

State of Utah
Administrative Rule Analysis
 Revised November 2021

NOTICE OF PROPOSED RULE		
TYPE OF RULE: New ___; Amendment ___; Repeal ___; Repeal and Reenact _x_		
Title No. - Rule No. - Section No.		
Utah Admin. Code Ref (R no.):	R590-173	Filing ID (Office Use Only)
Changed to Admin. Code Ref. (R no.):	R	

Agency Information

1. Department:	Insurance	
Agency:	Administration	
Room no.:	Suite 2300	
Building:	Taylorsville State Office Building	
Street address:	4315 S. 2700 W.	
City, state and zip:	Taylorsville, UT 84129	
Mailing address:	PO Box 146901	
City, state and zip:	Salt Lake City, UT 84114-6901	
Contact person(s):		
Name:	Phone:	Email:
Steve Gooch	801-957-9322	sgooch@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule or section catchline:
R590-173. Credit for Reinsurance
3. Purpose of the new rule or reason for the change (Why is the agency submitting this filing?):
The rule is being repealed and reenacted to reorganize the rule the match more closely with the NAIC model regulation that is required for accreditation. It is also being updated in compliance with Executive Order 2021-12.
4. Summary of the new rule or change (What does this filing do? If this is a repeal and reenact, explain the substantive differences between the repealed rule and the reenacted rule):
Section R590-173-9 is a new section that is required for NAIC accreditation. It deals with recognizing reinsurance credit for liabilities ceded to an international company regulated by a reciprocal jurisdiction. Other changes fix style issues to bring the rule text more in line with current rulewriting standards, make the language of the rule more clear, and update the Severability section to use the department's current language.

Fiscal Information

5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:
A) State budget:
There is no anticipated cost or savings to the state budget. The changes are largely clerical in nature, and will not change how the department functions.
B) Local governments:
There is no anticipated cost or savings to local governments. The changes are largely clerical in nature, and will not affect local governments.
C) Small businesses ("small business" means a business employing 1-49 persons):
There is no anticipated cost or savings to small businesses. The changes are largely clerical in nature, and will not affect small businesses.
D) Non-small businesses ("non-small business" means a business employing 50 or more persons):

There is no anticipated cost or savings to non-small businesses. The changes are largely clerical in nature, and will not affect non-small businesses.

E) Persons other than small businesses, non-small businesses, state, or local government entities ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an **agency**):

There is no anticipated cost or savings to any other persons. The changes are largely clerical in nature.

F) Compliance costs for affected persons (How much will it cost an impacted entity to adhere to this rule or its changes?):

There are no compliance costs for any affected persons. The changes are largely clerical in nature.

G) Comments by the department head on the fiscal impact this rule may have on businesses (Include the name and title of the department head):

After conducting a thorough analysis, it was determined that this proposed rule amendment will not result in a fiscal impact to businesses. — Jonathan T. Pike, Insurance Commissioner

6. A) Regulatory Impact Summary Table (This table only includes fiscal impacts that could be measured. If there are inestimable fiscal impacts, they will not be included in this table. Inestimable impacts will be included in narratives above.)

Regulatory Impact Table

Fiscal Cost	FY2022	FY2023	FY2024
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Cost	\$0	\$0	\$0
Fiscal Benefits			
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Benefits	\$0	\$0	\$0
Net Fiscal Benefits	\$0	\$0	\$0

B) Department head approval of regulatory impact analysis:

The Commissioner of Insurance, Jonathan T. Pike, has reviewed and approved this fiscal analysis.

Citation Information

7. Provide citations to the statutory authority for the rule. If there is also a federal requirement for the rule, provide a citation to that requirement:

Section 31A-2-201	Section 31A-17-404.3	

Incorporations by Reference Information

(If this rule incorporates more than two items by reference, please include additional tables.)

8. A) This rule adds, updates, or removes the following title of materials incorporated by references (a copy of materials incorporated by reference must be submitted to the Office of Administrative Rules; *if none, leave blank*):

	First Incorporation
Official Title of Materials Incorporated (from title page)	
Publisher	
Date Issued	

Issue, or version	
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B) This rule adds, updates, or removes the following title of materials incorporated by references (a copy of materials incorporated by reference must be submitted to the Office of Administrative Rules; *if none, leave blank*):

	Second Incorporation
Official Title of Materials Incorporated (from title page)	
Publisher	
Date Issued	
Issue, or version	

Public Notice Information

9. The public may submit written or oral comments to the agency identified in box 1. (The public may also request a hearing by submitting a written request to the agency. See Section 63G-3-302 and Rule R15-1 for more information.)

A) Comments will be accepted until (mm/dd/yyyy):	05/31/2022	
B) A public hearing (optional) will be held:		
On (mm/dd/yyyy):	At (hh:mm AM/PM):	At (place):

10. This rule change MAY become effective on (mm/dd/yyyy):	06/07/2022
NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date. To make this rule effective, the agency must submit a Notice of Effective Date to the Office of Administrative Rules on or before the date designated in Box 10.	

Agency Authorization Information

To the agency: Information requested on this form is required by Sections 63G-3-301, 302, 303, and 402. Incomplete forms will be returned to the agency for completion, possibly delaying publication in the *Utah State Bulletin* and delaying the first possible effective date.

Agency head or designee, and title:	Steve Gooch, Public Information Officer	Date (mm/dd/yyyy):	04/15/2022
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R590. Insurance, Administration.

R590-173. Credit For Reinsurance.

~~**R590-173-1. Authority.**~~

~~_____ This rule is promulgated pursuant to the authority granted by Section 31A-2-201 of the Insurance Code.~~

~~**R590-173-2. Purpose.**~~

~~_____ The purpose of this rule is to set forth requirements the commissioner deems necessary to carry out the provisions of Section 31A-17-404. The actions and information required by this rule are necessary and appropriate to the public interest and for the protection of the ceding insurers in this state.~~

~~**R590-173-3. Definitions.**~~

~~_____ A. "Accredited Reinsurer" means an insurer that has, by order of the commissioner, been designated as having met the requirements under Section 31A-17-404 for the allowance of credit against a ceding company's reserves for reinsurance ceded and the security factor required under Subsection 31A-17-404(1)(b) is satisfied in that it is an authorized insurer in at least one state as provided for in Subsection 31A-17-404(3)(e).~~

~~_____ B. "Beneficiary" means the entity for whose benefit a trust has been established and any successor of the beneficiary by operation of law. If a court of law appoints a successor in interest to the named beneficiary, then the named beneficiary includes and is limited to the court appointed domiciliary receiver, including conservator, rehabilitator or liquidator.~~

~~_____ C. "Grantor" means the entity that has established a trust for the benefit of the beneficiary. When established in conjunction with a reinsurance agreement, the grantor is the unlicensed, unaccredited, untrusted assuming insurer.~~

~~_____ D. "Liabilities" means the assuming insurer's gross liabilities attributable to reinsurance ceded by United States domiciled insurers excluding liabilities that are otherwise secured by acceptable means and includes:~~

~~_____ (1) For business ceded by domestic insurers authorized to write accident and health or property and casualty insurance:~~

~~_____ (a) losses and allocated loss expenses paid by the ceding insurer, recoverable from the assuming insurer;~~

~~_____ (b) reserves for losses reported and outstanding;~~

- _____ (c) reserves for losses incurred but not reported;
- _____ (d) reserves for allocated loss expenses; and
- _____ (e) unearned premiums.

_____ (2) For business ceded by domestic insurers authorized to write life, accident and health or annuity insurance:

- _____ (a) aggregate reserves for life policies and contracts net of policy loans and net due and deferred premiums;
- _____ (b) aggregate reserves for accident and health policies;
- _____ (c) deposit funds and other liabilities without life or accident and health contingencies; and
- _____ (d) liabilities for policy and contract claims.

_____ E. "Mortgage related security" means an obligation that is rated AA or higher, or the equivalent, by a securities rating agency recognized by the Securities Valuation Office of the National Association of Insurance Commissioners (NAIC) and that either:

_____ (1) represents ownership of one or more promissory notes or certificates of interest or participation in the notes, including any rights designed to assure servicing of, or the receipt or timeliness of receipt by the holders of the notes, certificates, or participation of amounts payable under, the notes, certificates or participation, that:

_____ (a) are directly secured by a first lien on a single parcel of real estate, including stock allocated to a dwelling unit in a residential cooperative housing corporation, upon which is located a dwelling or mixed residential and commercial structure, or on a residential manufactured home as defined in 42 U.S.C.A. Section 5402(6), whether the manufactured home is considered real or personal property under the laws of the state in which it is located; and

_____ (b) were originated by a savings and loan association, savings bank, commercial bank, credit union, insurance company, or similar institution that is supervised and examined by a federal or state housing authority, or by a mortgagee approved by the Secretary of Housing and Urban Development pursuant to 12 U.S.C.A. Sections 1709 and 1715 b, or, where the notes involve a lien on the manufactured home, by an institution or by a financial institution approved for insurance by the Secretary of Housing and Urban Development pursuant to 12 U.S.C.A. Section 1703; or

_____ (2) is secured by one or more promissory notes or certificates of deposit or participations in the notes, with or without recourse to the insurer of the notes, and, by its terms, provides for payments of principal in relation to payments, or reasonable projections of payments, or notes meeting the requirements of Items (1)(a) and (1)(b) of this subsection.

_____ F. "Obligations," means:

- _____ (a) reinsured losses and allocated loss expenses paid by the ceding company, but not recovered from the assuming insurer;
- _____ (b) reserves for reinsured losses reported and outstanding;
- _____ (c) reserves for reinsured losses incurred but not reported; and
- _____ (d) reserves for allocated reinsured loss expenses and unearned premiums.

_____ G. "Promissory note," when used in connection with a manufactured home, includes a loan, advance or credit sale as evidenced by a retail installment sales contract or other instrument.

_____ H.(1) "Qualified United States financial institution" for the purposes of Section R590-173-7 and Subsection R590-173-9.A.(3) 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 thereof;

_____ (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 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.

_____ (2) "Qualified United States financial institution," for general purposes of this rule, means an institution that is eligible to act as a fiduciary of a trust 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 of the United States and has been granted authority to operate with fiduciary powers; and

_____ (b) is regulated, supervised and examined by federal or state authorities having regulatory authority over banks and trust companies.

_____ I. "Trusteed Reinsurer" means an alien insurer which by order of the commissioner has been designated as having met the requirements under Section 31A-17-404 for the allowance of credit against a ceding company's reserves for reinsurance ceded and the security factor required under Subsection 31A-17-404(1)(b) is satisfied through a trust fund provided for in Subsection 31A-17-404(3)(d).

R590-173-4. Credit for Reinsurance—Reinsurer Licensed in this State.

_____ The commissioner shall allow credit for reinsurance ceded by a domestic insurer to assuming insurers authorized to do business in this state as of the date of the ceding insurer's statutory financial statement.

R590-173-5. Credit for Reinsurance—Accredited and Trusteed Reinsurers.

_____ The commissioner shall allow credit for reinsurance ceded by a domestic insurer to an assuming insurer that has been granted accredited or trusteed reinsurer status in this state as of the date of the ceding insurer's statutory financial statement.

R590-173-6. Credit for Reinsurance—Reinsurer Domiciled and Licensed in Another State.

_____ A. The commissioner shall allow credit for reinsurance ceded by a domestic insurer to an assuming insurer which as of the date of the ceding insurer's statutory financial statement:

_____ (1) is domiciled and licensed in a state which employs standards regarding credit for reinsurance substantially similar to those applicable under Section 31A-17-404 and this rule;

_____ (2) maintains total adjusted capital above the Company Action Level RBC; and

_____ (3) files a properly executed Certificate of Assuming Insurer, Form AR-1, with the commissioner as evidence of its submission to this state's authority to examine its books and records.

_____ B. The provisions of this section relating to surplus as regards policyholders will not apply to reinsurance ceded and assumed pursuant to pooling arrangements among insurers in the same insurance holding company system.

R590-173-7. Credit for Reinsurance—Reinsurers Maintaining Trust Funds.

A. The commissioner shall allow credit for reinsurance ceded by a domestic insurer to an assuming insurer which, as of the date of the ceding insurer's statutory financial statement maintains a trust fund in an amount prescribed below in a qualified 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. The assuming insurer shall report annually to the commissioner substantially the same information as that required to be reported on the NAIC annual statement form by licensed insurers, to enable the commissioner to determine the sufficiency of the trust fund.

B. The following requirements apply to the following categories of assuming insurer:

(1) the trust fund for a single assuming insurer shall consist of funds in trust in an amount not less than the assuming insurer's liabilities attributable to business written in the United States, and in addition, a trustee surplus of not less than \$20,000,000, except as provided in paragraph (2) of this subsection. For purposes of this section, liabilities attributable to business written in the United States means the liabilities attributable to reinsurance ceded by United States domiciled insurers.

(2) At any time after the assuming insurer has permanently discontinued underwriting new business secured by the trust for at least three full years, the commissioner with principal regulatory oversight of the trust may authorize a reduction in the required trustee surplus, but only after a finding, based on an assessment of the risk, that the new required surplus level is adequate for the protection of U.S. ceding insurers, policyholders and claimants in light of reasonably foreseeable adverse loss development. The risk assessment may involve an actuarial review, including an independent analysis of reserves and cash flows, and shall consider all material risk factors, including when applicable the lines of business involved, the stability of the incurred loss estimates, and the effect of the surplus requirements on the assuming insurer's liquidity or solvency. The minimum required trustee surplus may not be reduced to an amount less than thirty percent (30%) of the assuming insurer's liabilities attributable to reinsurance ceded by U.S. ceding insurers covered by the trust.

(3)(a) The trust fund for a group of incorporated and individual unincorporated underwriters shall consist of:

(i) for reinsurance ceded under reinsurance agreements with an inception, amendment or renewal date on or after January 1, 1993, funds in trust in an amount not less than the respective underwriters' aggregate liabilities attributable to business ceded by United States domiciled ceding insurers to any underwriter of the group;

(ii) for reinsurance ceded under reinsurance agreements with an inception date on or before December 31, 1992, and not amended or renewed after that date, notwithstanding the other provisions of this rule, funds in trust in an amount not less than the respective underwriters' aggregate insurance and reinsurance liabilities attributable to business written in the United States; and

(iii) in addition to these trusts, the group shall maintain a trustee surplus of which \$100,000,000 shall be held jointly for the benefit of the United States domiciled ceding insurers of any member of the group for all the years of account.

