including incorporated and individual unincorporated underwriters:
- (A) for reinsurance ceded under a reinsurance agreement with an inception, amendment, or renewal date on or after August 1, 1995, the trust shall consist of a trusteed account in an amount not less than the respective underwriters' several liabilities attributable to business ceded by the one or more United States domiciled ceding insurers to an underwriter of the group;
  - (B) for reinsurance ceded under a reinsurance agreement with an inception date on or before July 31, 1995, and not amended or renewed after July 31, 1995, notwithstanding the other provisions of this chapter, the trust shall consist of a trusteed account in an amount not less than the respective underwriters' several insurance and reinsurance liabilities attributable to business written in the United States;
  - (C) in addition to a trust described in Subsection (6)(d)(iii)(A) or (B), the group shall maintain in trust a trusteed surplus of which \$100,000,000 is held jointly for the benefit of the one

- or more United States domiciled ceding insurers of a member of the group for all years of account;
- (D) the incorporated members of the group:
- (I) may not be engaged in a business other than underwriting as a member of the group; and
  - (II) are subject to the same level of regulation and solvency control by the group's domiciliary regulator as are the unincorporated members; and
- (E) within 90 days after the day on which the group's financial statements are due to be filed with the group's domiciliary regulator, the group shall provide to the commissioner:
- (I) an annual certification by the group's domiciliary regulator of the solvency of each underwriter member; or
  - (II) if a certification is unavailable, a financial statement, prepared by an independent public accountant, of each underwriter member of the group.
- (iv) For a group of incorporated underwriters under common administration, the group shall:
- (A) have continuously transacted an insurance business outside the United States for at least three years immediately preceding the day on which the group makes application for accreditation;
  - (B) maintain aggregate policyholders' surplus of at least \$10,000,000,000;
  - (C) maintain a trust fund in an amount not less than the group's several liabilities attributable to business ceded by the one or more United States domiciled ceding insurers to a member of the group pursuant to a reinsurance contract issued in the name of the group;
  - (D) in addition to complying with the other provisions of this Subsection (6)(d)(iv), maintain a joint trusteed surplus of which \$100,000,000 is held jointly for the benefit of the one or more United States domiciled ceding insurers of a member of the group as additional security for these liabilities; and
  - (E) within 90 days after the day on which the group's financial statements are due to be filed with the group's domiciliary regulator, make available to the commissioner:
    - (I) an annual certification of each underwriter member's solvency by the member's domiciliary regulator; and
    - (II) a financial statement of each underwriter member of the group prepared by an independent public accountant.
- (7) A domestic ceding insurer is allowed a credit if the reinsurance is ceded to an assuming insurer that secures the assuming insurer's obligations in accordance with this Subsection (7):
- (a) The insurer shall be certified by the commissioner as a reinsurer in this state.
  - (b) To be eligible for certification, the assuming insurer shall:
    - (i) be domiciled and licensed to transact insurance or reinsurance in a qualified jurisdiction, as determined by the commissioner pursuant to Subsection (7)(d);
    - (ii) maintain minimum capital and surplus, or its equivalent, in an amount to be determined by the commissioner pursuant to rules made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act;
    - (iii) maintain financial strength ratings from two or more rating agencies considered acceptable by the commissioner pursuant to rules made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act; and
  - (iv) agree to:
    - (A) submit to the jurisdiction of this state;
    - (B) appoint the commissioner as the assuming insurer's agent for service of process in this state;

