

holder surplus. The commissioner may prohibit a licensed alien or nondomestic insurer from taking credit under this subsection.

(4) The reinsurer complies with all of the following:

(a) The reinsurer maintains a trust fund in a qualified fiduciary United States financial institution for the payment of the valid claims of its United States policyholders and ceding insurers, their assigns and successors in interest.

(b) The reinsurer reports annually, by March 1, or a later date which the commissioner approves in writing, to the commissioner information substantially the same as that required to be reported on the National Association of Insurance Commissioners Annual Statement form by licensed insurers to enable the commissioner to determine the sufficiency of the trust fund.

(c) The reinsurer maintains in a trust account funds equal to an amount that is not less than the assuming insurer's liabilities attributable to business written in the United States and, in addition, the reinsurer maintains a trustee surplus of not less than \$20,000,000.

(d) If the reinsurers are a group of individual unincorporated underwriters, the reinsurers maintains in a trustee account funds equal to an amount that is not less than the group's aggregate liabilities attributable to business written in the United States and, in addition, the group maintains a trustee surplus of which \$100,000,000 shall be held jointly for the benefit of United States ceding insurers of any member of the group and the group shall make available to the commissioner or equivalent official of the ceding licensed insurer's state of domicile or entry an annual certification of the solvency of each underwriter by the group's domiciliary regulator and its independent public accountants. For a domestic insurer, the certification shall be filed with the commissioner by June 1 unless otherwise approved in writing by the commissioner.

(e) The trust is established in a form approved by the commissioner or equivalent official of the ceding licensed insurer's state of domicile or entry. The trust instrument shall provide, and the trustees comply with, all of the following:

1. Contested claims shall be valid and enforceable out of funds in the trust if the claims remain unsatisfied 30 days after the entry of a final order of any court of competent jurisdiction in the United States.

2. Legal title to the assets of the trust is vested in the trustee of the trust for the benefit of the grantor's United States policyholders and ceding insurers, their assigns and successors in interest.

3. The trust and the assuming insurer are subject to examination as determined by the commissioner.

4. The trust shall remain in effect for as long as the assuming insurer, or any member or former member of a group of insurers, has outstanding obligations due under the reinsurance agreements subject to the trust.

5. No later than February 28 of each year, unless a later date is approved in writing by the commissioner or equivalent official of the ceding licensed insurer's state of domicile or entry, the trustees of the trust shall report to the commissioner or equivalent official of the ceding licensed insurer's state of domicile or entry in writing setting forth the balance in

the trust and listing the trust's investments at the preceding year end, and shall certify the date of termination of the trust, if so planned, or certify that the trust shall not expire prior to the next following December 31.

6. No amendment to the trust may be effective unless reviewed and approved in writing and in advance by the commissioner or equivalent official of the ceding licensed insurer's state of domicile or entry.

(5) The reinsurance ceded to the reinsurer is with respect to the insurance of risks located in jurisdictions where the reinsurance by the reinsurer is required by applicable law or regulation of that jurisdiction. For the purpose of this subsection "jurisdiction" means a state, district or territory of the United States or any lawful national government.

History: Cr. Register, July, 1993, No. 451, eff. 8-1-93.

Ins 52.025 Revocation of accreditation. (1) The commissioner may revoke the accreditation of a reinsurer under s. Ins 52.02. If the accreditation of a reinsurer is revoked, a licensed insurer may not take credit for ceded reinsurance to the reinsurer under s. Ins 52.02 (2), (3) or (3m), regardless of when the reinsurance was ceded or the reinsurance contract executed. If a reinsurer does not comply with any provision of s. Ins 52.02 (2), (3), (3m), (4) or (5) an insurer may not take credit for reinsurance ceded to the reinsurer under s. Ins 52.02 (2), (3), (3m), (4) or (5), regardless of whether the reinsurer is or remains accredited and regardless of when the reinsurance was ceded or the reinsurance contract executed.