(b) The incorporated members of the group will not be engaged in any business other than underwriting as a member of the group and shall be subject to the same level of regulation and solvency control by the group's domiciliary regulator as are the unincorporated members. The group shall, within 90 days after its financial statements are due to be filed with the group's domiciliary regulator, provide to the commissioner:

(i) an annual certification by the group's domiciliary regulator of the solvency of each underwriter member of the group; or

(ii) if a certification is unavailable, a financial statement, prepared by independent public accountants, of each underwriter member of the group.

(4)(a) The trust fund for a group of incorporated insurers under common administration shall:

(i) consist of funds in trust in an amount not less than the assuming insurers' aggregate liabilities attributable to business ceded by United States domiciled insurers to any members of the group pursuant to reinsurance contracts issued in the name of the group and;

(ii) maintain a joint trustee surplus of which \$100,000,000 shall be held jointly for the benefit of United States domiciled ceding insurers of any member of the group; and

(iii) file a properly executed Certificate of Assuming Insurer, Form AR-1, as evidence of the submission to this state's authority to examine the books and records of any of its members and shall certify that any member examined shall bear the expense of any such examination.

(b) Within 90 days after the statements are due to be filed with the group's domiciliary regulator, the group shall file with the commissioner an annual certification of each underwriter member's solvency by the member's domiciliary regulators, and financial statements, prepared by independent public accountants, of each underwriter member of the group.

C.(1) Credit for reinsurance will 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 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. The trust instrument shall provide that:

(a) contested claims shall be valid and enforceable out of funds in trust to the extent remaining unsatisfied 30 days after entry of the final order of any court of competent jurisdiction in the United States;

(b) legal title to the assets of the trust shall be vested in the trustee for the benefit of the grantor's United States ceding insurers, their assigns and successors in interest;

(c) the trust shall be subject to examination as determined by the commissioner;

(d) the trust shall remain in effect for as long as the assuming insurer, or any member or former member of a group of insurers, shall have outstanding obligations under reinsurance agreements subject to the trust; and

(e) no later than February 28 of each year the trustee of the trust shall report to the commissioner 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 will not expire prior to the following December 31.

(2)(a) Notwithstanding any other provisions in 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.

(b) The assets shall be distributed by and claims of United States trust beneficiaries 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.

(c) If the commissioner with regulatory oversight over the trust determines that the assets of the trust fund or any part of the trust fund are not necessary to satisfy the claims of the United States beneficiaries of the trust, the commissioner with regulatory oversight over the trust shall return the assets, or any part of the assets, to the trustee for distribution in accordance with the trust agreement.

_____ (d) The grantor shall waive any right otherwise available to it under United States law that is inconsistent with this provision.

_____ D. Assets deposited in the trust shall be valued according to their current fair market value and shall consist only of cash in United States dollars, certificates of deposit issued by a qualified United States financial institution, and investments of the type specified in this subsection, but investments in or issued by an entity controlling, controlled by or under common control with either the grantor or beneficiary of the trust will not exceed 5% of total investments. No more than 20% of the total of the investments in the trust may be foreign investments authorized under Subsection R590-173-7.D.(1)(e), (3), (5)(b) or (6), and no more than 10% of the total of the investments in the trust may be securities denominated in foreign currencies. A depository receipt denominated in United States dollars and representing rights conferred by a foreign security shall be classified as a foreign investment denominated in a foreign currency. The assets of a trust shall be invested only as follows:

_____ (1) government obligations that are not in default as to principal or interest, that are valid and legally authorized and that are issued, assumed or guaranteed by:

_____ (a) the United States or by any agency or instrumentality of the United States;

_____ (b) a state of the United States;

_____ (c) a territory, possession or other governmental unit of the United States;

_____ (d) an agency or instrumentality of a governmental unit referred to in Subsections R590-173-7.D.(1)(b) and (c) if the obligations shall be by law payable, as to both principal and interest, from taxes levied or by law required to be levied or from adequate special revenues pledged or otherwise appropriated or by law required to be provided for making these payments, but will not be obligations eligible for investment under this subsection if payable solely out of special assessments on properties benefited by local improvements; or

_____ (e) the government of any other country that is a member of the Organization for Economic Cooperation and Development and whose government obligations are rated A or higher, or the equivalent, by a rating agency recognized by the Securities Valuation Office of the NAIC;

_____ (2) obligations that are issued in the United States, or that are dollar denominated and issued in a non-United States market, by a solvent United States institution, other than an insurance company, or that are assumed or guaranteed by a solvent United States institution, other than an insurance company, and that are not in default as to principal or interest if the obligations:

_____ (a) are rated A or higher, or the equivalent, by a securities rating agency recognized by the Securities Valuation Office of the NAIC, or if not so rated, are similar in structure and other material respects to other obligations of the same institution that are so rated;

_____ (b) are insured by at least one authorized insurer, other than the investing insurer or a parent, subsidiary or affiliate of the investing insurer, licensed to insure obligations in this state and, after considering the insurance, are rated AAA, or the equivalent, by a securities rating agency recognized by the Securities Valuation Office of the NAIC; or

_____ (c) have been designated as Class One or Class Two by the Securities Valuation Office of the NAIC;

_____ (3) obligations issued, assumed or guaranteed by a solvent non-United States institution chartered in a country that is a member of the Organization for Economic Cooperation and Development or obligations of United States corporations issued in a non-United States currency, provided that in either case the obligations are rated A or higher, or the equivalent, by a rating agency recognized by the Securities Valuation Office of the NAIC;

_____ (4) an investment made pursuant to the provisions of Subsection R590-173-7.D. (1), (2) or (3) shall be subject to the following additional limitations:

_____ (a) an investment in or loan upon the obligations of an institution other than an institution that issues mortgage related securities will not exceed 5% of the assets of the trust;

_____ (b) an investment in any one mortgage related security will not exceed 5% of the assets of the trust;

_____ (c) the aggregate total investment in mortgage related securities will not exceed 25% of the assets of the trust; and

_____ (d) preferred or guaranteed shares issued or guaranteed by a solvent United States institution are permissible investments if all of the institution's obligations are eligible as investments under Subsections R590-173-7.D.(2)(a) and (2)(c), but will not exceed 2% of the assets of the trust.

_____ (5) Equity interests

_____ (a) Investments in common shares or partnership interests of a solvent United States institution are permissible if:

_____ (i) its obligations and preferred shares, if any, are eligible as investments under this subsection; and

_____ (ii) the equity interests of the institution, except an insurance company, are registered on a national securities exchange as provided in the Securities Exchange Act of 1934, 15 U.S. C. Sections 78a to 78kk or otherwise registered pursuant to that Act, and if otherwise registered, price quotations for them are furnished through a nationwide automated quotations system approved by the Financial Industry Regulatory Authority, or successor organization. A trust will not invest in equity interests under this subsection an amount exceeding 1% of the assets of the trust even though the equity interests are not so registered and are not issued by an insurance company;

_____ (b) investments in common shares of a solvent institution organized under the laws of a country that is a member of the Organization for Economic Cooperation and Development, if:

_____ (i) all its obligations are rated A or higher, or the equivalent, by a rating agency recognized by the Securities Valuation Office of the NAIC; and

_____ (ii) the equity interests of the institution are registered on a securities exchange regulated by the government of a country that is a member of the Organization for Economic Cooperation and Development;

_____ (c) an investment in or loan upon any one institution's outstanding equity interests will not exceed 1% of the assets of the trust. The cost of an investment in equity interests made pursuant to this subsection, when added to the aggregate cost of other investments in equity interests then held pursuant to this subsection, will not exceed 10% of the assets in the trust;

_____ (6) obligations issued, assumed or guaranteed by a multinational development bank, provided the obligations are rated A or higher, or the equivalent, by a rating agency recognized by the Securities Valuation Office of the NAIC.

_____ (7) Investment companies

_____ (a) Securities of an investment company registered pursuant to the Investment Company Act of 1940, 15 U.S. C. Section 802, are permissible investments if the investment company:

_____ (i) invests at least 90% of its assets in the types of securities that qualify as an investment under Subsection R590-173-7.D. (1), (2) or (3) or invests in securities that are determined by the commissioner to be substantively similar to the types of securities set forth in Subsection R590-173-7.D.(1), (2) or (3); or

_____ (ii) invests at least 90% of its assets in the types of equity interests that qualify as an investment under Subsection R590-173-7.D.(5)(a);

_____ (b) investments made by a trust in investment companies under this subsection will not exceed the following limitations:

_____ (i) an investment in an investment company qualifying under Subsection R590-173-7.D.(7)(a)(i) will not exceed 10% of the assets in the trust and the aggregate amount of investment in qualifying investment companies will not exceed 25% of the assets in the trust; and
_____ (ii) investments in an investment company qualifying under Subsection R590-173-7.D.(7)(a)(ii) will not exceed 5% of the assets in the trust and the aggregate amount of investment in qualifying investment companies shall be included when calculating the permissible aggregate value of equity interests pursuant to Subsection R590-173-7.D.(5)(a).

_____ E. A specific security provided to a ceding insurer by an assuming insurer pursuant to Section 9 of this rule shall be applied, until exhausted, to the payment of liabilities of the assuming insurer to the ceding insurer holding the specific security prior to, and as a condition precedent for, presentation of a claim by the ceding insurer for payment by a trustee of a trust established by the assuming insurer pursuant to this section.

R590-173-8. Credit for Reinsurance—Certified Reinsurers.

_____ A. The commissioner shall allow credit for reinsurance ceded by a domestic insurer to an assuming insurer that has been certified as a reinsurer in this state at all times for which statutory financial statement credit for reinsurance is claimed under this section. The credit allowed shall be based upon the security held by or on behalf of the ceding insurer in accordance with a rating assigned to the certified reinsurer by the commissioner. The security shall be in a form consistent with the provisions of Administrative Rule R590-114, Letters of Credit, or Sections 10, or 11 of this Regulation. The amount of security required in order for full credit to be allowed shall correspond with the following requirements:

TABLE

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

_____ (1) Affiliated reinsurance transactions shall receive the same opportunity for reduced security requirements as all other reinsurance transactions.

_____ (2) The commissioner shall require the certified reinsurer to post one hundred percent (100%), for the benefit of the ceding insurer or its estate, security upon the entry of an order of rehabilitation, liquidation or conservation against the ceding insurer.

_____ (3) 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 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 as recognized by the commissioner. The one year deferral period is contingent upon the certified reinsurer continuing to pay claims in a timely manner. Reinsurance recoverables for only the following lines of business as reported on the NAIC annual financial statement related specifically to the catastrophic occurrence will be included in the deferral:

- _____ (a) Line 1: Fire
- _____ (b) Line 2: Allied Lines
- _____ (c) Line 3: Farmowners multiple peril
- _____ (d) Line 4: Homeowners multiple peril
- _____ (e) Line 5: Commercial multiple peril
- _____ (f) Line 9: Inland Marine
- _____ (g) Line 12: Earthquake
- _____ (h) Line 21: Auto physical damage

_____ (4) Credit for reinsurance under this section shall apply only to reinsurance contracts entered into or renewed on or after the effective date of the certification of the assuming insurer. Any reinsurance contract entered into prior to the effective date of the certification of the assuming insurer that is subsequently amended after the effective date of the certification of the assuming insurer, or a new reinsurance contract, covering any risk for which collateral was provided previously, shall only be subject to this section with respect to losses incurred and reserves reported from and after the effective date of the amendment or new contract.

_____ (5) Nothing in this section 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 under this Section.

B. Certification Procedure.

_____ (1) The commissioner shall promptly post notice upon receipt of any application for certification, including instructions on how members of the public may respond to the application. The commissioner may not take final action on the application until at least thirty (30) days after posting the notice required by this paragraph.

_____ (2) The commissioner shall issue written notice to an assuming insurer that has made application and been approved as a certified reinsurer. Included in such notice shall be the rating assigned the certified reinsurer in accordance with Subsection A of this section. The commissioner shall publish a list of all certified reinsurers and their ratings.

_____ (3) In order to be eligible for certification, the assuming insurer shall meet the following requirements:

_____ (a) The assuming insurer must be domiciled and licensed to transact insurance or reinsurance in a Qualified Jurisdiction, as determined by the commissioner pursuant to Subsection C of this section.

_____ (b) The assuming insurer must maintain capital and surplus, or its equivalent, of no less than \$250,000,000 calculated in accordance with Subparagraph (4)(h) of this subsection. This requirement may also be satisfied by an association 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.