- (C) provide security for 100% of the assuming insurer's liabilities attributable to reinsurance ceded by United States ceding insurers if the assuming insurer resists enforcement of a final United States judgment;
  - (D) agree to meet applicable information filing requirements as determined by the commissioner including an application for certification, a renewal and on an ongoing basis; and
  - (E) any other requirements for certification considered relevant by the commissioner.
- (c) An association, including incorporated and individual unincorporated underwriters, may be a certified reinsurer, if the association:
- (i) satisfies the requirements of Subsections (7)(a) and (b);
  - (ii) satisfies the association's minimum capital and surplus requirements through the capital and surplus equivalents, net of liabilities, of the association and the association's members, which shall include a joint central fund that may be applied to any unsatisfied obligation of the association or any of the association's members in an amount determined by the commissioner to provide adequate protection;
  - (iii) does not have incorporated members of the association engaged in any business other than underwriting as a member of the association;
  - (iv) is subject to the same level of regulation and solvency control of the incorporated members of the association by the association's domiciliary regulator as are the unincorporated members; and
  - (v) within 90 days after the day on which the association's financial statements are due to be filed with the association's domiciliary regulator, provides to the commissioner:
    - (A) an annual certification by the association's domiciliary regulator of the solvency of each underwriter member; or
    - (B) if a certification described in Subsection (7)(c)(v)(A) is unavailable, financial statements prepared by independent public accountants, of each underwriter member of the association.
- (d)
- (i) The commissioner shall create and publish a list of qualified jurisdictions under which an assuming insurer licensed and domiciled in the jurisdiction is eligible to be considered for certification by the commissioner as a certified reinsurer.
  - (ii) To determine whether the domiciliary jurisdiction of a non-United States assuming insurer is eligible to be recognized as a qualified jurisdiction, the commissioner:
    - (A) shall evaluate the appropriateness and effectiveness of the reinsurance supervisory system of the jurisdiction, both initially and on an ongoing basis;
    - (B) shall consider the rights, the benefits, and the extent of reciprocal recognition afforded by the non-United States jurisdiction to reinsurers licensed and domiciled in the United States;
    - (C) shall require the qualified jurisdiction to share information and cooperate with the commissioner with respect to all certified reinsurers domiciled within that jurisdiction; and
    - (D) may not recognize a jurisdiction as a qualified jurisdiction if the commissioner has determined that the jurisdiction does not adequately and promptly enforce final United States judgments and arbitration awards.
  - (iii) The commissioner may consider additional factors in determining a qualified jurisdiction.
  - (iv) A list of qualified jurisdictions shall be published through the National Association of Insurance Commissioners' Committee Process.
  - (v) The commissioner shall:

- (A) consider the National Association of Insurance Commissioners' list of qualified jurisdictions in determining qualified jurisdictions; and
- (B) if the commissioner approves a jurisdiction as qualified that does not appear on the National Association of Insurance Commissioners' list of qualified jurisdictions, provide thoroughly documented justification in accordance with criteria to be developed by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.
- (vi) United States jurisdictions that meet the requirement for accreditation under the National Association of Insurance Commissioners' financial standards and accreditation program shall be recognized as qualified jurisdictions.
- (vii) If a certified reinsurer's domiciliary jurisdiction ceases to be a qualified jurisdiction, the commissioner may suspend the reinsurer's certification indefinitely, in lieu of revocation.
- (e) The commissioner shall:
  - (i) assign a rating to each certified reinsurer, giving due consideration to the financial strength ratings that have been assigned by rating agencies considered acceptable to the commissioner by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act; and
  - (ii) publish a list of all certified reinsurers and their ratings.
- (f) A certified reinsurer shall secure obligations assumed from United States ceding insurers under this Subsection (7) at a level consistent with the certified reinsurer's rating, as specified in rules made by the commissioner in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.
  - (i) For a domestic ceding insurer to qualify for full financial statement credit for reinsurance ceded to a certified reinsurer, the certified reinsurer shall maintain security in a form acceptable to the commissioner and consistent with Section 31A-17-404.1, or in a multibeneficiary trust in accordance with Subsections (5), (6), and (9), except as otherwise provided in this Subsection (7).
  - (ii) If a certified reinsurer maintains a trust to fully secure the certified reinsurer's obligations subject to Subsections (5), (6), and (9), and chooses to secure the certified reinsurer's obligations incurred as a certified reinsurer in the form of a multibeneficiary trust, the certified reinsurer shall maintain separate trust accounts for the certified reinsurer's obligations incurred under reinsurance agreements issued or renewed as a certified reinsurer with reduced security as permitted by this Subsection (7) or comparable laws of other United States jurisdictions and for the certified reinsurer's obligations subject to Subsections (5), (6), and (9).
  - (iii) It shall be a condition to the grant of certification under this Subsection (7) that the certified reinsurer shall have bound itself:
    - (A) by the language of the trust and agreement with the commissioner with principal regulatory oversight of the trust account; and
    - (B) upon termination of the trust account, to fund, out of the remaining surplus of the trust, any deficiency of any other trust account.
  - (iv) The minimum trusteed surplus requirements provided in Subsections (5), (6), and (9) are not applicable with respect to a multibeneficiary trust maintained by a certified reinsurer for the purpose of securing obligations incurred under this Subsection (7), except that the trust shall maintain a minimum trusteed surplus of \$10,000,000.
  - (v) With respect to obligations incurred by a certified reinsurer under this Subsection (7), if the security is insufficient, the commissioner:
    - (A) shall reduce the allowable credit by an amount proportionate to the deficiency; and

