

## Chapter Ins 52

### CREDIT FOR REINSURANCE

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**Ins 52.01 Definitions.** In this chapter, unless the context otherwise requires:

- (1) "Policyholder surplus" means capital and surplus.
- (2) "Qualified United States financial institution" means an institution that:
  - (a) Is organized or, in the case of a United States office of a foreign banking organization, licensed, under the laws of the United States or any state;
  - (b) Is regulated, supervised and examined by United States federal or state authorities having regulatory authority over banks and trust companies; and
  - (c) Has been determined by either the commissioner or equivalent official of the ceding insurer's state of domicile, or the securities valuation office of the national association of insurance commissioners, to meet such standards of financial condition and standing as are considered necessary and appropriate to regulate the quality of financial institutions whose letters of credit will be acceptable to the commissioner or equivalent official.
- (3) "Qualified fiduciary United States financial institution" means an institution that:
  - (a) Is organized or, in the case of a United States branch or agency office of a foreign banking organization, licensed, under the laws of the United States or any state; and
  - (b) Is regulated, supervised and examined by United States federal or state authorities having regulatory authority over banks and trust companies.

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

**Ins 52.02 Credit allowed a licensed ceding insurer.** Except as provided by s. Ins 52.04 and unless otherwise prohibited by the commissioner, a domestic insurer may take credit for ceded reinsurance as either an asset or a deduction from liability only if the reinsurer at all times complies with one or more of the following:

- (1) The reinsurer is licensed as an insurer in this state.
  - (2) The reinsurer is accredited in this state by the commissioner at the time credit is claimed or taken and the reinsurer:
    - (a) Files with the commissioner evidence of its submission to this state's jurisdiction;
    - (b) Submits to this state's authority to examine its books and records;
    - (c) Files a properly executed Form AR-1 as evidence of its submission to this state's jurisdiction and to this state's authority to examine its books and records;
- Note:** Form AR-1 is published as Chapter Ins 52 Appendix A.
- (d) Is licensed to transact insurance or reinsurance in at least one state, or 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;
  - (e) Files with the commissioner a certified copy of a letter or a certificate of authority or of compliance as evidence that it is licensed to transact insurance or reinsurance, or, in the case of a United States branch of an alien assuming insurer, is entered

through and licensed to transact insurance or reinsurance, as required under par. (d);

(f) Files annually with the commissioner by March 1, or a later date approved in writing by the commissioner, a copy of its annual statement filed with the insurance department of its state of domicile or, in the case of an alien assuming insurer, with the state through which it is entered and in which it is licensed to transact insurance or reinsurance, and a copy of its most recent audited financial statement annually by June 1; and

(g) Unless otherwise specifically approved in writing by the commissioner, maintains policyholder surplus in an amount which is not less than \$20,000,000.

(h) Demonstrates to the satisfaction of the commissioner that it has adequate financial capacity to meet its reinsurance obligations and is otherwise qualified to assume reinsurance from domestic insurers. An assuming insurer is presumed to meet this requirement as of the time of its application if it maintains a surplus as regards policyholders in an amount not less than \$20,000,000 and its accreditation has not been denied by the commissioner within 90 days after submission of its application.

(3) The reinsurer is domiciled and licensed in, or in the case of a United States branch of an alien assuming insurer is entered through, a state which employs standards regarding credit for reinsurance which the commissioner determines equal or exceed the standards applicable under this chapter and the reinsurer or United States branch of an alien reinsurer:

(a) Submits to the authority of this state to examine its books and records;

(b) Files a form AR-1 with the commissioner to comply with par. (a); and

**Note:** Form AR-1 is published as Chapter Ins 52 Appendix A.

(c) Complies with one or more of the following:

1. The reinsurer or United States branch assumes the reinsurance under pooling arrangements among insurers in the same holding company system; or

2. The reinsurer maintains policyholder surplus in an amount not less than \$20,000,000.

(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 including incorporated and individual unincorporated underwriters, the reinsurers maintain in a trusteed account funds, for reinsurance ceded under reinsurance agreements with an inception, amendment or renewal date on or after January 1, 1993, in an amount not less than the respective underwriters' several liabilities attributable to business ceded by United States domiciled ceding insurers to any member of the group. For reinsurance ceded under reinsurance agreements with an inception, amendment or renewal date on or before December 31, 1992, the reinsurer shall maintain in a trusteed account funds in amount not less than the respective underwriters' several insurance and reinsurance liabilities attributable to business written in the United States. In addition, the group maintains a trusteed surplus of which \$100,000,000 shall be held jointly for the benefit of United States ceding insurers of any member of the group; the incorporated members of the group are not engaged in any business other than underwriting as a member of the group and are subject to the same level of solvency regulation and control by the group's domiciliary regulator as are the unincorporated members; and the group makes 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.