_____ (c) The assuming insurer must maintain financial strength ratings from two or more rating agencies deemed acceptable by the commissioner. These ratings shall be based on interactive communication between the rating agency and the assuming insurer and shall not be based solely on publicly available information. These financial strength ratings will be one factor used by the commissioner in determining the rating that is assigned to the assuming insurer. Acceptable rating agencies include the following:

_____ (i) Standard and Poor's;

- _____ (ii) Moody's Investors Service;
- _____ (iii) Fitch Ratings;
- _____ (iv) A.M. Best Company; or
- _____ (v) any other nationally recognized Statistical rating organization.
- _____ (d) The certified reinsurer must comply with any other requirements reasonably imposed by the commissioner.
- _____ (4) Each certified reinsurer shall be rated on a legal entity basis, with due consideration being given to the group rating where appropriate, except that an association 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 evaluation process include, but are not limited, to the following:
 - _____ (a) The certified reinsurer's financial strength rating from an acceptable rating agency. The maximum rating that a certified reinsurer may be assigned will correspond to its financial strength rating as outlined in the table below. 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 acceptable rating agencies will result in loss of eligibility for certification;

TABLE
Financial Strength Ratings by Rating Agency

Ratings	Best	S and P	Moody's	Fitch
Secure 1	A++	AAA	Aaa	AAA
Secure 2	A+	AA+, AA	Aa1, Aa2	AA+, AA
	AA	Aa3	AA-	
Secure 3	A	A+, A	A1, A2	A+, A
Secure 4	A	A	A3	A-
Secure 5	B+, B	BBB+, BBB	Baa1, Baa2	BBB+, BBB
	BBB	Baa3	BBB-	
Vulnerable 6	B, B-	BB+, BB	Ba1, Ba2	BB+, BB
	C++, C+	BB-, B+	Ba3	BB-
	C, C-	B, CCC	B1, B2, B3	B+, B, B-
	D, E, F	CC, C, D	Caa, Ca, C	CCC+, CC
	R	CCC	DD	

- _____ (b) The business practices of the certified reinsurer in dealing with its ceding insurers, including its record of compliance with reinsurance contractual terms and obligations;
- _____ (c) For certified reinsurers domiciled in the U.S., a review of the most recent applicable NAIC Annual Statement Blank, either Schedule F (for property/casualty reinsurers) or Schedule S (for life and health reinsurers);
- _____ (d) For certified reinsurers not domiciled in the U.S., a review annually of Form CR-F (for property/casualty reinsurers) or Form CR-S (for life and health reinsurers) available from the commissioner upon request;
- _____ (e) The reputation of the certified reinsurer for prompt payment of claims under reinsurance agreements, based on an 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 attention given to obligations payable to companies that are in administrative supervision or receivership;
- _____ (f) Regulatory actions against the certified reinsurer;
- _____ (g) The report of the independent auditor on the financial statements of the insurance enterprise, on the basis described in paragraph (h) below;
- _____ (h) For certified reinsurers not domiciled in the U.S., audited financial statements, (audited 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 the permission of the state insurance commissioner, audited IFRS statements with reconciliation to U.S. GAAP certified by an officer of the company), regulatory filings, and actuarial opinion (as filed with the non U.S. jurisdiction supervisor). Upon the initial application for certification, the commissioner will consider audited financial statements for the last 3 years filed with its non U.S. jurisdiction supervisor;
- _____ (i) The liquidation priority of obligations to a ceding insurer in the certified reinsurer's domiciliary jurisdiction in the context of an insolvency proceeding;
- _____ (j) 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; and
- _____ (k) Any other information deemed relevant by the commissioner.
- _____ (5) Based on the analysis conducted under subparagraph 4(e) of a certified reinsurer's reputation for 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, provided that the commissioner shall, at a minimum, increase the security the certified reinsurer is required to post by one rating level under subparagraph 4(a) if the commissioner finds that
 - _____ (a) more than 15% of the certified reinsurer's 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
 - _____ (b) 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.
- _____ (6) The assuming insurer must submit a properly executed Form CR-1 (available from the commissioner upon request) as evidence of its submission to the jurisdiction of this state, appointment of the commissioner as an agent for service of process in this state, and agreement to provide security for one hundred percent (100%) of the assuming insurer's liabilities attributable to reinsurance ceded by U.S. ceding insurers if it resists enforcement of a final U.S. judgment. The commissioner shall not certify any assuming insurer that is domiciled in a jurisdiction that the commissioner has determined does not adequately and promptly enforce final U.S. judgments or arbitration awards.
- _____ (7) The certified reinsurer must agree to meet applicable information filing requirements as determined by the commissioner, both with respect to an initial application for certification and on an ongoing basis. All information submitted by certified reinsurers which are not otherwise public information subject to disclosure shall be exempted from disclosure under and shall be withheld from public disclosure. The applicable information filing requirements are, as follows:

_____ (a) Notification within 10 days of any regulatory actions taken against the certified reinsurer, any change in the provisions of its domiciliary license or any change in rating by an approved rating agency, including a statement describing such 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 subsection (d) below;

_____ (d) Annually, audited financial statements (audited 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 the permission of the state insurance commissioner, audited IFRS statements with reconciliation to U.S. GAAP certified by an officer of the company), regulatory filings, and actuarial opinion (as filed with the certified reinsurer's supervisor). Upon the initial certification, audited financial statements for the last 3 years filed with the certified reinsurer's supervisor;

_____ (e) At least annually, an updated list of all disputed and overdue reinsurance claims regarding reinsurance assumed from U.S. domestic ceding insurers;

_____ (f) A certification from 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; and

_____ (g) Any other information that the commissioner may reasonably require.

_____ (8) Change in Rating or Revocation of Certification.

_____ (a) In the case of a downgrade by a rating agency or other disqualifying circumstance, the commissioner shall upon written notice assign a new rating to the certified reinsurer in accordance with the requirements of paragraph (4)(a).

_____ (b) The commissioner shall have the authority to suspend, revoke, or otherwise modify a certified reinsurer's certification at any time if the certified reinsurer fails to meet its obligations or security requirements under this section, or if other financial or operating results of the certified reinsurer, or documented significant delays in payment by the certified reinsurer, lead the commissioner to reconsider the certified reinsurer's ability or willingness to meet its contractual obligations.

_____ (c) If the rating of a certified reinsurer is upgraded by the commissioner, the certified reinsurer may meet the security requirements applicable to its new rating on a prospective basis, but the commissioner shall require the certified reinsurer to post security under the previously applicable security requirements as to all contracts in force on or before the effective date of the upgraded rating. If the rating of a certified reinsurer is downgraded by the commissioner, the commissioner shall require the certified reinsurer to meet the security requirements applicable to its new rating for all business it has assumed as a certified reinsurer.

_____ (d) Upon revocation of the certification of a certified reinsurer by the commissioner, the assuming insurer shall be required to post security in accordance with Section 9 in order for the ceding insurer to continue to take credit for reinsurance ceded to the assuming insurer. If funds continue to be held in trust in accordance with Section 7, the commissioner may allow additional credit equal to the ceding insurer's pro rata share of such funds, discounted to reflect the risk of uncollectibility and anticipated expenses of trust administration. Notwithstanding the change of a certified reinsurer's rating or revocation of its certification, a domestic insurer that has ceded reinsurance to that certified reinsurer may not be denied credit for reinsurance for a period of 3 months for all reinsurance ceded to that certified reinsurer, unless the reinsurance is found by the commissioner to be at high risk of uncollectibility.

_____ C. Qualified Jurisdictions.

_____ (1) If, upon conducting an evaluation under this Section with respect to the reinsurance supervisory system of any non-U.S. assuming insurer, the commissioner determines that the jurisdiction qualifies to be recognized as a qualified jurisdiction, the commissioner shall publish notice and evidence of such recognition in an appropriate manner. The commissioner may establish a procedure to withdraw recognition of those jurisdictions that are no longer qualified.

_____ (2) In order to determine whether the domiciliary jurisdiction of a non-U.S. assuming insurer is eligible to be recognized as a qualified jurisdiction, the commissioner shall evaluate the reinsurance supervisory system of the non-U.S. 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 U.S. The commissioner shall determine the appropriate approach for evaluating the qualifications of such jurisdictions, and create and publish a list of jurisdictions whose reinsurers may be approved by the commissioner as eligible for certification. A qualified jurisdiction must agree to share information and cooperate with the commissioner with respect to all certified reinsurers domiciled within that jurisdiction. Additional factors to be considered in determining whether to recognize a qualified jurisdiction, in the discretion of the commissioner, include but are not limited to the following:

_____ (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 publicly 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 the 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 or 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 or successor organization.

_____ (i) Any other matters deemed relevant by the commissioner.

_____ (3) A list of qualified jurisdictions shall be published through the NAIC Committee Process. The commissioner shall consider this list in determining qualified jurisdictions. If the commissioner approves a jurisdiction as qualified that does not appear on the list of qualified jurisdictions, the commissioner shall provide thoroughly documented justification with respect to the criteria provided under subsections 8.C(2)(a) to (i).

_____ (4) U.S. jurisdictions that meet the requirements for accreditation under the NAIC financial standards and accreditation program shall be recognized as qualified jurisdictions.

_____ D. Recognition of Certification Issued by an NAIC Accredited Jurisdiction.

_____ (1) If an applicant for certification has been certified as a reinsurer in an NAIC accredited jurisdiction, the commissioner has the discretion to defer to that jurisdiction's certification, and to defer to the rating assigned by that jurisdiction, if the assuming insurer submits a properly executed

Form CR-1 and such additional information as the commissioner requires. The assuming insurer shall be considered to be a certified reinsurer in this state.

(2) 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 after receiving notice of the change.

(3) The commissioner may withdraw recognition of the other jurisdiction's rating at any time and assign a new rating in accordance with Subparagraph B(7)(a) of this section.

(4) The commissioner may withdraw recognition of the other jurisdiction's certification at any time, with written notice to the certified reinsurer. Unless the commissioner suspends or revokes the certified reinsurer's certification in accordance with Subparagraph B(7)(b) of this section, the certified reinsurer's certification shall remain in good standing in this State for a period of three months, which shall be extended if additional time is necessary to consider the assuming insurer's application for certification in this State.

E. Mandatory Funding Clause. Reinsurance contracts entered into or renewed under this section 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.

F. The commissioner shall comply with all reporting and notification requirements that may be established by the NAIC with respect to certified reinsurers and qualified jurisdictions.

R590-173-9. Asset or Reduction from Liability for Reinsurance Ceded to an Unauthorized Assuming Insurer not Meeting the Requirements of Sections 4 Through 7.

A. The commissioner shall allow a reduction from liability for reinsurance ceded by a domestic insurer to an assuming insurer in an amount not exceeding the liabilities carried by the ceding insurer. The reduction shall be in the amount of funds held by or on behalf of the ceding insurer, including funds held in trust for the exclusive benefit of the ceding insurer, under a reinsurance contract with such assuming insurer as security for the payment of obligations under the reinsurance contract. The security shall be held in the United States subject to withdrawal solely by, and under the exclusive control of, the ceding insurer or, in the case of a trust, held in a qualified United States financial institution. This security may be in the form of any of the following:

(1) cash;

(2) securities listed by the Securities Valuation Office of the NAIC, including those deemed exempt from filing as defined by the Purposes and Procedures Manual of the Securities Valuation Office, and qualifying as admitted assets;

(3) clean, irrevocable, unconditional and "evergreen" letters of credit that comply with Rule R590-114 issued or confirmed by a qualified United States financial institution; or

(4) any other form of security acceptable to the commissioner.

B. An admitted asset or a reduction from liability for reinsurance ceded to an unauthorized assuming insurer pursuant to this section shall be allowed only when the requirements of R590-114, Letters of Credit and the applicable portions of Sections R590-173-10 and 11 of this rule have been satisfied.

R590-173-10. Trust Agreements Qualified under Section 9.

A. Required conditions

(1) The trust agreement shall be entered into between the beneficiary, the grantor and a trustee, which shall be a qualified United States financial institution.

(2) The trust agreement shall create a trust account into which assets shall be deposited.

(3) All assets in the trust account shall be held by the trustee at the trustee's office in the United States.

(4) The trust agreement shall provide that:

(a) the beneficiary shall have the right to 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;

(b) no other statement or document is required to be presented to withdraw assets, except that the beneficiary may be required to acknowledge receipt of withdrawn assets;

(c) it is not subject to any conditions or qualifications outside of the trust agreement; and

(d) it will not contain references to any other agreements or documents except as provided for in Subsections R590-173-10.A.(11) and (12).

(5) The trust agreement shall be established for the sole benefit of the beneficiary.

(6) The trust agreement shall require the trustee to:

(a) receive assets and hold all assets in a safe place;

(b) determine that all assets are in such form that the beneficiary, or the trustee upon direction by the beneficiary may, whenever necessary, negotiate any such assets, without consent or signature from the grantor or any other person or entity;

(c) 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;

(d) notify the grantor and the beneficiary within 10 days, of any deposits to or withdrawals from the trust account;

(e) 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

(f) 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.

(7) The trust agreement shall provide 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.

(8) The trust agreement shall be made subject to and governed by the laws of the state in which the trust is domiciled.

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

(10) The trust agreement shall provide that the trustee shall be liable for its negligence, willful misconduct or lack of good faith.

_____ (11) Notwithstanding other provisions of this rule, when a trust agreement is established in conjunction with a reinsurance agreement covering risks other than life, annuities and accident and health, where it is customary practice to provide a trust agreement for a specific purpose, the trust agreement may provide that the ceding insurer shall undertake to use and apply amounts drawn upon the trust account, without diminution because of the insolvency of the ceding insurer or the assuming insurer, only for the following purposes:

_____ (a) 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;

_____ (b) to make payment to the assuming insurer any amounts held in the trust account that exceed 102 % of the actual amount required to fund the assuming insurer's obligations under the specific reinsurance agreement; or

_____ (c) where the ceding insurer has received notification of termination of the trust account and where the assuming insurer's entire obligations under the specific reinsurance agreement remain unliquidated and undischarged 10 days prior to the termination date, to withdraw amounts equal to the obligations and deposit those amounts in a separate account, in the name of the ceding insurer in any qualified United States financial institution apart from its general assets, in trust for such uses and purposes specified in Subsections R590-173-9.A.(11)(a) and (b) as may remain executory after such withdrawal and for any period after the termination date.

_____ (12) Notwithstanding other provisions of this rule, when a trust agreement is established to meet the requirements of Section R590-173-9. in conjunction with a reinsurance agreement covering life, annuities or accident and health risks, where it is customary to provide a trust agreement for a specific purpose, the trust agreement may provide that the ceding insurer shall undertake to use and apply amounts drawn upon the trust account, without diminution because of the insolvency of the ceding insurer or the assuming insurer, only for the following purposes:

_____ (a) to pay or reimburse the ceding insurer for:

_____ (i) the assuming insurer's share under the specific reinsurance agreement of premiums returned, but not yet recovered from the assuming insurer, to the owners of policies reinsured under the reinsurance agreement on account of cancellations of the policies; and

_____ (ii) the assuming insurer's share under the specific reinsurance agreement of surrenders and benefits or losses paid by the ceding insurer, but not yet recovered from the assuming insurer, under the terms and provisions of the policies reinsured under the reinsurance agreement;

_____ (b) to pay to the assuming insurer amounts held in the trust account in excess of the amount necessary to secure the credit or reduction from liability for reinsurance taken by the ceding insurer; or

_____ (c) where the ceding insurer has received notification of termination of the trust and where the assuming insurer's entire obligations under the specific reinsurance agreement remain unliquidated and undischarged 10 days prior to the termination date, to withdraw amounts equal to the assuming insurer's share of liabilities, to the extent that the liabilities have not yet been funded by the assuming insurer, and deposit those amounts in a separate account, in the name of the ceding insurer in any qualified United States financial institution apart from its general assets, in trust for the uses and purposes specified in Subsections R590-173-10.A.(12)(a) and (b) as may remain executory after withdrawal and for any period after the termination date.

_____ (13) Either the reinsurance agreement or the trust agreement must stipulate that assets deposited in the trust account shall be valued according to their current fair market value and shall consist only of cash in United States dollars, certificates of deposit issued by a United States bank and payable in United States dollars, and investments permitted by the Insurance Code or any combination of the above, provided investments in or issued by an entity controlling, controlled by or under common control with either the grantor or the beneficiary of the trust shall not exceed five percent (5%) of total investments. The agreement may further specify the types of investments to be deposited. If the reinsurance agreement covers life, annuities or accident and health risks, then the provisions required by this paragraph must be included in their insurance agreement.