(B) may impose further reductions in allowable credit upon finding that there is a material risk that the certified reinsurer's obligations will not be paid in full when due.

(vi)

(A) For purposes of this Subsection (7), a certified reinsurer whose certification has been terminated for any reason shall be treated as a certified reinsurer required to secure 100% of the certified reinsurer's obligations.

(B) As used in this Subsection (7), the term "terminated" refers to revocation, suspension, voluntary surrender, and inactive status.

(C) If the commissioner continues to assign a higher rating as permitted by other provisions of this section, the requirement under this Subsection (7)(f)(vi) does not apply to a certified reinsurer in inactive status or to a reinsurer whose certification has been suspended.

(g) If an applicant for certification has been certified as a reinsurer in a National Association of Insurance Commissioners' accredited jurisdiction, the commissioner may:

(i) defer to that jurisdiction's certification;

(ii) defer to the rating assigned by that jurisdiction; and

(iii) consider such reinsurer to be a certified reinsurer in this state.

(h)

(i) A certified reinsurer that ceases to assume new business in this state may request to maintain the certified reinsurer's certification in inactive status in order to continue to qualify for a reduction in security for its in-force business.

(ii) An inactive certified reinsurer shall continue to comply with all applicable requirements of this Subsection (7).

(iii) The commissioner shall assign a rating to a reinsurer that qualifies under this Subsection (7)(h), that takes into account, if relevant, the reasons why the reinsurer is not assuming new business.

(8)

(a) As used in this Subsection (8):

(i) "Covered agreement" means an agreement entered into pursuant to Dodd-Frank Wall Street Reform and Consumer Protection Act, 31 U.S.C. Sections 313 and 314, that:

(A) is currently in effect or in a period of provisional application; and

(B) addresses the elimination, under specified conditions, of collateral requirements as a condition for entering into any reinsurance agreement with a ceding insurer domiciled in this state or for allowing the ceding insurer to recognize credit for reinsurance.

(ii) "Reciprocal jurisdiction" means a jurisdiction that is:

(A) a non-United States jurisdiction that is subject to an in-force covered agreement with the United States, each within its legal authority, or, in the case of a covered agreement between the United States and European Union, is a member state of the European Union;

(B) a United States jurisdiction that meets the requirements for accreditation under the National Association of Insurance Commissioners' financial standards and accreditation program; or

(C) a qualified jurisdiction, as determined by the commissioner in accordance with Subsection (7)(d), that is not otherwise described in this Subsection (8)(a)(ii) and meets certain additional requirements, consistent with the terms and conditions of in-force covered agreements, as specified by the commissioner in rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

(b)

