

Title 3. Commerce, Community, and Economic Development

Part 2. Division of Insurance

Chapter 21. Insurer – Financial.

3 AAC 21.635(a) is amended by adding new paragraph to read:

(6) includes a proper reinsurance intermediary clause, if applicable, which stipulates that the credit risk for the intermediary is carried by the assuming insurer. (Eff. 11/25/94, Register 132; am 11/21/2004, Register 172; am ___ / ___ / ____, Register _____)

Authority: AS 21.06.090 AS 21.12.020

3 AAC 21.645 is repealed and readopted to read:

3 AAC 21.645 Accredited Reinsurer. (a) The director will allow credit for reinsurance ceded by a domestic insurer to an assuming insurer that is accredited as a reinsurer in this state no later than the “as of date” of the ceding insurer’s statutory financial statement. An accredited reinsurer must

(1) file a properly executed certificate of assuming insurer per 3 AAC 21.655 as evidence of its submission to this state's jurisdiction and to this state's authority to examine its books and records;

(2) file with the director a certified copy of a certificate of authority or other acceptable evidence that it is licensed to transact insurance or reinsurance in at least one state, or, in the case of a United States branch of an alien assuming insurer, is entered through and licensed to transact insurance or reinsurance in at least one state;

(3) file annually with the director a copy of its annual statement filed with the insurance department of its state of domicile or, in the case of an alien assuming insurer, with the state through which it is entered and in which it is licensed to transact insurance or reinsurance, and a copy of its most recent audited financial statement; and

(4) maintain a surplus as regards policyholders in an amount not less than \$20,000,000, or obtain the affirmative approval of the director upon a finding that it has adequate financial capacity to meet its reinsurance obligations and is otherwise qualified to assume reinsurance from domestic insurers.

(b) If the director determines that the assuming insurer has failed to meet or maintain any of these qualifications, the director may upon written notice and opportunity for hearing under AS 21.06.080, suspend or revoke the accreditation. Credit shall not be allowed a domestic ceding insurer under this section if the assuming insurer's accreditation has been revoked by the director, or if the reinsurance was ceded while the assuming insurer's accreditation was under suspension by the director. (Eff. 11/25/94, Register 132; am ____/____/____, Register ____)

Authority: AS 21.06.090 AS 21.12.020

3 AAC 21.650 is repealed:

3 AAC 21.650. Failure To Meet Criteria For Accredited Reinsurer. Repealed. (Eff. 11/25/94, Register 132; repealed ____/____/____, Register ____)

Authority: AS 21.06.090 AS 21.12.020

3 AAC 21.658 is amended to read:

(a) The director will allow credit for reinsurance ceded by a domestic insurer to an authorized assuming insurer that meets the requirements of AS 21.12.020(a)(3) on or before the date of the ceding insurer's statutory financial statement **if the authorized assuming insurer**

(1) is domiciled in or, in the case of a United States branch of an alien assuming insurer, is entered through a state that employs standards regarding credit for reinsurance substantially similar to those applicable under AS 21.12.020;

(2) maintains a surplus as regards policyholders in an amount not less than \$20,000,000; and

(3) files a properly executed Form AR-I with the director as evidence of its submission to this state's authority to examine its books and records.

3 AAC 21.658 is amended by adding a new subsection to read:

(b) The provisions of this section relating to surplus as regards policyholders shall not apply to reinsurance ceded and assumed pursuant to pooling arrangements among insurers in the same holding company system. As used in this section, "substantially similar" standards means credit for reinsurance standards that the director determines equal or exceed the standards of AS 21.12.020 and this regulation. (Eff. 11/21/2004, Register 172; am __/__/__, Register __)

Authority: AS 21.06.090 AS 21.12.020

3 AAC 21.660 is repealed and readopted to read:

3 AAC 21.660. Authorized assuming insurer maintaining a trust fund (a) The director shall allow credit for reinsurance ceded by a domestic insurer to an authorized assuming insurer that maintains a trust fund on or before the as of date of the ceding insurer's statutory financial statement. The director shall allow this credit for as long as credit for reinsurance is claimed by the domestic insurer and the trust fund is maintained in an amount and location as required under AS 21.12.020(a)(4). The assuming insurer shall report annually to the director substantially the same information as that required to be reported on the National Association of Insurance Commissioners annual statement form by licensed insurers, to enable the director to determine the sufficiency of the trust fund.

(b) 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 reinsurance ceded by United States domiciled insurers. In addition, the assuming insurer shall maintain a trustee surplus of not less than \$20,000,000, except as provided in (c) of this section.

(c) At any time after the assuming insurer has permanently discontinued underwriting new business secured by the trust for at least three full years, insurance regulatory official 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 United States 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 trusteed surplus may not be reduced to an amount less than 30 percent of the assuming insurer's liabilities attributable to reinsurance ceded by United States ceding insurers covered by the trust.