7. Notwithstanding any other provision of the trust instrument, if the trust fund is inadequate because it contains an amount less than the amount required by this subsection or if the grantor of the trust has been declared insolvent or placed into receivership, rehabilitation, liquidation or similar proceedings under the laws of its state or country of domicile, the trustee shall comply with an order of the commissioner with regulatory oversight over the trust or with an order of a court of competent jurisdiction directing the trustee to transfer to the commissioner with regulatory oversight over the trust or other designated receiver all of the assets of the trust fund. The assets shall be distributed by and

claims shall be filed with and valued by the commissioner with regulatory oversight over the trust in accordance with the laws of the state in which the trust is domiciled applicable to the liquidation of domestic insurance companies. If the commissioner with regulatory oversight over the trust determines the assets of the trust fund or any part thereof are not necessary to satisfy the claims of the U.S. beneficiaries of the trust, the commissioner with regulatory oversight over the trust shall return the assets to the trustee for distribution in accordance with the trust agreement. The grantor shall waive any right otherwise available to it under federal law that is inconsistent with this provision.

8. If the commissioner has principal regulatory oversight of the trust, at any time after the assuming insurer has permanently discontinued writing new business for at least three years, the commissioner may authorize a reduction in the required trusteed surplus, but only after finding, based on an assessment of the risk, that the new required surplus level is adequate for the protection of U.S. ceding insurers, policyholders and claimants. 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 incurred loss estimates and the effect of the surplus requirements on the assuming insurer's liquidity or solvency. 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 U.S. ceding insurers.

**(4m)** The reinsurance is ceded to an assuming insurer that has been certified by the commissioner as a reinsurer in this state and secures its obligations in accordance with the requirements of this subsection.

(a) In order to be eligible for certification, the assuming insurer shall meet the following requirements:

1. The assuming insurer shall be domiciled and licensed to transact insurance or reinsurance in a qualified jurisdiction, as determined by the commissioner pursuant to par. (c) of this subsection. If a certified reinsurer's domiciliary jurisdiction ceases to be a qualified jurisdiction, the commissioner has the discretion to suspend the reinsurer's certification indefinitely, in lieu of revocation.

2. The assuming insurer shall maintain minimum capital and surplus, or its equivalent, of not less than \$250,000,000. This requirement may also be satisfied by a group including incorporated and individual unincorporated underwriters having minimum capital and surplus equivalents, net of liabilities, of at least \$250,000,000 and a central fund containing a balance of at least \$250,000,000. For certified reinsurers not domiciled in the U.S., minimum capital and surplus shall be determined on a U.S. GAAP basis.

3. The assuming insurer shall apply for certification and maintain current financial strength rating from two or more approved rating agencies. Approved rating agencies include Fitch Investor Service, Inc., Standard & Poor's Corporation, Moody's Investors Service, Inc., and A.M. Best Company. The commissioner shall assign a rating to each certified reinsurer and publish a list of all certified reinsurers and their ratings. The commissioner shall post notice on the office's website promptly upon receipt of any application of certification including instructions on how members of the public may comment on the application. The commissioner shall issue a written notice to an assuming insurer no sooner than 30 days after receipt of the application indicating whether the assuming insurer has been approved for certification. If approved as a certified reinsurer, the notice shall include the rating assigned by the commissioner in accordance with this subdivision. Each certified reinsurer shall be rated on a legal entity basis, with consideration given to the group rating when the commissioner deems appropriate, except that a group including incorporated and individual unincorporated underwriters that has

been approved to do business as a single certified reinsurer may be evaluated on the basis of its group rating. Factors that may be considered as part of the rating process include the following:

a. The certified reinsurer’s financial strength rating from an approved rating agency. The maximum rating that a certified reinsurer may be assigned will correspond to its financial strength rat-

ing as outlined in the table that follows. The commissioner shall use the lowest financial strength rating received from an approved rating agency in establishing the maximum rating of a certified reinsurer. A failure to obtain or maintain at least two financial strength ratings from approved rating agencies will result in the loss of eligibility for certification.