(2) For the purpose of accreditation under s. Ins 52.02 (2) or an order disallowing credit under s. Ins 52.02 (3m), it is presumed that a reinsurer should not be accredited or take credit if the reinsurer has a policyholder surplus of less than \$20,000,000.

History: Cr. Register, July, 1993, No. 451, eff. 8-1-93.

Ins 52.03 Insolvency clause and jurisdiction; financial reinsurance disallowed. (1) A ceding domestic insurer may not take credit for reinsurance, except as permitted by s. Ins 52.02 (5), unless the reinsurer in a written reinsurance agreement:

(a) Agrees that if the reinsurer fails to perform its obligations under the terms of the reinsurance agreement, the reinsurer, at the request of the ceding insurer, shall submit to the jurisdiction of any court of competent jurisdiction in any state of the United States, will comply with all requirements necessary to give the court jurisdiction, and will abide by the final decision of such court or of any appellate court in the event of an appeal.

(b) Designates the commissioner or a designated attorney upon whom may be served any lawful process in any action, suit or proceeding instituted by or on behalf of the ceding company.

(c) For reinsurance agreements effective on or after January 1, 1980, the agreement provides that the reinsurer assumes all credit risks of an intermediary relating to payments to an intermediary if the agreement by its terms requires payments to an intermediary.

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(2) Subsection (1) does not effect the obligation of the parties to a reinsurance agreement to arbitrate their disputes, if the obligation is created in the agreement and complies with ch. 645, Stats.

(3) A ceding domestic insurer may not take credit for reinsurance unless the assuming insurer in the reinsurance contract:

(a) Undertakes to protect the ceding insurer from loss or liability on coverage the ceding insurer issues not only in form but in fact; and

(b) Includes a proper insolvency clause under s. 645.58 (1), Stats., or for an alien or nondomestic insurer includes an insolvency clause which guarantees payment of the liability of the reinsurer without diminution because of the insolvency of the ceding insurer.

History: Cr. Register, July, 1993, No. 451, eff. 8-1-93.

Ins 52.04 Reduction from liability for reinsurance ceded by a licensed insurer to an assuming insurer. Unless otherwise ordered by the commissioner, an insurer may take credit for a reduction in liability for reinsurance ceded to a reinsurer even if the credit is not permitted under s. Ins 52.02 in an amount not exceeding the lesser of the liabilities carried by the ceding insurer or the amount of funds held by or on behalf of the ceding insurer, but only if the funds are held in the United States and are security for the payment of obligations under the reinsurance contract and if the funds meet one of the following:

(1) Are included under a security arrangement and are subject to withdrawal solely by, and are under the exclusive control of, the ceding insurer, and the form of the funds and the security agreement are approved by the commissioner or the equivalent official of the state of domicile or entry of the ceding insurer.

(2) Are unencumbered, are securities listed by the securities valuation office of the national association of insurance commissioners and qualifying as admitted assets or cash, are withheld by the ceding insurer, and are subject to withdrawal solely by, and are under the exclusive control of, the ceding insurer;

(3) Are securities listed by the securities valuation office of the national association of insurance commissioners and qualifying as admitted assets or cash, are held in a trust for the exclusive benefit of the ceding insurer and the ceding insurer, reinsurer, reinsurance contract and trust comply with s. Ins. 52.05; or

(4) Are available under a clean, irrevocable, unconditional and ever-green letter of credit which is issued or confirmed by a qualified United States institution and are subject to withdrawal solely by, and are under the exclusive control of, the ceding insurer and the letter of credit is in the possession of the ceding insurer and the ceding insurer, reinsurer and letter of credit comply with s. Ins 52.06. A letter of credit meeting applicable standards of issuer acceptability as of the date of issue or confirmation continues to meet those standards for the purpose of this subsection if after issuance or confirmation the financial institution fails to meet applicable standards of issuer acceptability. The letter of credit continues to be acceptable as funds until its expiration, extension, renewal, modification or amendment, whichever first occurs.