_____ (14) Notwithstanding any other provisions in the trust instrument, 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 court of competent jurisdiction directing the trustee to transfer to the commissioner with regulatory oversight or other designated receiver all of the assets of the trust fund. The assets shall be applied in accordance with the priority statutes and laws of the state in which the trust is domiciled applicable to the assets of insurance companies in liquidation. If the commissioner with regulatory oversight determines that all or part of the trust assets are not necessary to satisfy claims of the United States beneficiaries of the trust, all, or any part of the assets shall be returned to the trustee for distribution in accordance with the trust agreement.

_____ B. Permitted conditions.

_____ (1) The trust agreement may provide that the trustee may resign upon delivery of a written notice of resignation, effective not less than 90 days after the beneficiary and grantor receive the notice and that the trustee may be removed by the grantor by delivery to the trustee and the beneficiary of a written notice of removal, effective not less than 90 days after the trustee and the beneficiary receive the notice, provided that no such resignation or removal shall be effective until 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.

_____ (2) The grantor may have the 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. Any interest or dividends shall be either forwarded promptly upon receipt to the grantor or deposited in a separate account established in the grantor's name.

_____ (3) The trustee may be given authority to invest, and accept substitutions of, any funds in the account, provided that no investment or substitution shall be made without prior approval of the beneficiary, unless the trust agreement specifies categories of investments acceptable to the beneficiary and authorizes the trustee to invest funds and to accept substitutions that the trustee determines are at least equal in current fair market value to the assets withdrawn and that are consistent with the restrictions in Subsection R590-173-10.C.(1)(b).

_____ (4) The trust agreement may provide that the beneficiary may at any time designate a party to which all or part of the trust assets are to be transferred. Transfer may be conditioned upon the trustee receiving, prior to or simultaneously, other specified assets.

_____ (5) The trust agreement may provide that, upon termination of the trust account, all assets not previously withdrawn by the beneficiary shall, with written approval by the beneficiary, be delivered to the grantor.

_____ C. Additional conditions applicable to reinsurance agreements:

_____ (1) A reinsurance agreement may contain provisions that:

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

_____ (b) require 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;

_____ (c) require that all settlements of account between the ceding insurer and the assuming insurer be made in cash or its equivalent; and
_____ (d) stipulate 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 without limitation any liquidator, rehabilitator, receiver or conservator of such company, without diminution because of insolvency on the part of the ceding insurer or the assuming insurer, only for the following purposes:

_____ (i) to pay or reimburse the ceding insurer for:
_____ (I) the assuming insurer's share under the specific reinsurance agreement of premiums returned, but not yet recovered from the assuming insurer, to the owners of policies reinsured under the reinsurance agreement because of cancellations of such policies;
_____ (II) 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; and
_____ (III) any other amounts necessary to secure the credit or reduction from liability for reinsurance taken by the ceding insurer;
_____ (ii) to make payment to the assuming insurer, amounts held in the trust account in excess of the amount necessary to secure the credit or reduction from liability for reinsurance taken by the ceding insurer.

_____ (2) The reinsurance agreement also may contain provisions that:

_____ (a) give the assuming insurer the right to seek approval from the ceding insurer, which will not be unreasonably or arbitrarily withheld, to withdraw from the trust account all or any part of the trust assets and transfer those assets to the assuming insurer, provided:

_____ (i) the assuming insurer shall, at the time of withdrawal, replace the withdrawn assets with other qualified assets having a market value equal to the current fair market value of the assets withdrawn so as to maintain at all times the deposit in the required amount; or
_____ (ii) after withdrawal and transfer, the current fair market value of the trust account is no less than 102 % of the required amount;
_____ (b) provide for the return of any amount withdrawn in excess of the actual amounts required for Subsection R590-173-10.C.(1)(e), and for interest payments at a rate not in excess of the prime rate of interest on such amounts held; and
_____ (c) permit the award by any arbitration panel or court of competent jurisdiction of:
_____ (i) interest at a rate different from that provided in Subsection R590-173-10.C.(2)(b);
_____ (ii) court or arbitration costs;
_____ (iii) attorney's fees; and
_____ (iv) any other reasonable expenses.

_____ D. Financial reporting

_____ (1) A trust agreement may be used to reduce any liability for reinsurance ceded to an unauthorized assuming insurer in financial statements required to be filed with this department in compliance with the provisions of this rule when established on or before the date of filing of the financial statement of the ceding insurer. Further, the reduction for the existence of an acceptable trust account may be up to the current fair market value of acceptable assets available to be withdrawn from the trust account at that time, but such reduction will be no greater than the specific obligations under the reinsurance agreement that the trust account was established to secure.

_____ E. Existing agreements

_____ (1) Any trust agreement or underlying reinsurance agreement in existence prior to the effective date of this rule shall continue to be acceptable until January 1, 1999, at which time the agreements must fully comply with this rule for the trust agreement to be acceptable.

_____ F. Identification of a beneficiary

_____ (1) The failure of any trust agreement to specifically identify the beneficiary will not be construed to affect any actions or rights that the commissioner may take or possess pursuant to the provisions of the laws of this state.

R590-173-11. Other Security.

_____ A ceding insurer may take credit for unencumbered funds withheld by the ceding insurer in the United States subject to withdrawal solely by the ceding insurer and under its exclusive control.

R590-173-12. Contracts Affected.

_____ All new and renewal reinsurance transactions entered into after the effective date of this rule shall conform to the requirements of this rule if credit is to be given to the ceding insurer for such reinsurance.

R590-173-13. Severability.

_____ If any provision of this rule or its application to any person or circumstance is, for any reason, held to be invalid, the remainder of this rule and its application to other persons or circumstances are not affected.]

R590-173-1. Authority.

_____ This rule is promulgated by the commissioner pursuant to Sections 31A-2-201 and 31A-17-404.3.

R590-173-2. Purpose and Scope.

_____ (1) The purpose of this rule is to provide procedural requirements to comply with Sections 31A-17-404, 31A-17-404.1, 31A-17-404.3, and 31A-17-404.4.

_____ (2) This rule applies to an insurer, including a reinsurer, authorized to do business in this state.

R590-173-3. Definitions.

_____ Terms used in this rule are defined in Section 31A-1-301 and 31A-17-404. Additional terms are defined as follows:

_____ (1) "Accredited reinsurer" means an insurer that meets the requirements of Section R590-173-5.

_____ (2)(a)(i) "Beneficiary" as used in Section R590-173-12 means a person for whose sole benefit a trust is established and a successor of the beneficiary by operation of law.

_____ (ii) If a court appoints a successor in interest to the named beneficiary, the named beneficiary includes the court appointed domiciliary receiver, rehabilitator, or liquidator.

_____ (b) "Beneficiary" as used in Section R590-173-13 means a domestic insurer for whose benefit a letter of credit is established and a successor of the beneficiary by operation of law.

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

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

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

(4) "Grantor" as used in Section R590-173-12 means an unlicensed, unaccredited assuming insurer that establishes, in conjunction with a reinsurance agreement, a trust for the sole benefit of a beneficiary.

(5) "Jurisdiction" as used in Section R590-173-10 means:

(a) a state, district, or territory of the United States; or

(b) a lawful national government.

(6) "Liabilities" as used in Section R590-173-7 means an assuming insurer's gross liabilities attributable to reinsurance ceded by a U.S. domiciled insurer, excluding liabilities that are otherwise secured by acceptable means, including:

(a) for business ceded by a domestic insurer authorized to write accident and health, and property and casualty insurance:

(i) losses and allocated loss expenses paid by the ceding insurer, recoverable from the assuming insurer;

(ii) reserves for losses reported and outstanding;

(iii) reserves for losses incurred but not reported;

(iv) reserves for allocated loss expenses; and

(v) unearned premiums; and

(b) for business ceded by a domestic insurer authorized to write life, health, and annuity insurance:

(i) aggregate reserves for life policies and contracts net of policy loans, net due, and deferred premiums;

(ii) aggregate reserves for accident and health policies;

(iii) deposit funds and other liabilities without life or disability contingencies; and

(iv) liabilities for policy and contract claims.

(7) "Manufactured home" has the same meaning as that term is defined in 42 U.S.C. 5402.

(8) "Mortgage-related security" means an obligation that is rated AA or higher, or the equivalent, by a securities rating agency recognized by the Securities Valuation Office of the NAIC and that:

(a) represents ownership of a promissory note, a certificate of interest, or participation in a note that includes a right designed to assure servicing of, or the receipt or timeliness of receipt by a holder of the note, certificate, or participation of an amount payable under a note, certificate, or participation, that:

(i) is directly secured by a first lien on a single parcel of real estate, including stock allocated to a dwelling unit in a residential cooperative housing corporation, where:

(A) a dwelling or mixed residential and commercial structure is located; or

(B) a residential manufactured home, whether the manufactured home is considered real or personal property under the laws of the state, is located; and

(ii) is originated by:

(A) a savings and loan association;

(B) a savings bank;

(C) a commercial bank;

(D) a credit union;

(E) an insurance company;

(D) a similar institution that is supervised and examined by a federal or state housing authority;

(G) a mortgage approved by the Secretary of Housing and Urban Development under 12 U.S.C. 1709 and 12 U.S.C. 1715b; or

(H) where a note involves a lien on a manufactured home, by an institution or by a financial institution approved for insurance by the Secretary of Housing and Urban Development pursuant to 12 U.S.C. 1703; or

(b)(i) is secured by a promissory note, certificate of deposit, or participation in a note, with or without recourse to the insurer of the note; and

(ii) by its terms, provides for a payment of principal in relation to a payment, or a reasonable projection of a payment, or note meeting the requirements of Subsections (8)(a)(i) and (8)(a)(ii).

(9) "Obligation" means:

(a) reinsured losses and allocated loss expenses paid by a ceding company, but not recovered from an assuming insurer;

(b) reserves for reinsured losses reported and outstanding;

(c) reserves for reinsured losses incurred but not reported; and

(d) reserves for allocated reinsured loss expenses and unearned premium.

(10) "Promissory note," used in connection with a manufactured home means:

(a) a loan;

(b) an advance or credit sale evidenced by a retail installment sales contract or another instrument.

(11)(a) "Qualified jurisdiction" means a jurisdiction that:

(i) requires an insurer with its domicile or head office in the qualified jurisdiction to receive credit for reinsurance ceded to a U.S. domiciled assuming insurer in the same manner as credit for reinsurance is received for reinsurance assumed by an insurer domiciled in the qualified jurisdiction;

(ii) recognizes a U.S. state's regulatory approach to group supervision and group capital by providing written confirmation, by a competent regulatory authority in the qualified jurisdiction, that an insurer and an insurance group that is domiciled or maintains its head office in this state or another jurisdiction accredited by the NAIC is subject only to worldwide prudential insurance group supervision including:

(A) worldwide group governance;

(B) solvency and capital; and

(C) reporting, as applicable, by the commissioner or the commissioner of the domiciliary state;

(iii) provides written confirmation by a competent regulatory authority in the qualified jurisdiction that information regarding an insurer and its parent, subsidiary, or affiliated entities are provided to the commissioner in accordance with a memorandum of understanding or similar document between the commissioner and the qualified jurisdiction, including:

- (A) the International Association of Insurance Supervisors Multilateral Memorandum of Understanding; or
- (B) other multilateral memoranda of understanding coordinated by the NAIC; and
- (iv) is designated as a qualified jurisdiction by the commissioner pursuant to Subsection 31A-17-404(7)(d) and this rule.
- (b) A qualified jurisdiction may not:
 - (i) require a U.S. domiciled assuming insurer to establish or maintain a local presence as a condition for entering into a reinsurance agreement with a ceding insurer subject to regulation by the non-U.S. jurisdiction or as a condition to allow a ceding insurer to recognize credit for reinsurance; and
 - (ii) be subject to group supervision at the level of the worldwide parent undertaking of an insurance or reinsurance group by the qualified jurisdiction.
- (12) "Reciprocal jurisdiction" means a jurisdiction, as designated by the commissioner under Section R590-173-9, that is:
 - (a) a non-U.S. jurisdiction subject to an in-force covered agreement with the United States, within its legal authority;
 - (b) in the case of a covered agreement between the United States and the European Union, a member state of the European Union;
 - (c) a U.S. jurisdiction that meets the requirements for accreditation under the NAIC financial standards and accreditation program; or
 - (d) a qualified jurisdiction, as determined by the commissioner pursuant to Subsection R590-173-8(6), that is not otherwise described in Subsection (12)(a), (12)(b), or (12)(c).
- (13) "Solvent scheme of arrangement" means a foreign or alien statutory or regulatory compromise procedure subject to:
 - (a) requisite majority creditor approval;
 - (b) judicial sanction in the assuming insurer's home jurisdiction to:
 - (i) commute liabilities of noticed classed members or creditors of a solvent debtor; or
 - (ii) reorganize or restructure the debts and obligations of a solvent debtor on a financial basis; and
 - (c) possible judicial recognition and enforcement of an arrangement by a governing authority outside the ceding insurer's home jurisdiction.
- (14) "Statutory financial statement" means a quarterly, annual, or other financial statement required by law.

R590-173-4. Credit for Reinsurance -- Reinsurer Licensed in Utah.

- (1) Credit is allowed for reinsurance ceded by a domestic insurer to an assuming insurer that is licensed in Utah as of the date the ceding insurer claims reinsurance credit in a statutory financial statement.
- (2) The requisite conditions for credit shall exist at the time the credit is claimed or reported in a statutory financial statement.
- (3) The conditions in Subsection (2) shall remain satisfied until the information reported in one statement is replaced by information reported in a subsequent statement.

R590-173-5. Credit for Reinsurance -- Accredited Reinsurer in Utah.