- (i) Credit is allowed when the reinsurance is ceded to an assuming insurer meeting each of the conditions set forth in this Subsection (8)(b).
- (ii) The assuming insurer must have the assuming insurer's head office in or be domiciled in, as applicable, and be licensed in a reciprocal jurisdiction.
- (iii)
  - (A) The assuming insurer shall have and maintain, on an ongoing basis, minimum capital and surplus, or its equivalent, calculated according to the methodology of the assuming insurer's domiciliary jurisdiction, in an amount to be set forth in regulation.
  - (B) If the assuming insurer is an association, including incorporated and individual unincorporated underwriters, the assuming insurer shall have and maintain, on an ongoing basis, minimum capital and surplus equivalents (net of liabilities), calculated according to the methodology applicable in the assuming insurer's domiciliary jurisdiction, and a central fund containing a balance in amounts set forth in regulation.
- (iv)
  - (A) The assuming insurer must have and maintain, on an ongoing basis, a minimum solvency or capital ration, as applicable, which will be set forth in regulation.
  - (B) If the assuming insurer is an association, including incorporated and individual unincorporated underwriters, the assuming insurer must have and maintain, on an ongoing basis, a minimum solvency or capital ratio in the reciprocal jurisdiction where the assuming insurer has the assuming insurer's head office or is domiciled, as applicable, and is also licensed.
- (v) The assuming insurer must agree and provide adequate assurance to the commissioner, in a form specified by the commissioner by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, as follows:
  - (A) the assuming insurer must provide prompt written notice and explanation to the commissioner if the assuming insurer falls below the minimum requirements set forth in Subsection (8)(c) or (d), or if any regulatory action is taken against the assuming insurer for serious noncompliance with applicable law;
  - (B) the assuming insurer must consent in writing to the jurisdiction of the courts of this state and to the appointment of the commissioner as agent for service of process, however the commissioner may require that consent for service of process be provided to the commissioner and included in each reinsurance agreement and nothing in this provision shall limit, or in any way alter, the capacity of parties to a reinsurance agreement to agree to alternative dispute resolution mechanisms, except to the extent such agreements are unenforceable under applicable insolvency or delinquency laws;
  - (C) the assuming insurer must consent in writing to pay all final judgments, wherever enforcement is sought, obtained by a ceding insurer or the ceding insurer's legal successor, that have been declared enforceable in the jurisdiction where the judgment was obtained;
  - (D) each reinsurance agreement must include a provision requiring the assuming insurer to provide security in an amount equal to 100% of the assuming insurer's liabilities attributable to reinsurance ceded pursuant to that agreement if the assuming insurer resists enforcement of a final judgment that is enforceable under the law of the jurisdiction in which the final judgement was obtained or a properly enforceable arbitration award, whether obtained by the ceding insurer or by the ceding insurer's legal successor on behalf of the ceding insurer's resolution estate; and



- (E) the assuming insurer must confirm that the assuming insurer is not presently participating in any solvent scheme of arrangement which involved this state's ceding insurers, and agree to notify the ceding insurer and the commissioner and to provide security:
    - (I) in an amount equal to 100% of the assuming insurer's liabilities to the ceding insurer, should the assuming insurer enter into such a solvent scheme of arrangement; and
    - (II) in a form consistent with the provisions of Subsections (7) and (10) and as specified by the commissioner in regulation.
  - (vi) The assuming insurer or the assuming insurer's legal successor must provide, if requested by the commissioner, on behalf of the assuming insurer and any legal predecessors, certain documentation to the commissioner, as specified by the commissioner by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.
  - (vii) The assuming insurer must maintain a practice of prompt payment of claims under reinsurance agreements, pursuant to criteria set forth in rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.
  - (viii) The assuming insurer's supervisory authority must confirm to the commissioner on an annual basis, as of the preceding December 31 or at the annual date otherwise statutorily reported to the reciprocal jurisdiction, that the assuming insurer complies with the requirements set forth in Subsections (8)(c) and (d).
  - (ix) Nothing in this provision precludes an assuming insurer from providing the commissioner with information on a voluntary basis.
- (c)
- (i) The commissioner shall timely create and publish a list of reciprocal jurisdictions.
  - (ii)
    - (A) A list of reciprocal jurisdictions is published through the National Association of Insurance Commissioners' Committee Process.
    - (B) The commissioner's list of reciprocal jurisdictions shall include any reciprocal jurisdiction as defined in this Subsection (8), and shall consider any other reciprocal jurisdictions in accordance with the criteria developed under rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.
  - (iii)
    - (A) The commissioner may remove a jurisdiction from the list of reciprocal jurisdictions upon a determination that the jurisdiction no longer meets the requirements of a reciprocal jurisdiction, in accordance with a process set forth in rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, except that the commissioner may not remove from the list a reciprocal jurisdiction.
    - (B) Upon removal of a reciprocal jurisdiction from this list, credit for reinsurance ceded to an assuming insurer whose home office or domicile is in that jurisdiction is allowed, if otherwise allowed under this chapter.
- (d)
- (i) The commissioner shall timely create and publish a list of assuming insurers that have satisfied the conditions set forth in this subsection and to which cessions shall be granted credit in accordance with this Subsection (8).
  - (ii) The commissioner may add an assuming insurer to such list if a National Association of Insurance Commissioners accredited jurisdiction has added such assuming insurer to a list of such assuming insurers or if, upon initial eligibility, the assuming insurer submits the information to the commissioner as required under this Subsection (8) and complies with any additional requirements that the commissioner may impose by rule made in accordance