Ratings	A.M. Best	S&P	Moody’s	Fitch
Secure–1	A++	AAA	Aaa	AAA
Secure–2	A+	AA+, AA, AA–	Aa1, Aa2, Aa3	AA+, AA, AA–
Secure–3	A	A+, A	A1, A2	A+, A
Secure–4	A–	A–	A3	A–
Secure–5	B++, B+	BBB+, BBB, BBB–	Baa1, Baa2, Baa3	BBB+, BBB, BBB–
Vulnerable–6	Any other lower rating	Any other lower rating	Any other lower rating	Any other lower rating

b. The applicant’s business practices in dealing with its ceding insurers, including compliance with contractual terms and obligations. If reinsurance obligations to U.S. cedents that are in dispute and that are more than 90 days past due exceed 5% of its reinsurance obligations to U.S. cedents as of the end of its prior financial reporting year, or the applicant’s reinsurance obligations to any of the top 10 U.S. cedents (based on the amount of outstanding reinsurance obligations as of the end of its prior financial reporting year) that are in dispute and are more than 90 days past due exceed 10% of its total reinsurance obligations to that U.S. cedent, then the applicant shall provide notice to the commissioner that reinsurance obligations in dispute and past due exceed the amounts described and a detailed explanation regarding the reasons for the amount of disputed or overdue claims, or both. The applicant shall also provide a description of the applicant’s business practices in dealing with U.S. ceding insurers, and a statement that the applicant commits to comply with all contractual requirements applicable to reinsurance contracts with U.S. ceding insurers. Upon receipt of such notice and explanation, the commissioner may request additional information concerning the applicant’s claims practices with regard to any or all U.S. ceding insurers.

c. For certified reinsurers domiciled in the U.S., a review of the most recent National Association of Insurance Commissioners Annual Statement Blank. For certified reinsurers not domiciled in the U.S., a review annually of Form CR–F or Form CR–S that are required to be filed under this subsection.

d. The history of the certified reinsurer for prompt payment of claims under reinsurance agreements, based on analysis of ceding insurers, Schedule F reporting of overdue reinsurance recoverables including the proportion of obligations that are more than 90 days past due or are in dispute, with specific emphasis placed on obligations payable to companies that are in administrative supervision or receivership.

e. Regulatory actions against the certified reinsurer.

f. The report of the independent auditor on the financial statements of the insurance enterprise, on the basis described in subd. 3. g.

g. For certified reinsurers not domiciled in the U.S., audited financial statements on a U.S. GAAP basis, regulatory filings, and actuarial opinions filed with the non–U.S. jurisdiction supervisor. Audited IFRS basis statements are allowed in lieu of a U.S. GAAP basis statement if they include an audited footnote reconciling equity and net income to a U.S. GAAP basis, or, with the commissioner’s approval, audited IFRS basis statements with reconciliation to U.S. GAAP certified by an officer of the company. Upon initial application for certification, the commissioner shall consider audited financial statements for the previous three years filed with its non–U.S. jurisdiction supervisor.

h. The liquidation priority of obligations to a ceding insurer in the certified reinsurer’s domiciliary jurisdiction in the context of an insolvency proceeding.

i. A certified reinsurer’s participation in any solvent scheme of arrangement, or similar procedure, which involves U.S. ceding insurers. The commissioner shall receive prior notice from a certified reinsurer that proposes participation by the certified reinsurer in a solvent scheme of arrangement.

j. Any other information deemed relevant by the commissioner.

4. The assuming insurer shall agree to submit to the jurisdiction of this state by submitting a properly executed Form CR–1, appointing the commissioner as its agent for service of process in this state, and agreeing to provide security of 100% of the assuming insurer’s liabilities attributable to reinsurance ceded by U.S. ceding insurers if its resists enforcement of a final U.S. judgment. The commissioner shall not certify an assuming insurer that is domiciled in a jurisdiction the commissioner has determined does not adequately and promptly enforce final U.S. judgments or arbitration awards.