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

(1) 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' several liabilities attributable to business ceded by United States domiciled ceding insurers to any underwriter of the group;

(2) 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 regulation, 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

(3) in addition to these trusts, the group shall maintain a trusteed 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.

(e) The incorporated members of a group shall 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 director:

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

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

(f) The trust fund for a group of incorporated insurers under common administration, whose members possess aggregate policyholders surplus of \$10,000,000,000, calculated and reported in substantially the same manner as prescribed by the annual statement instructions and *Accounting Practices and Procedures Manual* of the National Association of Insurance Commissioners, and which has continuously transacted an insurance business outside the United States for at least three years immediately prior to making application for accreditation, shall:

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

(2) maintain a joint trusteed 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;

(3) file a properly executed 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 will bear the expense of any such examination; and

(4) within 90 days after the statements are due to be filed with the group's domiciliary regulator, the group shall file with the director 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.

(g) Credit for reinsurance shall not be granted unless the form of the trust and any amendments to the trust have been approved by either the insurance regulatory official of the state where the trust is domiciled or the insurance regulatory official 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 director of every state in which the ceding insurer beneficiaries of the trust are domiciled. The trust instrument shall provide that:

(1) 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;

(2) 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;

(3) the trust shall be subject to examination as determined by the director;

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

(5) no later than February 28 of each year the trustee of the trust shall report to the director in writing setting forth the balance in the trust and listing the trust's investments at the preceding year-end, and shall certify the date of termination of the trust, if so planned, or certify that the trust shall not expire prior to the following December 31.

(h) 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 section 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 insurance regulatory official with regulatory oversight over the trust or with an order of a court of competent jurisdiction directing the trustee to transfer to the insurance regulatory official with regulatory oversight over the trust or other designated receiver all of the assets of the trust fund. The assets shall be distributed by and claims shall be filed with and valued by the insurance regulatory official with regulatory oversight over the trust in accordance with the laws of the state in which the trust is domiciled applicable to the liquidation of domestic insurance companies. If the insurance regulatory official with regulatory oversight over the trust determines that the assets of the trust fund or any part thereof are not necessary to satisfy the claims of the United States beneficiaries of the trust, the director with regulatory oversight over the trust shall return the assets, or any part thereof, to the trustee for distribution in accordance with the trust agreement. The grantor shall waive any right otherwise available to it under United States law that is inconsistent with this provision.

(i) Assets deposited in a trust fund established by an authorized assuming insurer must be valued according to fair market value and may only consist of

- (1) cash in United States dollars;
- (2) certificates of deposit issued by a qualified United States financial institution;
- (3) clean, irrevocable, unconditional letters of credit containing an evergreen

clause, issued or confirmed by a qualified United States financial institution; or

(4) investments of a type specified in (k) of this section.

(j) An investment in or issued by an entity controlling, controlled by, or under common control with either the grantor or beneficiary of the trust fund must not exceed five percent of the total of the trust fund. Not more than 20 percent of the total of the trust fund may be in foreign investments authorized in this section, and not more than 10 percent of the total of the trust fund may be in securities denominated in foreign currencies. A depository receipt denominated in United States dollars and representing rights conferred by a foreign security is classified as a foreign investment denominated in a foreign currency.

(k) The trust fund established by an authorized assuming insurer must only contain the following:

(1) a valid and legally authorized government obligation that is not in default as to principal or interest that is 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 (B) or (C) of this paragraph, if the obligation is payable by law, as to both principal and interest, from taxes levied or required by law to be levied, or from adequate special revenues pledged or otherwise appropriated, or required by law to be provided for making these payments; the obligation may not be an obligation eligible for investment

under this paragraph if the obligation is payable solely out of a special assessment 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 high grade investments or the equivalent by a rating agency recognized by the Securities Valuation Office of the National Association of Insurance Commissioners;

(2) an obligation that

(A) is issued in the United States by a solvent United States institution, other than an insurance company, or that is assumed or guaranteed by that institution; or a non-United States market by a solvent United States institution, other than an insurance company, and that is dollar-denominated;

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

(C) either

(i) is rated a high-grade investment or the equivalent by a rating agency recognized by the securities valuation office or, if not rated, is similar in structure and other material respects to other obligations of the same institution that are rated equivalent to a high-grade investment; or

(ii) is insured by at least one authorized insurer that is licensed to insure obligations in this state if, after considering the insurance, a rating agency recognized by the securities valuation office rates the obligation a high-grade investment or the equivalent; for purposes of this sub-subparagraph, an authorized

insurer may not be the investing insurer or a parent, subsidiary, or affiliate of the investing insurer; or

(iii) has been designated as Class One or Class Two by the Securities Valuation Office of the National Association of Insurance Commissioners;

(3) an obligation 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 National Association of Insurance Commissioners;