History: Cr. Register, July, 1993, No. 451, eff. 8-1-93.

Ins 52.05 Trust agreements qualifying for security (1) In this section:

(a) "Beneficiary" means the person for whose sole benefit the trust has been established and any successor of the beneficiary by operation of law, including, but not limited to, any liquidator, rehabilitator, receiver, or conservator.

(b) "Grantor" means the person that has established a trust, including, but not limited to, an unlicensed, unaccredited assuming insurer that establishes a trust.

(c) "Reinsurance obligations" means:

1. Reinsured losses and allocated loss expenses paid by the ceding insurer, but not recovered from the assuming insurer;
2. Reserves for reinsured losses reported and outstanding;
3. Reserves for reinsured losses incurred but not reported; and
4. Reserves for allocated reinsured loss expenses and unearned premiums.

(2) A ceding insurer may take credit under s. Ins 52.04 (3) only if:

(a) There is a written trust agreement between the beneficiary, the grantor and a trustee and the trustee is a qualified fiduciary United States financial institution.

(b) The trust agreement creates a trust account and all the assets are deposited in the trust account.

(c) The trustee holds all assets in the trust account at the trustee's office in the United States, except that a bank may apply for the permission of the commissioner or equivalent official of the ceding insurer's state of domicile or entry to use a foreign branch office of the bank as trustee for trust agreements established under this section. If the commissioner or equivalent official approves the use of a foreign branch office as trustee, then its use must be approved by the beneficiary in writing and the trust agreement must provide that the written notice described in par. (d) 1 must also be presentable, as a matter of legal right, at the trustee's principal office in the United States.

(d) The trust agreement provides that:

1. The beneficiary may withdraw assets from the trust account at any time, without notice to the grantor, subject only to written notice from the beneficiary to the trustee;
2. No statement or document is required to be presented in order to withdraw assets, except that the beneficiary may be required to acknowledge receipt of withdrawn assets;
3. It is not subject to any conditions or qualifications outside of the trust agreement; and
4. It does not contain references to any other agreements or documents except as provided under par. (k).

(e) The trust agreement is established for the sole benefit of the beneficiary.

(f) The trust agreement requires the trustee to:

1. Receive assets and hold all assets in a safe place;
2. Determine that all assets are in such form that the beneficiary, or the trustee upon direction by the beneficiary, may whenever necessary negotiate any of the assets, without consent or signature from the grantor or any other person;
3. Furnish to the grantor and the beneficiary a statement of all assets in the trust account upon its inception and at intervals no less frequent than the end of each calendar quarter;
4. Notify the grantor and the beneficiary within 10 days, of any deposits to or withdrawals from the trust account;
5. Upon written demand of the beneficiary, immediately take any and all steps necessary to transfer absolutely and unequivocally all right, title and interest in the assets held in the trust account to the beneficiary and deliver physical custody of the assets to the beneficiary; and
6. Allow no substitutions or withdrawals of assets from the trust account, except on written instructions from the beneficiary, except that the trustee may, without the consent of but with notice to the beneficiary, upon call or maturity of any trust asset, withdraw such asset upon condition that the proceeds are paid into the trust account.

(g) The trust agreement provides that at least 30 days, but not more than 45 days, prior to termination of the trust account, written notification of termination shall be delivered by the trustee to the beneficiary.

(h) The trust agreement provides that it is subject to and governed by the laws of the state in which the trust is established.

(i) The trust agreement prohibits invasion of the trust corpus for the purpose of paying compensation to, or reimbursing the expenses of, the trustee.

(j) The trust agreement provides that the trustee is liable for its own negligence, willful misconduct or lack of good faith.