**Note:** Form CR–1 is published in Chapter Ins 52 Appendix B.

5. The certified reinsurer must agree to meet applicable filing requirements. All information submitted by certified reinsurers which is not otherwise public information subject to disclosure shall be withheld from public disclosure under s. 601.465, Stats. The filing requirements are as follows:

a. Notification within 10 days of any regulatory actions taken against the certified reinsurer, any changes in the provisions of its domiciliary license or any change in rating by an approved rating agency, including a statement describing changes and the reasons therefore.

b. Annually, Form CR–F or CR–S, as applicable.

c. Annually, the report of the independent auditor on the financial statements of the insurance enterprise, on the basis described in subd. 3. f.

d. Annually, audited financial statements, regulatory filings, and actuarial opinion as filed with the certified reinsurer’s supervisor. Upon the initial certification, audited financial statements for the last three years filed with the certified reinsurer’s supervisor. Audited financial statements should be provided on a U.S. GAAP basis if available. Audited IFRS basis statements are allowed but must include an audited footnote reconciling equity and net income to a U.S. GAAP basis, or, with permission of the commissioner, audited IFRS statements with reconciliation to U.S. GAAP certified by an officer of the company.

e. At least annually, an updated list of all disputed and overdue reinsurance claims which meet the thresholds described in subd. 3. b. regarding reinsurance assumed from U.S. domestic ceding insurers.

f. Annually, a certification for the certified reinsurer’s domestic regulator that the certified reinsurer is in good standing and maintains capital in excess of the jurisdiction’s highest regulatory action level.

g. An annual renewal application for certification by October 1st to be considered for certification for the next calendar year.

h. Any other information deemed relevant by the commissioner.

6. The certified reinsurer shall secure its obligations assumed from U.S. ceding insurers at a level consistent with the rating set by the commissioner. The credit allowed shall be based upon the security held by or on behalf of the ceding insurer in accordance with the rating assigned to the reinsurer by the commissioner and shall be maintained in a form that is consistent with s. Ins 52.05 and this section, for multibeneficiary trusts. The amount of security required in order for full credit to be allowed shall correspond with the following requirements:

a. Ratings	Security Required
Secure -1	0%
Secure -2	10%
Secure -3	20%
Secure -4	50%
Secure - 5	75%
Vulnerable - 6	100%

b. The commissioner shall require the certified reinsurer to post 100% security, for the benefit of the ceding insurer or its estate, upon the entry of an order of rehabilitation, liquidation, or conservation against the ceding insurer.

c. In order to facilitate the prompt payment of claims, a certified reinsurer shall not be required to post security for catastrophe recoverables for a period of up to one year from the date of the first instance of a liability reserve entry by the ceding company as a result of a loss from a catastrophic occurrence that is likely to result in significant insured losses as recognized by the commissioner. The one year deferral period is contingent upon the certified reinsurer continuing to pay claims in a timely manner in compliance with its contractual obligations as set forth in the reinsurance agreement under which the claims are ceded. Reinsurance recoverables for only the following lines of business as reported on the National Association of Insurance Commissioners annual financial statement related specifically to the catastrophic occurrence will be included in the deferral:

- Line 1: Fire
- Line 2: Allied Lines
- Line 3: Farmowners multiple peril
- Line 4: Homeowners multiple peril
- Line 5: Commercial multiple peril
- Line 9: Inland Marine
- Line 12: Earthquake
- Line 21: Auto physical damage

d. Based on an analysis of a certified reinsurer's history of prompt payment of claims, the commissioner may make appropriate adjustments in the security the certified reinsurer is required to post to protect its liabilities to U.S. ceding insurers. The commissioner shall, at a minimum, increase the security the certified reinsurer is required to post by one rating level if the commissioner finds that more than 15% of the certified reinsurers ceding insurance clients have overdue reinsurance recoverables on paid losses of 90 days or more which are not in dispute and which exceed \$100,000 for each cedent or the aggregate amount of reinsurance recoverables on paid losses which are not in dispute that are overdue by 90 days or more exceeds \$50,000,000.

e. In the case of a downgrade by a rating agency or other disqualifying circumstance, the commissioner shall assign by written notice a new rating to the certified reinsurer pursuant to this section. The certified reinsurer shall meet the security requirements applicable to its new rating for all business assumed as a certified reinsurer by the date specified by the commissioner in the written notice. If the rating of a certified reinsurer is upgraded by the commissioner, the certified reinsurer may meet the applicable security requirements of its new rating for reinsurance agreements entered into after the date of the upgrade. For reinsurance agree-

ments entered into before the date of the upgrade, the certified reinsurer shall post security as required by the certified reinsurer's rating before the upgrade.

f. If a certified reinsurer maintains a trust to fully secure its obligations under sub. (4) (c) and chose to secure its obligations incurred as a certified reinsurer in the form of a multibeneficiary trust, the certified reinsurer shall maintain separate trust accounts for its obligations under sub. (4) (c) and for its obligations under this subsection. As a condition for certification, the reinsurer shall have bound itself by the language of the trust and agreement with the commissioner with principal regulatory oversight of each such trust account, to fund, upon termination of any such trust account, out of the remaining surplus of such trust any deficiency of any other trust account.