- (1) Credit is allowed for reinsurance ceded by a domestic insurer to an assuming insurer that is accredited as a reinsurer in Utah as of the date the ceding insurer claims reinsurance credit in a statutory financial statement.
- (2) An accredited reinsurer shall:
 - (a) file with the commissioner a completed Form AR-1, available on the department's website, <https://insurance.utah.gov>, evidencing:
 - (i) the insurer's submission to Utah's jurisdiction; and
 - (ii) Utah's authority to examine its books and records;
 - (b) file with the commissioner a certified copy of a certificate of authority or other acceptable evidence that the accredited reinsurer:
 - (i) is licensed to transact insurance or reinsurance in at least one state; or
 - (ii) in the case of a U.S. branch of an alien assuming insurer, is entered through and licensed to transact insurance or reinsurance in at least one state;
 - (c) file annually with the commissioner a copy of its annual statement filed with:
 - (i)(A) the insurance department of its state of domicile; or
 - (B) in the case of an alien assuming insurer, with the state through which it is entered and is licensed to transact insurance or reinsurance;
 - (d)(i) maintain a surplus regarding policyholders in an amount not less than \$20 million; or
 - (ii) obtain the affirmative approval of the commissioner upon a finding that:
 - (A) the insurer has adequate financial capacity to meet its reinsurance obligations; and
 - (B) is otherwise qualified to assume reinsurance from a domestic insurer.
- (3) If the commissioner determines that an assuming insurer failed to meet or maintain any qualification, the commissioner may suspend or revoke the accreditation upon written notice and opportunity for hearing.
- (4) Credit may not be allowed a domestic ceding insurer if:
 - (a) the assuming insurer's accreditation is revoked by the commissioner; or
 - (b) the reinsurance was ceded while the assuming insurer's accreditation was suspended by the commissioner.

R590-173-6. Credit for Reinsurance -- Reinsurer Domiciled in Another State.

- (1) Credit is allowed for reinsurance ceded by a domestic insurer to an assuming insurer as of any date a ceding insurer claims reinsurance credit in a statutory financial statement.
- (2) Credit is allowed when the assuming insurer:
 - (a) is domiciled in, or in the case of a U.S. branch of an alien assuming insurer, is entered through a state that employs standards regarding credit for reinsurance that is equal to or exceeds those applicable under law;
 - (b) maintains a surplus regarding policyholders in an amount not less than \$20 million; and
 - (c) files with the commissioner a completed Form AR-1, available on the department's website, <https://insurance.utah.gov>, evidencing its submission to Utah's authority to examine its books and records.
- (3) Subsection (2)(b) does not apply to reinsurance ceded and assumed under a pooling arrangement among insurers in the same holding company system.

R590-173-7. Credit for Reinsurance -- Reinsurer Maintains a Trust Fund.

(1)(a) Credit is allowed for reinsurance ceded by a domestic insurer to an assuming insurer that, as of any date a ceding insurer claims reinsurance credit in a statutory financial statement, and thereafter for so long as:

(i) credit for reinsurance is claimed; and

(ii) the assuming insurer maintains a trust fund:

(A) in an amount prescribed in Subsection (2)(a); and

(B) in a qualified United States financial institution for the payment of the valid claims of its U.S. domiciled ceding insurers, their assigns, and successors in interest.

(b) An assuming insurer shall report annually to the commissioner substantially the same information required to be reported on the NAIC annual statement form by a licensed insurer, for the commissioner to determine the sufficiency of the trust fund.

(2) This subsection applies to each category of an assuming insurer.

(a) A trust fund for a single assuming insurer shall consist of funds in trust:

(i) in an amount not less than the assuming insurer's liabilities attributable to reinsurance ceded by a U.S. domiciled insurer; and

(ii) a trustee surplus of not less than \$20 million, except as provided in Subsection (2)(b).

(b)(i) The commissioner with principal regulatory oversight of the trust may authorize a reduction in the required trustee surplus if:

(A) the assuming insurer permanently discontinues underwriting new business secured by the trust for at least three years; and

(B) the commissioner makes a risk assessment finding that the new required surplus level is adequate for the protection of U.S. ceding insurers, policyholders, and claimants in light of reasonably foreseeable adverse loss development.

(ii) The risk assessment in Subsection (2)(b)(i):

(A) may involve an actuarial review, including an independent analysis of reserves and cash flows; and

(B) shall consider all material risk factors including:

(I) the lines of business involved;

(II) the stability of the incurred loss estimates; and

(III) the effect of surplus requirements on the assuming insurer's liquidity or solvency.

(iii) A reduction in trustee surplus under Subsection (2)(b) may not fall below 30% of the assuming insurer's liabilities attributable to reinsurance ceded by U.S. ceding insurers covered by the trust.

(c)(i) A trust fund for a group including incorporated and individual unincorporated underwriters shall consist of:

(A) for reinsurance ceded under a reinsurance agreement with an inception, amendment, or renewal date on or after January 1, 1993, funds in trust in an amount not less than the respective underwriters' several liabilities attributable to business ceded by U.S. domiciled ceding insurers to any underwriter of the group;

(B) for reinsurance ceded under a reinsurance agreement with an inception date on or before December 31, 1992, and not amended or renewed after that date, notwithstanding the other provisions of this rule, funds in trust in an amount not less than the respective underwriters' several insurance and reinsurance liabilities attributable to business written in the United States; and

(C) a trustee surplus of which \$100 million is held jointly for the benefit of the U.S. domiciled ceding insurers of any member of the group for all the years of account.

(ii) The incorporated members of the group:

(A) may not engage in any business other than underwriting as a member of the group; and

(B) are subject to the same level of regulation and solvency control by the group's domiciliary regulator as are the unincorporated members.

(iii) The group shall, within 90 days after its financial statements are due to be filed with the group's domiciliary regulator, provide to the commissioner:

(A) an annual certification by the group's domiciliary regulator of the solvency of each underwriter member of the group; or

(B) if a certification is unavailable, a financial statement, prepared by an independent public accountant, of each underwriter member of the group.

(d)(i) A trust fund for a group of incorporated insurers under common administration, whose members possess aggregate policyholders surplus of \$10 billion, calculated and reported in substantially the same manner as prescribed by the annual statement instructions and the Accounting Practices and Procedures Manual of the NAIC, and that continuously transacted an insurance business outside the United States for at least three years immediately prior to applying for accreditation, shall:

(A) consist of funds in trust in an amount not less than the assuming insurers' several liabilities attributable to business ceded by U.S. domiciled ceding insurers to any members of the group pursuant to reinsurance contracts issued in the name of the group;

(B) maintain a joint trustee surplus of which \$100 million is held jointly for the benefit of the U.S. domiciled ceding insurers of any member of the group; and

(C)(I) file with the commissioner a completed Form AR-1, available on the department's website, <https://insurance.utah.gov>, evidencing each member's submission to Utah's authority to examine its books and records; and

(II) certify that the member examined will bear the expense of the examination.

(ii) For each underwriter member of a group described in Subsection (2)(d)(i), the group shall file within 90 days after the financial statements are due to be filed with the group's domiciliary regulator:

(A) an annual certification of its solvency by its domiciliary regulator; and

(B) a financial statement prepared by an independent public accountant.

(3)(a) Credit for reinsurance may not be granted unless the form of the trust and any amendments to the trust have been approved by either:

(i) the commissioner of the state where the trust is domiciled; or

(ii) the commissioner of another state who, pursuant to the terms of the trust instrument, accepted responsibility for regulatory oversight of the trust.

(b) The form of a trust and a trust amendment shall be filed with the commissioner of every state in which the ceding insurer beneficiaries of the trust are domiciled.

(c) The trust instrument shall provide that:

(i) contested claims be valid and enforceable out of funds in trust to the extent that they remain unsatisfied 30 days after entry of the final order of any court of competent jurisdiction in the United States;

(ii) legal title to the assets of the trust be vested in the trustee for the benefit of the grantor's U.S. ceding insurers, their assigns, and successors in interest;

(iii) it is subject to examination as determined by the commissioner;

(iv) it remains in effect for as long as the assuming insurer, or any member or former member of a group of insurers, has outstanding obligations under reinsurance agreements subject to the trust; and

(v) no later than February 28 of each year, the trustee of the trust submit a written report to the commissioner that:

(A) sets forth the balance in the trust;

(B) lists the trust's investments at the preceding year-end; and

(C)(I) certifies the date of termination of the trust, if planned; or

(II) certifies that the trust may not expire before the following December 31.

(d)(i) Notwithstanding any provision in the trust instrument, a 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, that directs the trustee to transfer to a receiver, including a commissioner with regulatory oversight over the trust, the assets of the trust if:

(A) the trust fund is inadequate because it contains an amount less than the amount required by Subsection (3)(d); or

(B) the grantor of the trust is declared insolvent or placed into receivership, rehabilitation, liquidation, or similar proceedings under the laws of its state or country of domicile.

(ii) A receiver described in Subsection (3)(d) shall receive and value claims and distribute assets in accordance with the laws applicable to the liquidation of a domestic insurer in the state in which the trust is domiciled.

(iii) If a receiver described in Subsection (3)(d) determines that 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 receiver shall return the assets, or any part thereof, to the trustee for distribution in accordance with the trust agreement.

(iv) The grantor shall waive any right otherwise available to it under U.S. law that is inconsistent with Subsection (3)(d).

(4)(a) An asset deposited in a trust shall:

(i) be valued according to its current fair market value; and

(ii) consist only of:

(A) cash in U.S. dollars;

(B) certificates of deposit issued by a qualified United States financial institution; and

(C) clean, irrevocable, unconditional, and "evergreen" letters of credit issued or confirmed by a qualified United States financial institution; and

(D) an investment in or issued by an entity controlling, controlled by, or under common control with either a grantor or a beneficiary of the trust, not to exceed 5% of total investments;

(b) No more than 20% of the total investment in the trust may be foreign investments authorized under Subsection (4)(d)(i)(E), (4)(d)(iii), (4)(d)(iv), or (4)(d)(vi).

(c)(i) No more than 10% of the total investment in the trust may be securities denominated in foreign currencies.

(ii) A depository receipt denominated in U.S. dollars and representing rights conferred by a foreign security is classified as a foreign investment denominated in a foreign currency.

(d) An asset of a trust may be invested only in:

(i) a valid and legally authorized government obligation that is not in default as to principal and interest and is issued, assumed, or guaranteed by:

(A) the United States or its agency or instrumentality;

(B) a state of the United States;

(C) a territory, possession, or other governmental unit of the United States;

(D) an agency or instrumentality of a governmental unit in Subsection (4)(d)(i)(B) or (4)(d)(i)(C) if the obligation is payable, as to principal and interest, from taxes levied or by law required to be levied, or from adequate special revenues pledged or otherwise appropriated, or by law required to be provided for making these payments, but not if the obligation is payable solely out of special assessments on properties benefited by local improvements; or

(E) the government of a country that is a member of the Organization for Economic Cooperation and Development and whose government obligations are rated A or higher, or the equivalent, by a rating agency recognized by the Securities Valuation Office of the NAIC;

(ii) an obligation that satisfies the following requirements:

(A)(I) is issued in the United States;

(II) is dollar denominated and issued in a non-U.S. market by a solvent U.S. institution other than an insurance company; or

(III) is assumed or guaranteed by a solvent U.S. institution other than an insurance company;

(B) is not in default as to principal or interest;

(C)(I) is rated A or higher, or the equivalent, by a securities rating agency recognized by the Securities Valuation Office of the NAIC; or

(II) is similar in structure and other material respects to other obligations of the same institution that are rated A or higher; and

(D)(I) is insured by at least one authorized insurer, other than the investing insurer or a parent, subsidiary, or affiliate of the investing insurer, licensed to insure obligations in this state, and, after considering the insurance, is rated AAA or the equivalent by a securities rating agency recognized by the Securities Valuation Office of the NAIC; or

(II) is designated as Class One or Class Two by the Securities Valuation Office of the NAIC;

(iii) an obligation rated A or higher, or the equivalent, by a rating agency recognized by the Securities Valuation Office of the NAIC and is:

(A) issued, assumed, or guaranteed by a solvent non-U.S. institution chartered in a country that is a member of the Organization for Economic Cooperation and Development; or

(B) an obligation of a U.S. corporation issued in a non-U.S. currency;

(iv) an equity interest in a solvent U.S. institution other than an insurance company, if:

(A) the institution's obligations and preferred shares are eligible as investments under Subsection (4)(d)(iv); and

(B) the equity interest is:

(I) registered on a national securities exchange under the Securities Exchange Act of 1934, 15 U.S.C. Sections 78a to 78kk; or

(II) otherwise registered under the Securities Exchange Act of 1934 and a price quotation for the interest is furnished through a nationwide automated quotation system approved by the Financial Industry Regulatory Authority or successor organization; and

(C) the total amount of equity interest investments does not exceed 1% of the assets of the trust;

(v) an equity interest in a solvent non-U.S. institution that is organized under the laws of a member country of the Organization for Economic Cooperation and Development, if:

(A) the institution's obligations are rated A or higher, or the equivalent, by a rating agency recognized by the Securities Valuation Office of the NAIC;

(B) the institution's equity interests are registered on a securities exchange regulated by the government of a member country of the Organization for Economic Cooperation and Development;

(C) an investment in or loan upon the institution's outstanding equity interests does not exceed 1% of the assets of the trust; and

(D) the cost of investments in equity interests, when added to the aggregate cost of other investments in equity interests already held pursuant to Subsection (4)(d)(v), may not exceed 10% of the assets in the trust;

(vi) an obligation issued, assumed, or guaranteed by a multinational development bank, if the obligation is rated A or higher, or the equivalent, by a rating agency recognized by the Securities Valuation Office of the NAIC;

(vii) securities of an investment company registered pursuant to the Investment Company Act of 1940, 15 U.S.C. Sec. 80a, if the investment company:

(A)(I) invests at least 90% of its assets in the types of securities that qualify as an investment under Subsection (4)(d)(i), (4)(d)(ii), or (4)(d)(iii);

(II) invests in securities that the commissioner determines are substantively similar to the types of securities set forth in Subsections (4)(d)(i), (4)(d)(ii), and (4)(d)(iii); or

(III) invests at least 90% of its assets in the types of equity interests that qualify as an investment under Subsection (4)(d)(iv); and

(B) includes the aggregate amount of investments in qualifying investment companies when calculating the permissible aggregate value of equity interests pursuant to Subsection (4)(d)(iv); or

(viii) a letter of credit, if:

(A) in the case where a letter of credit expires without being renewed or replaced, the trustee has the right and duty under the deed of trust or other binding agreement, as 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; and

(B) the trust agreement provides that the trustee is liable for negligence, willful misconduct, or lack of good faith, which may include the failure of a trustee to draw against a letter of credit.

