

REINSURANCE REQUIREMENTS

The Department of Industry, Division of Insurance (Division), has determined that several areas of Chapter 681A of Nevada Revised Statutes (NRS), and Nevada Administrative Code (NAC) need to be clarified.

REINSURANCE AND THE REQUIREMENTS FOR TRUSTS

NRS 681A.200 (1) states the following:

1. A trust for the purposes of [NRS 681A.180](#) or [681A.190](#) must be established in a form approved by the commissioner. The trust instrument must provide that contested claims become valid and enforceable upon the final order of any court of competent jurisdiction in the United States. The trust must vest legal title to its assets in the trustees of the trust for its policyholders and ceding insurers in the United States, their assigns and successors in interest. The trust and the assuming insurer are subject to examination as determined by the commissioner. The trust must remain in effect for as long as the assuming insurer has outstanding obligations due under the agreements for reinsurance subject to the trust.

The Form of the Trust

STATUTE: “A trust for the purposes of [NRS 681A.180](#) or [681A.190](#) must be established in a form approved by the commissioner.”

CLARIFICATION: Credit for reinsurance shall not be granted unless the form of the trust and any amendments to the trust have been approved by either the commissioner of the state where the trust is domiciled or by the commissioner of another state who, pursuant to the terms of the trust instrument, has accepted responsibility for regulatory oversight of the trust. The form of the trust and any trust amendments also shall be filed with the commissioner of every state in which the ceding insurer beneficiaries of the trust are domiciled.

Trust Provisions

STATUTE: “The trust instrument must provide that contested claims become valid and enforceable upon the final order of any court of competent jurisdiction in the United States.”

CLARIFICATION: The Division interprets this language to mean that “the contested claims shall be valid and enforceable out of funds in the trust to the extent remaining unsatisfied thirty (30) days after entry of the final order of any court of competent jurisdiction in the United States.”

STATUTE: “The trust must remain in effect for as long as the assuming insurer has outstanding obligations due under the agreements for reinsurance subject to the trust.”

CLARIFICATION: The Division interprets “the assuming insurer,” to include “any member or former member of a group of insurers.”

For insurers to receive credit for reinsurance assumed under Chapter 681A of the Nevada Revised Statutes (NRS), Sections 140 through 240 inclusive, and Nevada Administrative Code (NAC), Sections 150 through 190 inclusive, the reinsurance agreement shall be constructed to contain the following provisions:

In the event of insolvency and the appointment of a receiver, the reinsurance obligation shall be payable to the receiver upon demand, with reasonable provision for verification, on the basis of claims allowed pursuant to Chapter 696B of Nevada Revised Statutes, Section 310, 320 and 330, without diminution because of the insolvency or because the receiver has failed to pay all or a portion of any claims. Payment by the reinsurer as set forth above shall be made directly to the ceding insurer or to its receiver; and the receiver of a reinsured company shall give written notice of the pendency of a claim against the reinsured company indicating the policy or bond reinsured, within a reasonable time after the claim is filed. The receiver of a reinsured company may arrange for the giving of notice of the pendency of claims on reinsured policies by guaranty funds or by other persons responsible for the adjustment and settlement of the reinsured company” claims. Failure to give notice shall not excuse the obligation of the reinsurer unless it is substantially prejudiced thereby. The reinsurer may interpose, at its own expense, in the proceeding where the claim is to be adjudicated, any defense or defenses which it may deem available to the reinsured company or its receiver.

If an assuming insurer is unauthorized, the agreement shall include a provision whereby the assuming insurer will submit to the jurisdiction of an alternative dispute resolution panel or court of competent jurisdiction within the United States, has agreed to comply with all requirements necessary to give the court or panel jurisdiction, has designated an agent upon whom service of process may be effected, and has agreed to abide by the final decision of the court or panel. The assuming insurer shall provide a properly executed Form AR-1 as evidence of the above and its submission to the State of Nevada, Department of Business and Industry, Division of Insurance’s authority to examine the books and records of any of its members and shall certify that any member examined will bear the expense of any such examination. The group shall make available to the commissioner annual certification by the members’ domiciliary regulators and their independent public accountant to the solvency of each member of the group.

The form AR-1 is attached to this bulletin and is being mailed to all domestic insurers on January 30, 2002.

The form will be available on the Division website at doi.state.nv.us under Corporate and Finance – Reinsurance Filings.

If you need any further assistance, contact the Division staff at: The Nevada Division of Insurance, Corporate and Financial Affairs @ (775) 687-4270.

ALICE A. MOLASKY-ARMAN
Commissioner of Insurance

CERTIFICATE OF ASSUMING INSURER

I, _____, _____
 (name of officer) (title of officer)
 of _____, the assuming insurer
 (name of assuming insurer)
 under a reinsurance agreement with one or more insurers domiciled in _____, hereby
 (name of state)
 certify that _____ ("Assuming Insurer"):
 (name of assuming insurer)

1. Submits to the jurisdiction of any court of competent jurisdiction in _____
 (ceding insurer's state of domicile)
 for the adjudication of any issues arising out of the reinsurance agreement, agrees to comply with all requirements necessary to give such court jurisdiction, and will abide by the final decision of such court or any appellate court in the event of an appeal. Nothing in this paragraph constitutes or should be understood to constitute a waiver of Assuming Insurer's rights to commence an action in any court of competent jurisdiction in the United States, to remove an action to a United States District Court, or to seek a transfer of a case to another court as permitted by the laws of the United States or of any state in the United States. This paragraph is not intended to conflict with or override the obligation of the parties to the reinsurance agreement to arbitrate their disputes if such an obligation is created in the agreement.

2. Designates the Insurance Commissioner of _____
 (ceding insurer's state of domicile)
 as its lawful attorney upon whom may be served any lawful process in any action, suit or proceeding arising out of the reinsurance agreement instituted by or on behalf of the ceding insurer.

3. Submits to the authority of the Insurance Commissioner of _____
 (ceding insurer's state of domicile)
 to examine its books and records and agrees to bear the expense of any such examination.

4. Submits with this form a current list of insurers domiciled in _____
 (ceding insurer's state of domicile)
 reinsured by Assuming Insurer and undertakes to submit additions to or deletions from the list to the Insurance Commissioner at least once per calendar quarter.

Dated: _____
 (name of assuming insurer)

BY: _____
 (name of officer)

 (title of officer)