g. The minimum trustee surplus requirements provided in sub. (4) (c) and (d) are not applicable with respect to a multibeneficiary trust maintained by a certified reinsurer for the purpose of securing obligations incurred under this subsection, except that such trust shall maintain a minimum of trustee surplus of \$10,000,000.

h. If the security held by the certified reinsurer under this subsection is insufficient, the commissioner shall reduce the allowable credit by an amount proportionate to the deficiency and has the discretion to impose further reductions in allowable credit if there is a material risk that the certified reinsurer's obligations will not be paid in full.

i. A certified reinsurer whose certification has been terminated for any reason shall be treated as a certified reinsurer required to secure 100% of its obligations.

7. The assuming insurer must satisfy any other requirements for certification deemed relevant by the commissioner.

(b) An association including incorporated and individual unincorporated underwriters may be a certified reinsurer. In order to be eligible for certification, in addition to satisfying the requirements of par. (a):

1. The association shall satisfy its minimum capital and surplus requirement through capital and surplus equivalents, net of liabilities, of the association and its members, which shall include a joint central fund that may be applied to any unsatisfied obligation of the association.

2. The incorporated members of the association shall not be engaged in any business other than underwriting as a member of the association and shall be subject to the same level of regulation and solvency control by the association's domiciliary regulator as are the unincorporated members.

3. Within 90 days after its financial statements are due to be filed with the association's domiciliary regulator, the association shall provide the commissioner an annual certification by the association's domiciliary regulator of the solvency of each underwriter member or, if certification is unavailable, financial statements prepared by independent public accountants of each underwriter member of the association.

(c) The commissioner shall create and publish electronically a list of qualified jurisdictions under which an assuming insurer licensed and domiciled therein is eligible to be considered for certification by the commissioner. Qualified jurisdictions shall be determined using the following criteria:

1. In order to determine whether the domiciliary jurisdiction of a non-U.S. insurer is eligible to be recognized as a qualified jurisdiction, the commissioner shall evaluate the appropriateness and effectiveness of the reinsurance supervisory system of the jurisdiction, both initially and on an ongoing basis, and consider the rights, benefits, and the extent of reciprocal recognition afforded by the non-U.S. jurisdiction to reinsurers licensed and domiciled in the United States. A qualified jurisdiction shall agree to share information and cooperate with the commissioner with respect to all certified reinsurers domiciled within that jurisdiction. A jurisdiction may not be recognized as a qualified jurisdiction.

tion if the commissioner has determined that the jurisdiction does not adequately and promptly enforce final U.S. judgments and arbitration awards.

2. The commissioner shall consider the list of qualified jurisdictions published through the National Association of Insurance Commissioners in determining qualified jurisdictions. If the commissioner approves a jurisdiction as qualified that does not appear on the National Association of Insurance Commissioners list, the commissioner shall provide a justification for determining the jurisdiction is qualified. Factors to be considered in determining whether to recognize a qualified jurisdiction include:

- a. The framework under which the assuming insurer is regulated.
- b. The structure and authority of the domiciliary regulator with regard to solvency regulation requirements and financial surveillance.
- c. The substance of financial and operating standards for assuming insurers in the domiciliary jurisdiction.
- d. The form and substance of financial reports required to be filed or made publically available by reinsurers in the domiciliary jurisdiction and the accounting principles used.
- e. The domiciliary regulator's willingness to cooperate with U.S. regulators in general and the commissioner in particular.
- f. The history of performance by assuming insurers in the domiciliary jurisdiction.
- g. Any documented evidence of substantial problems with enforcement of final U.S. judgments in the domiciliary jurisdiction. A jurisdiction will not be considered to be a qualified jurisdiction if the commissioner has determined that it does not adequately and promptly enforce final U.S. judgments and arbitration awards.
- h. Any relevant international standards or guidance with respect to mutual recognition of reinsurance supervision adopted by the International Association of Insurance Supervisors.
- i. Any other matters deemed relevant by the commissioner.

3. U.S. jurisdictions that meet the requirements for accreditation under the National Association of Insurance Commissioners financial standards and accreditation program shall be recognized as qualified jurisdictions.