with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, except to the extent that they conflict with an applicable covered agreement.

(e)

(i) If the commissioner determines that an assuming insurer no longer meets one or more of the requirements under this Subsection (8), the commissioner may revoke or suspend the eligibility of the assuming insurer for recognition under this Subsection (8) in accordance with procedures established in rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

(ii)

(A) While an assuming insurer's eligibility is suspended, no reinsurance agreement issued, amended, or renewed after the day on which the suspension is effective qualifies for credit except to the extent that the assuming insurer's obligations under the contract are secured in accordance with Subsection (10).

(B) If an assuming insurer's eligibility is revoked, no credit for reinsurance may be granted after the day on which the revocation is effective with respect to any reinsurance agreements entered into by the assuming insurer, including reinsurance agreements entered into before the day on which the revocation is effective, except to the extent that the assuming insurer's obligations under the contract are secured in a form acceptable to the commissioner and consistent with the provisions of Subsection (10).

(f) If subject to a legal process of rehabilitation, liquidation, or conservation, as applicable, the ceding insurer, or the ceding insurer's representative, may seek and, if determined appropriate by the court in which the proceedings are pending, may obtain an order requiring that the assuming insurer post security for all outstanding ceded liabilities.

(g) Nothing in this Subsection (8) limits or in any way alters the capacity of parties to a reinsurance agreement to agree on requirements for security or other terms in that reinsurance agreement, except as expressly prohibited by this chapter or other applicable law or regulation.

(h)

(i) Credit may be taken under this Subsection (8) only for reinsurance agreements entered into, amended, or renewed on or after the effective date of the statute adding this Subsection (8), and only with respect to losses incurred and reserves reported on or after the later of:

(A) the day on which the assuming insurer has met all eligibility requirements pursuant to Subsection (8)(b); and

(B) the day on which the new reinsurance agreement, amendment, or renewal is effective.

(ii) This Subsection (8) does not alter or impair a ceding insurer's right to take credit for reinsurance, to the extent that credit is not available under this Subsection (8), as long as the reinsurance qualifies for credit under any other applicable provision of this chapter.

(iii) Nothing in this Subsection (8) authorizes an assuming insurer to withdraw or reduce the security provided under any reinsurance agreement except as permitted by the terms of the agreement.

(iv) Nothing in this Subsection (8) limits, or in any way alters, the capacity of parties to any reinsurance agreement to renegotiate the agreement.

(9) If reinsurance is ceded to an assuming insurer not meeting the requirements of Subsection (3), (4), (5), (6), (7), or (8), a domestic ceding insurer is allowed credit only as to the insurance of a risk located in a jurisdiction where the reinsurance is required by applicable law or regulation of that jurisdiction.