(k) Notwithstanding other provisions of this chapter, when a trust agreement is established in conjunction with a reinsurance agreement covering risks other than life, annuities and accident and health, and where it is customary practice to provide a trust agreement for a specific purpose, the trust agreement may, notwithstanding any other conditions in this chapter, provide that the ceding insurer agrees to use and apply amounts drawn upon the trust account, without diminution because of the insolvency of the ceding insurer or the assuming insurer, for the following purposes:

1. To pay or reimburse the ceding insurer for the assuming insurer's share under the specific reinsurance agreement regarding any losses and allocated loss expenses paid by the ceding insurer, but not recovered from the assuming insurer, or for unearned premiums due to the ceding insurer if not otherwise paid by the assuming insurer;

2. To make payment to the assuming insurer of any amounts held in the trust account that exceed 102% of the actual amount required to

fund the assuming insurer's reinsurance obligations under the specific reinsurance agreement; or

3. Where the ceding insurer has received notification of termination of the trust account and where the assuming insurer's entire reinsurance obligations under the specific reinsurance agreement remain unliquidated and undischarged 10 days prior to the termination date, to withdraw amounts equal to the reinsurance obligations and deposit those amounts in a separate account in the name of the ceding insurer in any qualified fiduciary United States financial institution apart from its general assets and in trust for the uses and purposes specified in subds. 1 and 2 which remain executory after the withdrawal and for any period after the termination date.

(1) Either the reinsurance agreement entered into in conjunction with the trust agreement or the trust agreement stipulates that assets deposited in the trust account shall be valued according to their current fair market value and shall consist only of one or more of the following:

1. United States legal tender cash;

2. Certificates of deposit issued by a United States bank and payable in United States legal tender issued by an institution that is not the parent, subsidiary or affiliate of either the grantor or the beneficiary; or

3. Investments which are admitted assets, permitted under ch. 620, Stats., and not excluded from the calculation of compulsory surplus, if the investments are issued by an institution that is not the parent, subsidiary or affiliate of either the grantor or the beneficiary.

(m) Any trust agreement provision which permits the trustee to resign only allows resignation to be effective not less than 90 days after receipt by the beneficiary and grantor of written notice of resignation and only after a successor trustee has been duly appointed and approved by the beneficiary and the grantor and all assets in the trust have been duly transferred to the new trustee.

(n) Any trust agreement provision which permits the grantor to remove the trustee only allows removal to be effective not less than 90 days after receipt of notice of the removal by the trustee and beneficiary and only after a successor trustee has been duly appointed and approved by the beneficiary and the grantor and all assets in the trust have been duly transferred to the new trustee.

(o) Any trust agreement provision which allows the grantor full and unqualified right to vote any shares of stock in the trust account and to receive from time to time payments of any dividends or interest upon any shares of stock or obligations included in the trust account requires the trustee to promptly on receipt forward dividends or interest to the grantor or promptly deposit dividends or interest in a separate account established in the grantor's name.

(p) Any trust agreement provision which gives the trustee authority to invest, or accept substitutions of, any funds in the account, requires the trustee to obtain the prior approval of the beneficiary for each investment or substitution, unless the trust agreement specifies categories of investments acceptable to the beneficiary and authorizes the trustee to invest funds and to accept substitutions which the trustee determines are

at least equal in market value to the assets withdrawn and that are consistent with the restrictions in par. (1).

(q) Any trust agreement provision which permits or requires the trustee, upon termination of the trust account, to deliver assets not withdrawn by the beneficiary to the grantor, also prohibits the trustee from delivering the assets until the beneficiary gives written approval.

(3) A trust agreement under s. Ins 52.04 (3) may permit the beneficiary to at any time designate a party to which all or part of the trust assets are to be transferred. The transfer may be conditioned upon the trustee receiving, prior to or simultaneously, other specified assets.