(e) An investment made pursuant to Subsection (4)(d) is subject to the following additional limitations:

(i) an investment in or loan on the obligations of an institution other than an institution that issues mortgage-related securities may not exceed 5% of the assets of the trust;

(ii) an investment in a mortgage-related security may not exceed 5% of the assets of the trust;

(iii) the aggregate total investment in mortgage-related securities may not exceed 25% of the assets of the trust;

(iv) preferred or guaranteed shares issued or guaranteed by a solvent U.S. institution are permissible investments if the institution's obligations are eligible under Subsections (4)(d)(ii)(D)(I) and (4)(d)(ii)(D)(II), but may not exceed 2% of the assets of the trust;

(v) a trust's investment in investment companies may not exceed 10% of the assets in the trust;

(vi) the aggregate amount of investments in qualifying investment companies may not exceed 25% of the assets in the trust; and

(vii) an investment in an investment company qualifying under Subsection (4)(e)(vi) may not exceed 5% of the assets in the trust.

(5) A specific security provided to a ceding insurer by an assuming insurer pursuant to Section R590-173-11 is applied, until exhausted, to the payment of liabilities of the assuming insurer to the ceding insurer holding the specific security prior to, and as a condition precedent for, presenting a claim by the ceding insurer for payment by a trustee of a trust established by the assuming insurer.

R590-173-8. Credit for Reinsurance -- Reinsurer is a Certified Reinsurer.

(1) Credit is allowed for reinsurance ceded by a domestic insurer to an assuming insurer that is certified as a reinsurer in this state whenever the ceding insurer claims credit for reinsurance in a statutory financial statement.

(2) The credit allowed in Subsection (1) is based on the security held by or on behalf of the ceding insurer in accordance with a rating assigned to the certified reinsurer by the commissioner.

(3) The security is in a form consistent with Subsection 31A-17-404(7), and Sections R590-173-12 through R590-173-14.

(4) The amount of security required for full reinsurance credit shall correspond with the requirements of this subsection.

(a) Table 1 sets forth the security required for each rating.

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

(b) An affiliated reinsurance transaction shall receive the same opportunity for a reduced security requirement as any other reinsurance transaction.

(c) A certified reinsurer shall post 100% security, for the benefit of the ceding insurer or its estate, upon the entry of an order of receivership, rehabilitation, or liquidation against the ceding insurer.

(d)(i) A certified reinsurer may post security for catastrophe recoverables for a period of 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 as recognized by the commissioner.

(ii) The one-year deferral period is contingent on the certified reinsurer continuing to pay claims in a timely manner.

(iii) Reinsurance recoverables for the following lines of business, as reported on the NAIC annual financial statement related to the catastrophic occurrence, shall be included in the deferral:

- (A) Line 1, Fire;
- (B) Line 2, Allied Lines;
- (C) Line 3, Farmowners multiple peril;
- (D) Line 4, Homeowners multiple peril;
- (E) Line 5, Commercial multiple peril;
- (F) Line 9, Inland Marine;
- (G) Line 12, Earthquake; and
- (H) Line 21, Auto physical damage.

(e) Credit for reinsurance under this section is available only for a reinsurance contract that is:

(i) entered into or renewed on or after the effective date of the assuming insurer's certification;

(ii) entered into before the effective date of the certification and is amended with an effective date after the effective date of certification but only for losses incurred and reserves reported after the effective date of certification; or

(iii) new and covers a risk for which credit is allowed before certification based on collateral provided, if the new contract's effective date is after the effective date of certification, but only for losses incurred and reserves reported after the effective date of certification.

(f) A reinsurance agreement may establish security requirements that exceed the minimum security requirements for certified reinsurers in this section.

(5)(a) After receiving an application for certification, the commissioner shall post notice of the application on the department's website, <https://insurance.utah.gov>, and include instructions on how the public may respond to the application.

(b) The commissioner may not take final action on the application until at least 30 days after posting the notice required in Subsection (5)(a).

(c)(i) The commissioner shall notify the applicant in writing of the final action.

(ii) If the application is approved, the notice shall state the certified reinsurer's rating.

(d) The commissioner shall publish on the department's website a list of all certified reinsurers and their ratings.

(e) An assuming insurer shall meet the following requirements to qualify for certification:

(i) be domiciled and licensed to transact insurance or reinsurance in a qualified jurisdiction, as determined by the commissioner under

Subsection (7);

(ii)(A) maintain capital and surplus, or its equivalent, of not less than \$250 million, calculated in accordance with Subsection (5)(f)(ii)(H);

and

(B) this requirement may be satisfied by an association including incorporated and individual unincorporated underwriters having:

(I) minimum capital and surplus equivalents, net of liabilities, of at least \$250 million; and

(II) a central fund containing a balance of at least \$250 million;

(iii)(A) the assuming insurer shall maintain financial strength ratings from two or more rating agencies acceptable to the commissioner;

(B) the ratings shall:

(I) be based on interactive communication between the rating agency and the assuming insurer;

(II) not be based solely on publicly available information; and

(III) be one factor used by the commissioner in determining the rating that is assigned to the assuming insurer; and

(C) acceptable rating agencies include:

(I) Standard & Poor's;

(II) Moody's Investors Service;

(III) Fitch Ratings;

(IV) A.M. Best Company; or

(V) any other nationally recognized statistical rating organization; and

(iv) the certified reinsurer shall comply with all requirements reasonably imposed by the commissioner.

(f)(i) A certified reinsurer is rated on a legal entity basis, with due consideration given to the group rating where appropriate, except that an association including incorporated and individual unincorporated underwriters that are approved to do business as a single certified reinsurer may be evaluated on the basis of its group rating.

(ii) Factors that may be considered as part of the evaluation process include:

(A) a certified reinsurer's maximum financial strength rating, calculated based on Table 2;

(I) the lowest financial strength rating given by an approved rating agency is used; and

(II) a certified reinsurer shall maintain at least two financial strength ratings to maintain eligibility;

TABLE 2

Rating	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	B, B-, C+,, C+, C, C-, D, E, F	BB+, BB, BB-, B+, B, B-	Ba1, Ba2, Ba3, B1, B2, B3, Caa, Ca, C	BB+, BB, BB-, B+, B, B-

		<u>CCC,</u> <u>CC, C,</u> <u>D, R</u>		<u>CCC+,</u> <u>CC,</u> <u>CCC-,</u> <u>DD</u>
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(B) the business practices of a certified reinsurer dealing with its ceding insurers, including its record of compliance with reinsurance contractual terms and obligations;

(C) for certified reinsurers domiciled in the U.S., a review of the most recent applicable NAIC Annual Statement Blank, either Schedule F for property and casualty reinsurers or Schedule S for life and health reinsurers, available on the department's website, <https://insurance.utah.gov>;

(D) for certified reinsurers not domiciled in the U.S., an annual review of Form CR-F for property and casualty reinsurers or Form CR-S for life and health reinsurers, available on the department's website, <https://insurance.utah.gov>;

(E) a certified reinsurer's reputation for prompt payment of claims under reinsurance agreements, based on an analysis of a ceding insurer's 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 attention given to obligations payable to companies that are in delinquency, administrative proceedings, or receivership;

(F) regulatory action against the certified reinsurer;

(G) the report of the independent auditor on a financial statement of the insurance enterprise, under Subsection (5)(f)(ii)(H);

(H) for a certified reinsurer not domiciled in the U.S.;

(I) audited financial statements, regulatory filings, and actuarial opinions, filed with the non-U.S. jurisdiction supervisor, translated into English; and

(II) the audited financial statements filed with the non-U.S. jurisdiction supervisor for the last two years;

(I) the liquidation priority of obligations to a ceding insurer in the certified reinsurer's domiciliary jurisdiction in the context of an insolvency proceeding;

(J) a certified reinsurer's participation in any solvent scheme of arrangement, or similar procedure, that involves U.S. ceding insurers, if the commissioner received prior notice from a certified reinsurer that proposes participation by the certified reinsurer in a solvent scheme of arrangement; and

(K) any other information relevant to the commissioner.

(g) Based on the analysis conducted under Subsection (5)(f)(ii)(E) of a certified reinsurer's reputation for prompt payment of claims, the commissioner may make appropriate adjustments in the security that the certified reinsurer is required to post to protect its liabilities to U.S. ceding insurers, provided the commissioner increases the security the certified reinsurer is required to post by one rating level under Subsection (5)(f)(ii) if the commissioner finds that:

(A) more than 15% of the certified reinsurer's ceding insurance clients have overdue reinsurance recoverables on paid losses of 90 days or more that are not in dispute and exceed \$100,000 for each ceding; or

(B) the aggregate amount of reinsurance recoverables on paid losses that are not in dispute that are overdue by 90 days or more exceeds \$50 million.

(h) The assuming insurer shall file with the commissioner a completed Form CR-1, available on the department's website, <https://insurance.utah.gov>, evidencing its:

(i) submission to the jurisdiction of this state;

(ii) appointment of the commissioner as an agent for service of process; and

(iii) agreement to provide security for 100% of the assuming insurer's liabilities attributable to reinsurance ceded by U.S. ceding insurers if it resists enforcement of a final U.S. judgment.

(i) The commissioner may not certify any assuming insurer that is domiciled in a jurisdiction that the commissioner determines does not adequately and promptly enforce final U.S. judgments or arbitration awards.

(j)(i) The certified reinsurer shall agree to meet applicable information filing requirements as determined by the commissioner for an initial application for certification and on an ongoing basis.

(ii) All information submitted by a certified reinsurer that is not public information subject to disclosure is exempted from disclosure under Title 63G, Chapter 2, Government Records Access and Management Act, and is withheld from public disclosure.

(k) A certified reinsurer shall notify or file with the commissioner the following:

(i) within 10 days of any regulatory action taken against the certified reinsurer:

(A) any change in the provisions of its domiciliary license; or

(B) any change in rating by an approved rating agency, including a statement describing the changes and the reasons therefor;

(ii) Form CR-F or CR-S annually, as applicable;

(iii) annually, a report of the independent auditor on the financial statements of the insurance enterprise;

(iv) the most recent audited financial statements, regulatory filings, and actuarial opinion filed with the certified reinsurer's supervisor, translated into English;

(v) upon initial certification, audited financial statements for the last two years filed with the certified reinsurer's supervisor;

(vi) at least annually, an updated list of all disputed and overdue reinsurance claims regarding reinsurance assumed from U.S. domestic ceding insurers;

(vii) a certification from 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; and

(viii) any other information the commissioner reasonably requires.

(l) A change in rating or revocation of certification is subject to the following:

(i) in the case of a downgrade by a rating agency or other disqualifying circumstance, the commissioner shall assign a new rating to the certified reinsurer under Subsection (5)(f)(ii)(A);

(ii) the commissioner may suspend, revoke, or modify a certified reinsurer's certification if:

(A) the certified reinsurer fails to meet its obligations or security requirements under this section; or

(B) other financial or operating results of the certified reinsurer, or documented significant delays in payment by the certified reinsurer, lead the commissioner to reconsider the certified reinsurer's ability or willingness to meet its contractual obligations;

(iii) if a certified reinsurer's rating is upgraded by the commissioner, the certified reinsurer may meet the security requirements applicable to its new rating on a prospective basis, but the commissioner requires the certified reinsurer to post security under the previously applicable security requirements as to all contracts in force on or before the effective date of the upgraded rating;

(iv) if a certified reinsurer's rating is downgraded by the commissioner, the commissioner requires the certified reinsurer to meet the security requirements applicable to its new rating for all business it assumed as a certified reinsurer;

(v) if the commissioner revokes a certified reinsurer's certification for the ceding insurer to continue to take credit for reinsurance ceded to the assuming insurer:

(A) the assuming insurer shall post security under Section R590-173-11; or

(B) if the funds continue to be held in trust under Section R590-173-7, the commissioner may allow additional credit equal to the ceding insurer's pro rata share of such funds, discounted to reflect the risk of uncollectability and anticipated expenses of trust administration; and

(vi) notwithstanding the change of a certified reinsurer's rating or revocation of its certification, a domestic insurer that cedes reinsurance to a certified reinsurer may not be denied credit for reinsurance for a period of three months for all reinsurance ceded to that certified reinsurer unless the reinsurance is found by the commissioner to be at high risk of uncollectability.

(6) If, upon conducting an evaluation under this section with respect to the reinsurance supervisory system of any non-U.S. assuming insurer, the commissioner determines that the jurisdiction is recognized as a qualified jurisdiction, the commissioner shall:

(a) publish notice and evidence of the recognition on the department's website, <https://insurance.utah.gov>; and

(b) establish a procedure to withdraw recognition of the jurisdiction that is no longer qualified.

(7) If the domiciliary jurisdiction of a non-U.S. assuming insurer is eligible to be recognized as a qualified jurisdiction under Subsection (6), the commissioner shall:

(a) evaluate the reinsurance supervisory system of the non-U.S. jurisdiction, both initially and on an ongoing basis;

(b) consider the rights, benefits, and extent of reciprocal recognition afforded by the non-U.S. jurisdiction to reinsurers licensed and domiciled in the U.S.;

(c) determine the appropriate approach for evaluating the qualifications of such jurisdictions;

(d) create and publish a list of jurisdictions whose reinsurers are approved by the commissioner as eligible for certification;

(e) obtain an agreement from a qualified jurisdiction to share information and cooperate with the commissioner with respect to all certified reinsurers domiciled in that jurisdiction;

(f) consider additional factors, at the commissioner's discretion, including:

(i) the framework the assuming insurer is regulated under;

(ii) the structure and authority of the domiciliary regulator regarding solvency regulation requirements and financial surveillance;

(iii) the substance of financial and operating standards for an assuming insurer in the domiciliary jurisdiction;

(iv) the form and substance of financial reports required to be filed or made publicly available by a reinsurer in the domiciliary jurisdiction;

(v) the accounting principles used;

(vi) the domiciliary regulator's willingness to cooperate with U.S. regulators in general and the commissioner in particular;

(vii) the history of performance by assuming insurers in the domiciliary jurisdiction;

(viii)(A) any documented evidence of substantial problems with the enforcement of final U.S. judgments in the domiciliary jurisdiction; and

(B) a jurisdiction may not be considered a qualified jurisdiction if the commissioner determines that it does not adequately and promptly enforce final U.S. judgments or arbitration awards;

(ix) any relevant international standards or guidance with respect to mutual recognition of reinsurance supervision adopted by the International Association of Insurance Supervisors or successor organization; and

(x) any relevant factors established by the commissioner;

(g) consider the list of qualified jurisdictions published through the NAIC committee process in determining qualified jurisdictions;

(h) provide thoroughly documented justification of the criteria under Subsections (7)(f)(i) through (7)(f)(x) if the commissioner approves a jurisdiction as qualified; and

(i) recognize as qualified jurisdictions, U.S. jurisdictions that meet the requirements for accreditation under the NAIC financial standards and accreditation program.