(d) If an applicant has been certified as a reinsurer in a National Association of Insurance Commissioners accredited jurisdiction, the commissioner has the discretion to defer to that jurisdiction's certification, and has the discretion to defer to the rating assigned by that jurisdiction if the assuming insurer submits Form CR-1 and such additional information as the commissioner requires. The commissioner's recognition of another accredited jurisdiction's certification is subject to the following conditions:

**Note:** Form CR-1 is published as Chapter Ins 52 Appendix B.

1. Any change in the certified reinsurer's status or rating in the other jurisdiction shall apply automatically in this State as of the date it takes effect in the other jurisdiction. The certified reinsurer shall notify the commissioner of any change in its status or rating within 10 days of receiving notice of the change.

2. The commissioner may withdraw recognition of the other jurisdiction's rating at any time and assign a new rating in accordance with this section.

3. The commissioner may withdraw recognition of the other jurisdiction's certification at any time, with written notice to the reinsurer. Unless the commissioner suspends or revokes the certified reinsurer's certification in accordance with s. Ins 52.025, the certified reinsurer's certification shall remain in good standing in this state for a period of three months, which may be extended if additional time is necessary to consider the assuming insurer's application for certification in this state.

(e) A certified reinsurer that ceases to assume new business from ceding insurers domiciled in this state may request to maintain its certification in inactive status in order to continue to qual-

ify for a reduction in security for its in-force business. An inactive certified reinsurer shall continue to comply with all applicable requirements of this chapter, and the commissioner shall assign a rating that takes into account the reasons why the reinsurer is not assuming new business.

(f) In addition to the clauses required under this chapter, reinsurance contracts entered or renewed under this subsection shall include a proper funding clause, which requires the certified reinsurer to provide and maintain security in an amount sufficient to avoid the imposition of any financial statement penalty on the ceding insurer under this section for reinsurance ceded to the certified reinsurer.

(g) The commissioner shall comply with all reporting and notification requirements that may be established by the National Association of Insurance Commissioners with respect to certified reinsurers and qualified jurisdictions.

(h) Credit for reinsurance under this subsection shall apply only to reinsurance contracts entered into or renewed on or after the effective date of the certification of the assuming insurer.

(i) Nothing in this subsection shall prohibit the parties to a reinsurance agreement from agreeing to provisions establishing security requirements that exceed the minimum security requirements established for certified reinsurers in this subsection.

(j) The commissioner may retain at the certified reinsurer's expense such experts as shall be necessary to assist in the review of an initial application for certification and on an ongoing basis. Any experts so retained shall be under the direction and control of the commissioner. The commissioner may retain such experts as may be necessary to evaluate the supervisory systems of jurisdictions under evaluation for eligibility to become a qualified jurisdiction and on an ongoing basis. The expense for such experts shall be paid by the reinsurers seeking certification from that jurisdiction.

(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; am. (4) (d), Register, December, 1995, No. 480, eff. 1-1-96; **CR 17-004: am. (intro.), (2) (g), cr. (2) (h), r. (3m), am. (4) (d), cr. (4) (e) 7., 8., (4m) Register December 2017 No. 744, eff. 1-1-18; correction in (2) (h), (4) (e) 7., 8., (4m) a) 3. (intro.), b., d., f., 4., 5. (intro.), c. to e., 6. b., d., g., (b) 3., (c) 1., 6. (intro.), e. made under s. 35.17, Stats., and correction in (4m) a) 5. c. made under s. 13.92 (4) (b) 7., Stats., Register December 2017 No. 744.**

#### **Ins 52.025 Revocation of accreditation or certification.**

(1) The commissioner may revoke the accreditation or certification of a reinsurer under s. Ins 52.02. If the accreditation or certification 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 (4m), 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), (4), (4m), or (5) an insurer may not take credit for reinsurance ceded to the reinsurer under s. Ins 52.02 (2), (3), (4), (4m), or (5), regardless of whether the reinsurer is or remains accredited or certified 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) 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.

(3) The commissioner may revoke the certification of a reinsurer under s. Ins 52.02 (4m) at any time if the certified reinsurer fails to meet the requirements of s. Ins 52.02 (4m).

**History:** Cr. Register, July, 1993, No. 451, eff. 8-1-93; **CR 17-004: am. (intro.), (1), (2), cr. (3) Register December 2017 No. 744, eff. 1-1-18; correction in (3) made under s. 35.17, Stats., Register December 2017 No. 744.**

**Ins 52.03 Insolvency clause and jurisdiction; financial reinsurance disallowed.** (1) Except as permitted by s. Ins 52.02 (5), a ceding domestic insurer may take credit for reinsurance ceded to a reinsurer which does not comply with s. Ins 52.02 (1), (2), (3), (4), and (4m) only if the reinsurer in a written reinsurance agreement does all of the following:

(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 insurer.