(4) A ceding insurer may take credit under s. Ins 52.04 (3) only if there is a written reinsurance agreement entered into in conjunction with a trust agreement which complies with sub. (2) and the reinsurance agreement:

(a) Requires the assuming insurer to enter into a trust agreement and to establish a trust account for the benefit of the ceding insurer, and specifies what the agreement is to cover;

(b) Also contains the provision the trust agreement is required to have under sub. (2) (k), except the reinsurance agreement is not required to also have that provision if the reinsurance agreement covers only risks other than life, annuities or accident and health;

(c) Requires the assuming insurer, prior to depositing assets with the trustee, to execute assignments or endorsements in blank, or to transfer legal title to the trustee of all shares, obligations or any other assets requiring assignments, in order that the ceding insurer, or the trustee upon the direction of the ceding insurer, may whenever necessary negotiate these assets without consent or signature from the assuming insurer or any other entity;

(d) Requires that all settlements of account between the ceding insurer and the assuming insurer be made in cash or its equivalent; and

(e) Stipulates that the assuming insurer and the ceding insurer agree that the assets in the trust account, established pursuant to the provisions of the reinsurance agreement, may be withdrawn by the ceding insurer at any time, notwithstanding any other provisions in the reinsurance agreement, and shall be utilized and applied by the ceding insurer or its successors in interest by operation of law, including, but not limited to, by any liquidator, rehabilitator, receiver or conservator of the ceding insurer, without diminution because of insolvency on the part of the ceding insurer or the assuming insurer, only for the following purposes:

1. To reimburse the ceding insurer for the assuming insurer's share of premiums returned to the owners of policies reinsured under the reinsurance agreement because of cancellations of the policies;

2. To reimburse the ceding insurer for the assuming insurer's share of surrenders and benefits or losses paid by the ceding insurer pursuant to the provisions of the policies reinsured under the reinsurance agreement;

3. To fund an account with the ceding insurer in an amount at least equal to the deduction, for reinsurance ceded, from the ceding insurer liabilities for policies ceded under the agreement. The account shall include, but not be limited to, amounts for policy reserves, claims and

losses incurred (including losses incurred but not reported), loss adjustment expenses and unearned premium reserves; and

4. To pay any other amounts the ceding insurer claims are due under the reinsurance agreement.

(f) If it gives the assuming insurer the right to seek to withdraw from the trust account all or any part of the trust assets, restricts that right by requiring:

1. The prior written approval by the ceding insurer which the reinsurance agreement may require the ceding insurer to not unreasonably or arbitrarily withhold; and

2. That withdrawal may be approved or permitted only if after the withdrawal the market value of the trust account is no less than 102% of the required amount or if the assuming insurer, at the time of withdrawal, replaces the withdrawn assets with other qualified assets having a market value equal to the market value of the assets withdrawn so as to maintain at all times the deposit in the required amount.

(g) Does not require the return of amounts withdrawn under the provision required under par. (e) except the reinsurance agreement may require the ceding insurer to return:

1. Any amount withdrawn in excess of the actual amounts required for par. (e) 1, 2, or 3, or in the case of par. (e) 4, any amounts that are subsequently determined not to be due; and

2. Interest payments, at a rate not in excess of the prime rate of interest, on the amounts held under par. (e) 3.

(h) If it permits the award of attorneys' fees or costs or interest at a rate other than provided under par. (g) 2, permits it only as the result of an award by any arbitration panel or court of competent jurisdiction and only of:

1. Interest at a rate different from that provided in par. (g) 2;
2. Court or arbitration costs;
3. Attorneys' fees; or
4. Any other reasonable expenses.

(5) The failure of any trust agreement to specifically identify the beneficiary shall not be construed to affect any actions or rights which the commissioner or equivalent official may take or possess pursuant to the provisions of the laws of the state of domicile or entry of the licensed insurer.

History: Cr. Register, July, 1993, No. 451, eff. 8-1-93.

Ins 52.06 Letters of credit. (1) In this section "beneficiary" means the insurer for whose benefit the letter of credit has been established and any successor of the beneficiary by operation of law, including, but not limited to, a court-appointed domiciliary receiver, including, but not limited to, a conservator, rehabilitator or liquidator.

(2) A ceding insurer may take credit under s. Ins 52.04 (4) only if the letter of credit complies with all of the following:

Register, July, 1993, No. 451