(8) If an applicant for certification is certified as a reinsurer in an NAIC accredited jurisdiction, the commissioner may:

(a) defer to that jurisdiction's certification;

(b) defer to the rating assigned by that jurisdiction if the assuming insurer:

(i) files with the commissioner a completed Form CR-1, available on the department's website, <https://insurance.utah.gov>; and

(ii) provides additional information required by the commissioner; and

(c) consider the assuming insurer to be a certified reinsurer in this state.

(9) A change in a certified reinsurer's status or rating in another jurisdiction automatically applies in this state as of the date it takes effect in the other jurisdiction.

(10) The certified reinsurer shall notify the commissioner of any change in its status or rating within 10 days after receiving notice of the change.

(11) In recognizing a certification from an accredited jurisdiction, the commissioner may:

(a) withdraw recognition of the other jurisdiction's rating at any time and assign a new rating under Subsection (5)(l); and

(b) withdraw recognition of the other jurisdiction's certification, upon written notice to the certified reinsurer.

(12) Unless the commissioner suspends or revokes a certified reinsurer's certification, the certified reinsurer's certification is in good standing for three months, and shall be extended if additional time is necessary to consider the assuming insurer's application for certification in this state.

(13) In addition to the requirements of Section R590-173-15, a reinsurance contract entered into or renewed under this section shall include a proper funding clause requiring 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 for reinsurance ceded to the certified reinsurer.

(14) The commissioner shall comply with all reporting and notification requirements established by the NAIC regarding certified reinsurers and qualified jurisdictions.

R590-173-9. Credit for Reinsurance -- Reinsurer is from a Reciprocal Jurisdiction.

(1) Credit is allowed for reinsurance ceded by a domestic insurer to an assuming insurer that is licensed to write reinsurance by, and has its head office or is domiciled in, a reciprocal jurisdiction, and meets the requirements of this rule.

(2) Credit is allowed when reinsurance is ceded from an insurer domiciled in this state to an assuming insurer if the assuming insurer:

(a) is licensed to transact reinsurance by, and has its head office or is domiciled in, a reciprocal jurisdiction;

(b) meets and maintains minimum capital and surplus, or its equivalent, calculated on at least an annual basis as of the preceding December 31 or on the annual date reported to the reciprocal jurisdiction; and

(c) the minimum capital and surplus is confirmed under Subsection (2)(g) according to the methodology of its domiciliary jurisdiction, in the following amounts:

(A) no less than \$250 million; or

(B) if the assuming insurer is an association, including incorporated and individual unincorporated underwriters:

(I) minimum capital and surplus equivalents, net of liabilities, or own funds of the equivalent of at least \$250 million; and

(II) a central fund containing a balance of the equivalent of at least \$250 million;

(d) meets and maintains on an ongoing basis a minimum solvency or capital ratio as follows:

(i) if the assuming insurer has its head office or is domiciled in a reciprocal jurisdiction as defined in Subsection R590-173-3(12)(a), the ratio specified in the applicable covered agreement;

(ii) if the assuming insurer is domiciled in a reciprocal jurisdiction as defined in Subsection R590-173-3(12)(b), a risk-based capital ratio of 300% of the authorized control level, calculated according to the formula developed by the NAIC; or

(iii) if the assuming insurer is domiciled in a reciprocal jurisdiction as defined in Subsection R590-173-3(12)(c), after consultation with the reciprocal jurisdiction and considering any recommendations published through the NAIC committee process, such solvency or capital ratio as the commissioner determines to be an effective measure of solvency;

(e) provides adequate assurance in a completed Form RJ-1, available on the department's website, <https://insurance.utah.gov>, that the assuming insurer:

(i) will provide prompt written notice and explanation to the commissioner if:

(A) it falls below the minimum requirements set forth in Subsection (2)(b) or (2)(c); or

(B) any regulatory action is taken against it for serious noncompliance with applicable law;

(ii) consents to the jurisdiction of the courts of this state and appoints the commissioner as agent for service of process;

(iii) consents in writing to pay all final judgments, wherever enforcement is sought, obtained by a ceding insurer that is enforceable where the judgment was obtained;

(iv) includes in every reinsurance agreement a requirement that it will provide security in an amount equal to 100% of liabilities attributable to reinsurance ceded pursuant to the agreement if it resists enforcement of a final judgment that is enforceable under the law of the jurisdiction in which it was obtained, or a properly enforceable arbitration award, whether obtained by the ceding insurer or by its legal successor on behalf of its estate;

(v) confirms that it is not participating in a solvent scheme of arrangement that involves this state's ceding insurers;

(vi) on entering into a solvent scheme of arrangement, agrees to:

(A) notify the ceding insurer and the commissioner; and

(B) provide 100% security to the ceding insurer consistent with the terms of the scheme, and in a form consistent with the provisions of law and this rule; and

(vii) agrees in writing to meet the applicable information filing requirements of Subsection (2)(f);

(f) provides, if requested by the commissioner, on behalf of itself and any legal predecessors, the following documentation:

(i) for the two years preceding entry into the reinsurance agreement and on an annual basis thereafter, its annual audited financial statements, in accordance with the applicable law of the jurisdiction of its head office or domiciliary jurisdiction, including the external audit report;

(ii) for the two years preceding entry into the reinsurance agreement, its solvency and financial condition report or actuarial opinion, if filed with its supervisor;

(iii) before entry into the reinsurance agreement and not more than semi-annually thereafter, an updated list of all disputed and overdue reinsurance assumed from ceding insurers domiciled in the United States; and

(iv) before entry into the reinsurance agreement and not more than semi-annually thereafter, information regarding its:

(A) assumed reinsurance by the ceding insurer;

(B) ceded reinsurance by the assuming insurer; and

(C) reinsurance recoverables on its paid and unpaid losses allowing for the evaluation of the criteria set forth in Subsection (2)(g);

(g) maintains a practice of promptly paying reinsurance claims as follows:

(i) no more than 15% of its reinsurance recoverables are overdue and in dispute, as reported to the commissioner;

(ii) no more than 15% of its ceding insurers or reinsurers have overdue reinsurance recoverables on paid losses of 90 days or more that are:

(A) not in dispute and exceed for each ceding insurer \$100,000; or

(B) as specified in a covered agreement; or

(iii) the aggregate amount of reinsurance recoverables on undisputed paid losses are:

(A) overdue by 90 days or more and exceed \$50 million; or

(B) as specified in a covered agreement; and

(h) complies with Subsections (2)(b) and (2)(c) as confirmed by its supervisory authority to the commissioner on an annual basis.

(3) An assuming insurer may provide the commissioner with information on a voluntary basis.

(4) An assuming insurer's consent to the jurisdiction of the courts of this state and to appointing the commissioner as agent for service of process shall be included in each reinsurance agreement under the commissioner's jurisdiction.

(5) Parties to a reinsurance agreement may agree to alternative dispute resolution mechanisms, except to the extent such agreements are unenforceable under applicable insolvency or delinquency laws.

(6)(a) The commissioner shall create and publish a list of reciprocal jurisdictions that includes a reciprocal jurisdiction as defined under Subsection R590-173-3(12)(a), R590-173-3(12)(b), or R590-173-3(12)(c).

(b) The commissioner shall consider a reciprocal jurisdiction included on the NAIC list of reciprocal jurisdictions.

(7) The commissioner may approve a jurisdiction that does not appear on the NAIC list of reciprocal jurisdictions as provided by applicable law, regulation, or in accordance with criteria published through the NAIC committee process.

(8)(a) The commissioner may remove a jurisdiction from the list of reciprocal jurisdictions on a determination that the jurisdiction no longer meets one or more of the requirements of a reciprocal jurisdiction, as provided by applicable law or in accordance with a process published through the NAIC committee process.

(b) The commissioner may not remove from the list a reciprocal jurisdiction defined under Subsection R590-173-3(12)(a), R590-173-3(12)(b), or R590-173-3(12)(c).

(c) When removing a reciprocal jurisdiction from the commissioner's list, credit for reinsurance ceded to an assuming insurer domiciled in that jurisdiction is permitted, if otherwise allowed by law.

(9) The commissioner shall create and publish a list of assuming insurers that qualify as reinsurers from reciprocal jurisdictions satisfying the conditions of this section and where cessions are granted reinsurance credit.

(a) If an NAIC accredited jurisdiction determines that the conditions set forth in Subsection (9)(b) are met, the commissioner may:

(i) defer to that jurisdiction's determination;

(ii) add the assuming insurer to the list of insurers where cessions are granted reinsurance credit; and

(iii) accept financial documentation filed with another NAIC accredited jurisdiction or with the NAIC under Subsection (9)(b).

(b) A request to defer to another NAIC accredited jurisdiction's determination shall include:

(i) a completed Form RJ-1, available on the department's website, <https://insurance.utah.gov>; and

(ii) additional information the commissioner may require.

(c) Upon receipt of a request under Subsection (9)(b), the commissioner shall:

(i) notify other states of the request through the NAIC committee process; and

(ii) provide relevant information about the determination of eligibility.

(10) If the commissioner determines that an assuming insurer no longer meets one or more of the requirements under this section, the commissioner may revoke or suspend the eligibility of the assuming insurer.

(a) During a suspension period, a reinsurance agreement may not be issued, amended, or renewed after the effective date of the suspension qualifies for credit except to the extent that the assuming insurer's obligations under the contract are secured under Section R590-173-11.

(b) Credit for reinsurance may not be available after the effective date of the revocation for a reinsurance agreement entered into before the date of revocation, except to the extent that the assuming insurer's obligations under the contract are secured in a form acceptable to the commissioner and consistent with Section R590-173-11.

(11) Before denying statement credit, requiring security under Subsection (10), or adopting a similar requirement with the same regulatory impact to requiring security, the commissioner shall:

(a) notify the following that the assuming insurer no longer satisfies one of the conditions listed in Subsection (2):

(i) the ceding insurer;

(ii) the assuming insurer; and

(iii) the assuming insurer's supervisory authority;

(b) give the assuming insurer:

(i) 30 days to submit a plan to remedy the defect; and

(ii) 90 days to remedy the defect unless a shorter period is necessary to protect policyholders and consumers;

(c) take an action described in Subsection (11) if the defect has not been remedied; and

(d) provide the assuming insurer a written explanation for action taken.

(12) A ceding insurer may seek a court order that requires an assuming insurer in receivership, rehabilitation, or liquidation to post security for the assuming insurer's outstanding liabilities.

R590-173-10. Credit for Reinsurance Required by Law.

Credit is allowed for reinsurance ceded by a domestic insurer to an assuming insurer that does not meet the requirements of this rule but only for the insurance of risks located in a reciprocal jurisdiction defined in Subsection R590-173-3(12), where the reinsurance is required by the laws of that jurisdiction.

R590-173-11. Reinsurance Ceded to an Unauthorized Reinsurer Not Meeting the Requirements of Sections R590-173-4 Through R590-173-10.

(1) A reduction is allowed from liability for reinsurance ceded by a domestic insurer to an assuming insurer not meeting the requirements of Section 31A-17-40.

(2) A reduction from liability is:

(a) an amount not exceeding the liabilities carried by the ceding insurer; and

(b) the amount of funds held by or on behalf of the ceding insurer, including funds held in trust for the exclusive benefit of the ceding insurer, under a reinsurance contract with such assuming insurer as security for the payment of obligations under the reinsurance contract which funds shall be:

(i) held in the United States subject to withdrawal solely by, and under the exclusive control of, the ceding insurer; or

(ii) in the case of a trust, held in a qualified United States financial institution.

(3) The security held under Subsection (2)(b) may be in the form of:

(a) cash;

(b) securities listed by the Securities Valuation Office of the NAIC, including those deemed exempt from filing as defined by the Purposes and Procedures Manual of the Securities Valuation Office, and qualifying as admitted assets;

(c) clean, irrevocable, unconditional, and evergreen letters of credit that:

(i) are issued or confirmed by a qualified United States financial institution;

(ii) are effective no later than December 31 of the year the filing is made;

(iii) are in the possession of, or in trust for, the ceding insurer on or before the filing date of its annual statement; and

(iv) meet the issuer's standards of acceptability at the time of issuance until their expiration, extension, renewal, modification, or amendment, whichever occurs first; or

(d) any other security acceptable to the commissioner.

(2) An admitted asset or a reduction from liability for reinsurance ceded to an unauthorized assuming insurer pursuant to this section is allowed only when the requirements of the following are satisfied:

- (a) Section R590-173-15; and
- (b) the applicable provisions of:
 - (i) Section R590-173-12;
 - (ii) Section R590-173-13; or
 - (iii) Section R590-173-14.

R590-173-12. Trust Agreement Qualified Under Section R590-173-11.