(2) Subsection (1) (a) and (b) do not affect or supersede 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.

(2m) Except as permitted by s. Ins 52.02 (5), a ceding domestic insurer may take credit for reinsurance under a reinsurance agreement effective on or after January 1, 1980, only if 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 payment to an intermediary.

(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.

(4) A ceding domestic insurer may take credit for reinsurance ceded only to the extent the ceding insurer has established adequate gross reserves on the business ceded.

(5) A ceding domestic insurer may not take credit for reinsurance ceded in excess of the amount of the gross reserves carried on the business, or portion of the business, ceded.

**History:** Cr. Register, July, 1993, No. 451, eff. 8–1–93; am. (1) (intro.), (b) and (2), renum. (1) (c) to be (2m) and am., cr. (4) and (5), Register, December, 1995, No. 480, eff. 1–1–96; CR 17–004: am. (1) Register December 2017 No. 744, eff. 1–1–18.

**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, including those deemed exempt from filing as defined by the purposes and procedures manual of the securities valuation office, 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 evergreen 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; CR 17–004: am. (3) Register December 2017 No. 744, eff. 1–1–18.

**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. In order for a letter of credit to qualify as an asset of the trust, the trustee shall have the right and the obligation pursuant to the deed of trust or some other binding agreement, approved by the commissioner, to immediately draw down the full amount of the letter of credit and hold the proceeds in trust for the beneficiaries of the trust if the letter of credit will otherwise expire without being renewed or replaced.

(j) The trust agreement provides that the trustee is liable for its own negligence, willful misconduct or lack of good faith. The failure of the trustee to draw against a letter of credit in circumstances where such a draw would be required shall be deemed negligence and willful misconduct.

(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 subsd. 1. and 2. which remain executory after the withdrawal and for any period after the termination date.

(L) 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. (L).

(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) (L), 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; am. (4) (b), Register, December, 1995, No. 480, eff. 1–1–96; **CR 17–004: am. (2) (i), (j) Register December 2017 No. 744, eff. 1–1–18.**

**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:

(a) The letter of credit is clean, irrevocable and unconditional.

(b) The letter of credit contains an issue date and date of expiration and stipulates that the beneficiary need only draw a sight draft under the letter of credit and present it to obtain funds and that no other document need be presented.

(c) The letter of credit states that it is not subject to any condition or qualifications outside of the letter of credit.

(d) The letter of credit itself shall not contain reference to any other agreements, documents or entities, except as provided in sub. (3) (a) and (b).

(e) If the heading of the letter of credit includes a section which includes notations to provide a reference for the letter of credit, the section shall be boxed section and clearly marked to indicate that the information is for internal identification purposes only.

(f) The letter of credit states that the obligation of the qualified United States financial institution under the letter of credit is in no way contingent upon reimbursement.

(g) The term of the letter of credit is for at least one year and the letter of credit contains a clause which prevents the expiration of the letter of credit unless the issuer gives written notice to the ceding insurer. The "evergreen clause" shall provide for a period of no less than 30 days' notice to the ceding insurer prior to the expiration date for nonrenewal.

(h) The letter of credit states whether it is subject to and governed by the laws of this state or the uniform customs and practice for documentary credits of the international chamber of commerce (Publication 600) and that all drafts drawn under the letter of credit are presentable at an office in the United States of a qualified United States financial institution.

(i) If the letter of credit is made subject to the uniform customs and practice for documentary credits of the international chamber of commerce (Publication 600), the letter of credit specifically addresses and makes provision for an extension of time to draw against the letter of credit if any of the occurrences specified in Article 36 of Publication 600 occur.

(j) The letter of credit is issued or confirmed by a qualified United States financial institution authorized to issue letters of credit.

(k) If the letter of credit is issued by a financial institution which is not a qualified United States financial institution:



1. The issuing financial institution formally designates the confirming qualified United States financial institution as its agent for the receipt and payment of the drafts; and

2. The letter of credit “evergreen clause” under par. (g) requires the confirming qualified United States financial institution to give written notice to the ceding insurer at least 30 days prior to expiration date for nonrenewal.