(10)

- (a) An asset or a reduction from liability for the reinsurance ceded by a domestic insurer to an assuming insurer not meeting the requirements of Subsection (3), (4), (5), (6), (7), or (8) shall be allowed in an amount not exceeding the liabilities carried by the ceding insurer.
- (b) The commissioner may adopt by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, specific additional requirements relating to or setting forth:
  - (i) the valuation of assets or reserve credits;
  - (ii) the amount and forms of security supporting reinsurance arrangements; and
  - (iii) the circumstances pursuant to which credit will be reduced or eliminated.
- (c)
  - (i) The reduction shall be in the amount of funds held by or on behalf of the ceding insurer, including funds held in trust for the ceding insurer, under a reinsurance contract with the assuming insurer as security for the payment of obligations thereunder, if the security is:
    - (A) held in the United States subject to withdrawal solely by, and under the exclusive control of, the ceding insurer; or
    - (B) in the case of a trust, held in a qualified United States financial institution.
  - (ii) The security described in this Subsection (10)(c) may be in the form of:
    - (A) cash;
    - (B) securities listed by the Securities Valuation Office of the National Association of Insurance Commissioners, including those deemed exempt from filing as defined by the Purposes and Procedures Manual of the Securities Valuation Office, and qualifying as admitted assets;
    - (C) clean, irrevocable, unconditional letters of credit, issued or confirmed by a qualified United States financial institution effective no later than December 31 of the year for which the filing is being made, and in the possession of, or in trust for, the ceding insurer on or before the filing date of its annual statement;
    - (D) 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
    - (E) any other form of security acceptable to the commissioner.
- (11) Reinsurance credit is not allowed a domestic ceding insurer unless the assuming insurer under the reinsurance contract submits to the jurisdiction of Utah courts by:
  - (a)
    - (i) being an admitted insurer; and
    - (ii) submitting to jurisdiction under Section 31A-2-309;
  - (b) having irrevocably appointed the commissioner as the domestic ceding insurer's agent for service of process in an action arising out of or in connection with the reinsurance, which appointment is made under Section 31A-2-309; or
  - (c) agreeing in the reinsurance contract:
    - (i) that if the assuming insurer fails to perform the assuming insurer's obligations under the terms of the reinsurance contract, the assuming insurer, at the request of the ceding insurer, shall:
      - (A) submit to the jurisdiction of a court of competent jurisdiction in a state of the United States;
      - (B) comply with all requirements necessary to give the court jurisdiction; and
      - (C) abide by the final decision of the court or of an appellate court in the event of an appeal;

- (ii) to designate the commissioner or a specific attorney licensed to practice law in this state as its attorney upon whom may be served lawful process in an action, suit, or proceeding instituted by or on behalf of the ceding company.
- (12) Submitting to the jurisdiction of Utah courts under Subsection (11) does not override a duty or right of a party under the reinsurance contract, including a requirement that the parties arbitrate their disputes.
- (13)
  - (a) If an assuming insurer does not meet the requirements of Subsection (3), (4), (5), or (8), the credit permitted by Subsection (6) or (7) may not be allowed unless the assuming insurer agrees in the trust instrument to the conditions described in Subsections (13)(b) through (e).
  - (b)
    - (i) Notwithstanding any other provision in the trust instrument, if an event described in Subsection (13)(b)(ii) occurs the trustee shall comply with:
      - (A) an order of the commissioner with regulatory oversight over the trust; or
      - (B) an order of a court of competent jurisdiction directing the trustee to transfer to the commissioner with regulatory oversight all of the assets of the trust fund.
    - (ii) This Subsection (13)(b) applies if:
      - (A) the trust fund is inadequate because the trust contains an amount less than the amount required by Subsection (6)(d); or
      - (B) the grantor of the trust is:
        - (I) declared insolvent; or
        - (II) placed into receivership, rehabilitation, liquidation, or similar proceeding under the laws of its state or country of domicile.
  - (c) The assets of a trust fund described in Subsection (13)(b) shall be distributed by and a claim shall be filed with and valued by the commissioner with regulatory oversight in accordance with the laws of the state in which the trust is domiciled that are applicable to the liquidation of a domestic insurance company.
  - (d) If the commissioner with regulatory oversight determines that the assets of the trust fund, or any part of the assets, are not necessary to satisfy the claims of the one or more United States ceding insurers of the grantor of the trust, the assets, or a part of the assets, shall be returned by the commissioner with regulatory oversight to the trustee for distribution in accordance with the trust instrument.
  - (e) A grantor shall waive any right otherwise available to the grantor under United States law that is inconsistent with this Subsection (13).
- (14)
  - (a) If an accredited or certified reinsurer ceases to meet the requirements for accreditation or certification, the commissioner may suspend or revoke the reinsurer's accreditation or certification.
  - (b) The commissioner shall give the reinsurer notice and opportunity for hearing.
  - (c) The suspension or revocation may not take effect until after the day on which the commissioner issues an order after a hearing, unless:
    - (i) the reinsurer waives the reinsurer's right to hearing;
    - (ii) the commissioner's order is based on:
      - (A) regulatory action by the reinsurer's domiciliary jurisdiction; or
      - (B) the voluntary surrender or termination of the reinsurer's eligibility to transact insurance or reinsurance business in its domiciliary jurisdiction or primary certifying state under Subsection (7)(g); or