- (1) A trust agreement qualified under Section R590-173-11 shall:
 - (a) be between a beneficiary, a grantor, and a trustee that is a qualified United States financial institution;
 - (b) create a trust account where assets are deposited;
 - (c) require that all assets in the trust account be held by a trustee in the trustee's office in the United States;
 - (d) provide that:
 - (i) 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;
 - (ii) no other statement or document is required to be presented to withdraw assets, except that the beneficiary may be required to acknowledge receipt of withdrawn assets;
 - (iii) it is not subject to a condition or qualification outside of the trust agreement; and
 - (iv) it may not contain a reference to another agreement or document except as provided for in Subsections (k) and (l);
 - (e) be established for the sole benefit of the beneficiary;
 - (f) require the trustee to:
 - (i) receive and hold all assets in a safe place;
 - (ii) place assets in a form that allows the beneficiary, or the trustee upon direction by the beneficiary, to negotiate the assets without consent or signature from the grantor or any other person or entity;
 - (iii) 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;
 - (iv) notify the grantor and the beneficiary within 10 days of a deposit to or withdrawal from the trust;
 - (v) on a beneficiary's written request, immediately take 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
 - (vi) not allow a substitution or withdrawal of an asset from the trust account, except:
 - (A) on written instruction from the beneficiary; and
 - (B) 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) provide written notification of termination at least 30 days, but not more than 45 days, before termination of the trust, to the trustee and to the beneficiary;
 - (h) be subject to the laws of the state in which the trust is domiciled;
 - (i) prohibit invasion of the trust corpus for the purpose of paying commission to, or reimbursing the expenses of, the trustee, except that 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 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 expires without being renewed or replaced;
 - (j) provide that the trustee is liable for its:
 - (i) negligence or willful misconduct, including the failure of the trustee to draw against the letter of credit in circumstances where the draw would be required; and
 - (ii) lack of good faith;
 - (k) notwithstanding other provisions of this rule, when a trust agreement is established in conjunction with a reinsurance agreement covering risks other than life, annuity, and accident and health, where a trust agreement is provided for a specific purpose, the trust agreement may provide that the ceding insurer undertake to use and apply amounts drawn upon the trust account, without diminution because of the insolvency of the ceding insurer or the assuming insurer, only for the following purposes:
 - (i) to pay or reimburse the ceding insurer for:
 - (A) 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; and
 - (B) the unearned premiums due to the ceding insurer if not paid by the assuming insurer;
 - (ii) to pay the assuming insurer any amount held in the trust account that exceeds 102% of the actual amount required to fund the assuming insurer's obligations under the specific reinsurance agreement; or
 - (iii) to withdraw amounts equal to the obligations and deposit those amounts in a separate account, in the name of the ceding insurer in any qualified United States financial institution separate from its general assets, in trust for such uses and purposes specified in Subsections (1)(k)(i) and (1)(k)(ii) as may remain executory after such withdrawal and for any period after the termination date where:
 - (A) the ceding insurer received notification of termination of the trust account; and
 - (B) the assuming insurer's entire obligations under the specific reinsurance agreement remain unliquidated and undischarged 10 days before the termination date;
 - (l) notwithstanding other provisions of this rule, when a trust agreement is established to meet the requirements of Subsection (2) in conjunction with a reinsurance agreement covering life, annuity, or accident and health risks, where a trust agreement is provided for a specific purpose, the trust agreement may provide that the ceding insurer undertake to use and apply amounts drawn upon the trust account, without diminution because of the insolvency of the ceding insurer or the assuming insurer, only for the following purposes:
 - (i) to pay or reimburse the ceding insurer for:
 - (A) the assuming insurer's share under the specific reinsurance agreement of premiums returned, but not yet recovered from the assuming insurer, to the owners of policies reinsured under the reinsurance agreement on account of cancellation of the policies; and
 - (B) the assuming insurer's share under the specific reinsurance agreement of surrenders and benefits or losses paid by the ceding insurer, but not yet recovered from the assuming insurer, under the terms and provisions of the policies reinsured under the reinsurance agreement;

(ii) to pay the assuming insurer amounts held in the trust account in excess of the amount necessary to secure the credit or reduction from liability for reinsurance taken by the ceding insurer; or

(iii) to withdraw amounts equal to the assuming insurer's share of liabilities, to the extent that the liabilities have not yet been funded by the assuming insurer, and deposit those amounts in a separate account, in the name of the ceding insurer in any qualified United States financial institution separate from its general assets, in trust for the uses and purposes specified in Subsections (1)(l)(i) and (1)(l)(ii) as may remain executory after withdrawal and for any period after the termination date where:

(A) the ceding insurer received notification of termination of the trust; and

(B) the assuming insurer's entire obligations under the specific reinsurance agreement remain unliquidated and undischarged 10 days before the termination date; and

(m) either the reinsurance agreement or the trust agreement shall provide that assets deposited in the trust account:

(i) be valued according to their current fair market value; and

(ii) consist only of:

(A) cash in United States dollars;

(B) certificates of deposit issued by a United States bank and payable in United States dollars;

(C) investments permitted by Title 31A, Insurance Code; or

(D) a combination of Subsections (1)(m)(A) through (1)(m)(C), provided:

(I) investments in or issued by an entity controlling, controlled by, or under common control with either the grantor or the beneficiary of the trust may not exceed 5% of total investments; and

(II) investments are of a type of investment specified in the trust agreement; and

(iii) include provisions required by Subsection (1)(m) if the reinsurance agreement covers life, annuity, or accident and health risks.

(2) Permitted conditions.

(a) The trust agreement may provide that:

(i) the trustee may resign on delivery of a written notice of resignation, effective not less than 90 days after the beneficiary and grantor receive the notice; and

(ii) the trustee may be removed by the grantor on delivery to the trustee and the beneficiary of a written notice of removal, effective not less than 90 days after the trustee and the beneficiary receive the notice, if:

(A) no such resignation or removal is effective until a successor trustee is duly appointed and approved by the beneficiary; and

(B) the grantor and all assets in the trust are duly transferred to the new trustee.

(b) The grantor has the full and unqualified right to:

(i) vote any shares of stock in the trust account; and

(ii) receive, from time to time, payments of any dividends or interest upon any shares of stock or obligations included in the trust account, if any interest or dividends are:

(A) forwarded promptly upon receipt to the grantor; or

(B) deposited in a separate account established in the grantor's name.

(c) The trustee has authority to invest, and accept substitutions of, any funds in the account if no investment or substitution is made without prior approval of the beneficiary, unless the trust agreement:

(i) specifies categories of investments acceptable to the beneficiary; and

(ii) authorizes the trustee to invest funds and to accept substitutions that the trustee determines are:

(A) at least equal in current fair market value to the assets withdrawn; and

(B) consistent with the restrictions in Subsection (3)(a)(ii).

(d) The trust agreement may provide that:

(i) the beneficiary may at any time designate a party to which all or part of the trust assets are to be transferred, conditioned upon the trustee receiving, prior to or simultaneously, other specified assets; and

(ii) upon termination of the trust account, all assets not previously withdrawn by the beneficiary shall, with written approval by the beneficiary, be delivered to the grantor.

(3) A reinsurance agreement may:

(a) require the assuming insurer to:

(i) enter into a trust agreement;

(ii) establish a trust account for the benefit of the ceding insurer; and

(iii) specify what the agreement is to cover;

(b) require the assuming insurer, before depositing assets with the trustee, to:

(i) execute assignments or endorsements in blank; or

(ii) transfer legal title to the trustee of all shares, obligations, or other assets requiring assignment, so the ceding insurer or the trustee, upon direction of the ceding insurer, may, when necessary, negotiate the assets without consent or signature from the assuming insurer or another entity;

(c) require that all settlements of account between the ceding insurer and the assuming insurer are in cash or its equivalent;

(d) state that the assuming insurer and the ceding insurer agree that the assets in the trust account may be withdrawn by the ceding insurer at any time, notwithstanding any other provisions in the reinsurance agreement, which assets are used for the following purposes:

(i) to be utilized and applied by the ceding insurer or its successors in interest by operation of law, including any liquidator, rehabilitator, or receiver, without diminution because of insolvency on the part of the ceding insurer or the assuming insurer to pay or reimburse the ceding insurer for:

(A) the assuming insurer's share under the specific reinsurance agreement of premiums returned, but not yet recovered from the assuming insurer, to the owner of a policy reinsured under the reinsurance agreement due to cancellation of the policy;

(B) the assuming insurer's share of surrenders and benefits or losses paid by the ceding insurer pursuant to the provisions of the policy reinsured under the reinsurance agreement; and

(C) any other amount necessary to secure the credit or reduction from liability for reinsurance taken by the ceding insurer; and

(ii) to pay the assuming insurer amounts held in the trust account in excess of the amount necessary to secure the credit or reduction from liability for reinsurance taken by the ceding insurer;

(e) give the assuming insurer the right to seek approval from the ceding insurer, which may not be unreasonably or arbitrarily withheld, to withdraw from the trust account all or any part of the trust assets and transfer those assets to the assuming insurer, provided:

(i) the assuming insurer replaces, at the time of withdrawal, the withdrawn assets with other qualified assets having a current fair market value equal to the market value of the assets withdrawn to always maintain the deposit in the required amount; or

(ii) after withdrawal and transfer, the current fair market value of the trust account is no less than 102% of the required amount;

(f) provide for the return of:

(i) an amount withdrawn in excess of the actual amount under Subsection (3)(d); and

(ii) interest payments at a rate not to exceed the prime rate of interest on such amount; and

(g) permit the award by an arbitration panel or court of competent jurisdiction of:

(i) interest at a rate different from that provided in Subsection (3)(f);

(ii) court or arbitration costs;

(iii) attorney's fees; and

(iv) other reasonable expenses.

(4) A trust agreement may be used to reduce a liability for reinsurance ceded to an unauthorized assuming insurer in a financial statement required to be filed with the department in compliance with the provisions of this rule when:

(a) established on or before the date of filing of the financial statement of the ceding insurer;

(b) the reduction for the existence of an acceptable trust account is not more than the current fair market value of acceptable assets available to be withdrawn from the trust account at the time the trust is established; and

(c) the reduction is not greater than the specific obligations under the reinsurance agreement that the trust account was established to secure.

(5) Failure of a trust agreement to specifically identify the beneficiary may not be construed to affect an action or right that the commissioner may take or possess pursuant to the provisions of the laws of this state.

R590-173-13. Letter of Credit Qualified Under Section R590-173-11.

(1)(a) A letter of credit shall be:

(i) clean;

(ii) irrevocable;

(iii) unconditional; and

(iv) issued or confirmed by a qualified United States financial institution.

(b) A letter of credit shall contain:

(i) an issue date;

(ii) an expiration date; and

(iii) statements that:

(A) to obtain funds, a beneficiary is required only to draw a sight draft under a letter of credit and present it; and

(B) the letter of credit is not subject to a condition or qualification not stated in it.

(c) A letter of credit may not refer to other agreements, documents, or entities, except as provided in Subsection (10).

(2) The heading of a letter of credit may include a boxed section containing the name of the applicant and other appropriate notations shall be clearly marked to indicate that the information is for internal identification purposes only.

(3) A letter of credit shall contain a statement that the issuing financial institution's obligation under the letter of credit is not contingent on reimbursement.

(4)(a) The term of a letter of credit shall be for at least one year.

(b) A letter of credit shall contain an evergreen clause that:

(i) prevents the letter of credit from expiring without notice from the issuer; and

(ii) requires no less than 30 days' notice before the expiration date for nonrenewal.

(5)(a) A letter of credit shall state whether it is subject to and governed by:

(i) the laws of this state;

(ii) the Uniform Customs and Practice for Documentary Credits of the International Chamber of Commerce Publication 600 (UCP 600);

(iii) International Standby Practices of the International Chamber of Commerce Publication 590 (ISP98); or

(iv) any successor publication to those named in Subsection (5)(a)(ii) or (5)(a)(iii).

(b) Drafts drawn under Subsection (5)(a) shall be presentable at an office in the United States of a qualified United States financial institution.

(6) A letter of credit under Subsections (5)(a)(ii) through (5)(a)(iv) shall specifically address and provide for an extension of time to draw against the letter of credit in the event that one or more of the occurrences specified in Article 36 of UCP600 or any successor publication occur.

(7) If the letter of credit is issued by a financial institution authorized to issue letters of credit, other than a qualified United States financial institution, the following requirements shall be met:

(a) the issuing financial institution shall formally designate the confirming qualified United States financial institution as its agent for the receipt and payment of the drafts; and

(b) the evergreen clause shall provide for 30 days' notice before the expiration date for nonrenewal.

(8) Reinsurance agreement provisions.

(a) A reinsurance agreement obtained together with a letter of credit may:

(i) require the assuming insurer to provide letters of credit to the ceding insurer and specify what they cover; or

(ii) state that the assuming insurer and ceding insurer agree that the letter of credit provided by the assuming insurer pursuant to the provisions of the reinsurance agreement may be drawn upon at any time, notwithstanding any other provisions in the agreement, and shall be utilized by the ceding insurer or its successors in interest only for one or more of the following reasons:

(A) to pay or reimburse the ceding insurer for:

(I) the assuming insurer's share under the specific reinsurance agreement of premiums returned, but not yet recovered from the assuming insurers, to the owners of policies reinsured under the reinsurance agreement on account of cancellations of such policies;

(II) the assuming insurer's share, under the specific reinsurance agreement, of surrenders and benefits or losses paid by the ceding insurer, but not yet recovered from the assuming insurers, under the terms and provisions of the policies reinsured under the reinsurance agreement; and

(III) any other amounts necessary to secure the credit or reduction from liability for reinsurance taken by the ceding insurer; and

(B) where the letter of credit will expire without renewal or be reduced or replaced by a letter of credit for a reduced amount and where the assuming insurer's entire obligations under the reinsurance agreement remain unliquidated and undischarged 10 days before the termination date, to withdraw amounts equal to the assuming insurer's share of the liabilities, to the extent that the liabilities have not yet been funded by the assuming insurer and exceed the amount of any reduced or replacement letter of credit, the assuming insurer shall deposit the amounts withdrawn in a separate account in the name of the ceding insurer in a qualified United States financial institution apart from its general assets, in trust for such uses and purposes specified in Subsection (8)(ii)(A) as may remain after withdrawal and for any period after the termination date.

(iii) The provisions of Subsection (8)(a) apply without diminution because of insolvency on the part of the ceding insurer or assuming insurer.

(b) Nothing in Subsection (8)(a) precludes the ceding insurer and assuming insurer from providing for:

(i) an interest payment, at a rate not in excess of the prime rate of interest, on the amounts held under Subsection (8)(b); or

(ii) the return of any amounts drawn down on the letters of credit in excess of the actual amounts required for the above or any amounts that are subsequently determined not to be due.

R590-173-14. Other Security.

A ceding insurer may take credit for unencumbered funds withheld by the ceding insurer in the United States subject to withdrawal solely by the ceding insurer and under its exclusive control.

R590-173-15. Required Provisions in a Reinsurance Contract.

Credit for reinsurance may not be granted, and an asset or reduction from liability allowed, to a ceding insurer for reinsurance effected with assuming insurers meeting the requirements of this rule or Section 31A-17-404 unless the reinsurance agreement:

(1) includes a proper insolvency clause, stipulating that reinsurance is payable directly to the liquidator or successor without diminution regardless of the status of the ceding company;

(2) includes a provision that the assuming insurer, if an authorized assuming insurer:

(a) submits to the jurisdiction of an alternative dispute resolution panel or court of competent jurisdiction within the United States;

(b) complies with all requirements necessary to give the court or panel jurisdiction;

(c) designates an agent who service of process may be made upon; and

(d) agrees to abide by the final decision of the court or panel; and

(3) includes a proper reinsurance intermediary clause stipulating that the credit risk for the intermediary is carried by the assuming insurer.

R590-173-16. Severability.

If any provision of this rule, Rule R590-173, or its application to any person or situation is held invalid, such invalidity does not affect any other provision or application of this rule that can be given effect without the invalid provision or application. The remainder of this rule shall be given effect without the invalid provision or application.

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