(3) A ceding insurer may take credit under s. Ins 52.04 (4) only if there is a written reinsurance agreement in conjunction with the letter of credit and the reinsurance agreement:

(a) Requires the assuming insurer to provide letters of credit to the ceding insurer, specifies what the letters of credit are to cover, and provides that the provisions required under this paragraph and par. (b) apply without diminution because of insolvency by either the ceding or assuming insurer.

(b) Except as permitted under par. (d), stipulates that the assuming insurer and ceding insurer agree that the letter of credit provided by the assuming insurer under the reinsurance agreement may be drawn upon at any time, notwithstanding any other provisions in the agreement, and may be utilized by the ceding insurer or its successors in interest 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 one or more of the following reasons:

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 under 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.

(c) Does not require the return of amounts drawn under the letter of credit except the reinsurance agreement may require the ceding insurer to return:

1. Any amount withdrawn in excess of the actual amounts required for par. (b) 1., 2., or 3., or in the case of par. (b) 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. (b) 3.

(d) Requires a trust agreement to accomplish to the purpose of par. (b), instead of including that provision in the reinsurance agreement, and the trust agreement is incorporated in the reinsurance agreement or separately executed except a trust agreement may be used only if the reinsurance agreement covers risks other

than life, annuities and health and if it is customary practice to provide a letter of credit for a specific purpose.

**History:** Cr. Register, July, 1993, No. 451, eff. 8–1–93; CR 17–004: am. (2) (h), (i) Register December 2017 No. 744, eff. 1–1–18.

**Ins 52.065 Concentration Risk. (1)** A ceding insurer shall take steps to manage its reinsurance recoverable balances proportionate to its own book of business. A domestic ceding insurer shall notify the commissioner within 30 days after reinsurance recoverable from any single assuming insurer, or group of affiliated assuming insurers, exceeds 50% of the domestic ceding insurer’s last reported surplus to policyholders, or after it determined that reinsurance recoverable from any single assuming insurer, or of affiliated assuming insurers, is likely to exceed this limit. The notification shall include an explanation demonstrating that the exposure is safely managed by the domestic ceding insurer.

(2) A ceding insurer shall take steps to diversity its reinsurance program. A domestic ceding insurer shall notify the commissioner within 30 days after ceding to any single assuming insurer, or group of affiliated assuming insurers, more than 20% of the ceding insurer’s gross written premium in the prior calendar year, or after it has determined that the reinsurance ceded to any single assuming insurer, or group of affiliated assuming insurers, is likely to exceed this limit. The notification shall include an explanation demonstrating that the exposure is safely managed by the domestic ceding insurer.

**History:** CR 17–004: cr. Register December 2017 No. 744, eff. 1–1–18; corrections made under s. 35.17, Stats., Register December 2017 No. 744.

**Ins 52.07 Applicability. (1)** This chapter applies to determine whether credit may be taken for:

(a) Any reinsurance ceded under agreements entered into on or after August 1, 1993; or

(b) Any reinsurance ceded if the reinsurance agreement is renewed by agreement on or after August 1, 1993.

(2) Section Ins 6.73 continues to apply for the purpose of determining whether credit may be taken for reinsurance which is not subject to this chapter under sub. (1).

**Note:** Ins 6.73 was repealed eff. 8–1–93.

(3) This chapter and ch. Ins 55 are in addition to and do not limit the commissioner’s authority under s. 618.21 (1) (a), 618.23 (1) (a), 618.26 (1) (a), 623.11, 623.12 or 623.21, or ch. 645, Stats., or s. Ins 51.80. Even if credit for reinsurance is permitted under this chapter and ch. Ins 55, the commissioner may under those provisions require a licensed insurer to exclude the effects of the credit for the purpose of determining compliance with security or compulsory surplus.

(4) Nothing in this chapter or ch. Ins 55 relieves an insurer or an officer or director of an insurer or an accountant or actuary from responsibility under s. 627.23 (3), Stats., or fiduciary or professional responsibility, to assess the financial condition of a reinsurer. Accreditation by the commissioner does not create a presumption that a reinsurer is in compliance with this chapter or that it is in sound financial condition and no reinsurer or officer, employe or agent of a reinsurer may make such a representation.

(5) This chapter does not limit or change the requirements for town mutual insurers under ss. 612.31 and 612.33, Stats. This chapter applies to the state life fund.

**History:** Cr. Register, July, 1993, No. 451, eff. 8–1–93; correction in (3) made under s. 13.92 (4) (b) 7., Stats., Register February 2013 No. 686.