- (iii) the commissioner's finding that an emergency requires immediate action and a court of competent jurisdiction has not stayed the commissioner's action.
  - (d) While a reinsurer's accreditation or certification is suspended, no reinsurance contract issued or renewed after the effective date of the suspension qualifies for credit except to the extent that the reinsurer's obligations under the contract are secured in accordance with Section 31A-17-404.1.
  - (e) If a reinsurer's accreditation or certification is revoked, no credit for reinsurance may be granted after the effective date of the revocation except to the extent that the reinsurer's obligations under the contract are secured in accordance with Subsection (7)(f) or Section 31A-17-404.1.
- (15)
- (a) A ceding insurer shall take steps to manage the ceding insurer's reinsurance recoverables proportionate to the ceding insurer's own book of business.
  - (b)
    - (i) A domestic ceding insurer shall notify the commissioner within 30 days after the day on which reinsurance recoverables from any single assuming insurer, or group of affiliated assuming insurers:
      - (A) exceeds 50% of the domestic ceding insurer's last reported surplus to policyholders; or
      - (B) after it is determined that reinsurance recoverables from any single assuming insurer, or group of affiliated assuming insurers, is likely to exceed 50% of the domestic ceding insurer's last reported surplus to policyholders.
    - (ii) The notification required by Subsection (15)(b)(i) shall demonstrate that the exposure is safely managed by the domestic ceding insurer.
  - (c) A ceding insurer shall take steps to diversify the ceding insurer's reinsurance program.
  - (d)
    - (i) A domestic ceding insurer shall notify the commissioner within 30 days after the day on which the ceding insurer cedes or is likely to cede more than 20% of the ceding insurer's gross written premium in the prior calendar year to any:
      - (A) single assuming insurer; or
      - (B) group of affiliated assuming insurers.
    - (ii) The notification shall demonstrate that the exposure is safely managed by the domestic ceding insurer.
- (16) A ceding insurer licensed under Chapter 5, Domestic Stock and Mutual Insurance Corporations, Chapter 7, Nonprofit Health Service Insurance Corporations, Chapter 8, Health Maintenance Organizations and Limited Health Plans, or Chapter 9, Insurance Fraternal, may be allowed credit if:
- (a) the reinsurance is ceded to an assuming domestic captive insurer; and
  - (b) the assuming domestic captive insurer complies with:
    - (i) Sections 31A-2-202 through 31A-2-205;
    - (ii) Chapter 4, Insurers in General;
    - (iii) Chapter 16, Insurance Holding Companies;
    - (iv) Chapter 16a, Risk Management and Own Risk and Solvency Assessment Act;
    - (v) Chapter 17, Determination of Financial Condition;
    - (vi) Chapter 18, Investments; and
    - (vii) any other requirement that, in the commissioner's discretion, is necessary to promote the captive insurer's solvency.

Amended by Chapter 194, 2023 General Session