(4) an equity investment in common shares or a partnership interest as described in (A) or (B) of this paragraph, if the investment in, or loan upon, any one institution's outstanding equity interests does not exceed one percent of the assets of the trust fund, or if the cost of the investment in equity interest made under this paragraph, when added to the aggregate cost of other investments in equity interest then held under this paragraph, does not exceed 10 percent of the assets of the trust fund; the equity investment may be made in

(A) a solvent United States institution if the

(i) obligation and preferred shares of the institution, if any, are eligible as investments under this subsection; and

(ii) equity interests of the institution, except an insurance company, are registered on a national securities exchange registered under 15 U.S.C. 78e -

78f, secs. 5 - 6 of the Securities Act of 1934, and price quotations are furnished through a nationwide automated quotations system approved by the Securities and Exchange Commission or the National Association of Securities Dealers; or

(B) a solvent institution organized under the laws of a member country of the Organization for Economic Cooperation and Development if the

(i) obligation is rated a high-grade investment or the equivalent by a rating agency recognized by the Securities Valuation Office of the National Association of Insurance Commissioners; and

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

(5) if a high-grade investment obligation or the equivalent by a rating agency recognized by the securities valuation office, an obligation issued, assumed, or guaranteed by a multinational development bank; for purposes of this paragraph, "multinational development bank" includes

(A) International Bank for Reconstruction and Development;

(B) European Bank for Reconstruction and Development;

(C) Inter-American Development Bank;

(D) Asian Development Bank;

(E) African Development Bank; and

(F) International Finance Corporation;

(6) a security of an investment company registered under 15 U.S.C. 80a-1 - 80a-64, Investment Company Act of 1940, if the

(A) investment company invests at least 90 percent of its assets in the types of securities that qualify as an investment

(i) under (1), (2), or (3) of this subsection or invests in securities that are determined by the director to be substantially similar; or

(ii) under (4)(A) of this subsection; and

(B) total investment in securities qualifying

(i) under (A)(i) of this paragraph does not exceed 10 percent of the assets of the trust fund and the total investment in qualifying investment companies does not exceed twenty five percent of the assets of the trust fund; and

(ii) under (A)(ii) of this paragraph does not exceed five percent of the assets of the trust fund and the total investment in qualifying investment companies are included when calculating the permissible aggregate value of equity interests under (4)(A) of this subsection; or

(7) a letter of credit that has the right and obligation of the trustee in a binding agreement, as approved by the director, to immediately draw down the full amount of the letter of credit and hold the proceeds in trust for the beneficiary of the trust fund if the letter of credit will otherwise expire without being renewed or replaced.

(I) An investment made under (k)(1), (2), or (3) of this section may not exceed

(1) five percent of the trust fund for the total of investments in or loans upon the obligations of an institution other than an institution that issues mortgage-related securities;

(2) five percent of the trust fund for an investment in any one mortgage-related security;

(3) twenty five percent of the trust fund for the total of investments in mortgage-related security; or

(4) two percent of the trust fund for preferred or guaranteed shares issued or guaranteed by a solvent United States institution; in addition, an investment in preferred or guaranteed shares issued or guaranteed by a solvent United States institution is permitted only if all obligations of the institution are eligible as investments under (k)(2)(C)(i) or (iii) of this section.

(m) As used in this section:

(1) "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 and that either:

(A) 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:

(i) 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

(ii) 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

(B) 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 (A)(i) and (A)(ii) of this subsection;

(2) "Promissory note," when used in connection with a manufactured home, shall also include a loan, advance or credit sale as evidenced by a retail installment sales contract, or other instrument. (Eff. 11/25/94, Register 132; am 11/21/2004, Register 172; am

_____/_____/_____, Register _____)

Authority: AS 21.06.090 AS 21.12.020

3 AAC 21 is amended by adding a new section to read:

3 AAC 21.661. Credit for reinsurance required by law. Under AS 21.12.020(a)(6), the director shall allow credit for reinsurance ceded by a domestic insurer to an assuming insurer not meeting the requirements of AS 21.12.020(a)(1)-(5) but only as to the insurance of risks located in jurisdictions where the reinsurance is required by the applicable law or regulation of that jurisdiction. As used in this section, "jurisdiction" means state, district, or territory of the United States and any lawful national government. (Eff. ___/___/____, Register ____)

Authority: AS 21.06.090 AS 21.12.020

3 AAC 21 is amended by adding a new section to read:

3 AAC 21. 662. Asset or Reduction from Liability. (a) Pursuant to AS 21.12.020(c), the director shall allow a reduction from liability for reinsurance ceded by a domestic insurer to an assuming insurer not meeting the requirements of AS 21.12.020(a) 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 as defined in AS 21.12.020(c)(3)(A) – (C). This security may be in the form of any of the following:

- (1) cash;

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

(3) clean, irrevocable, unconditional, and "evergreen" letters of credit issued or confirmed by a qualified United States institution, as defined in AS 21.12.020(c)(3), effective no later than December 31 of the year for which filing is being made, and in the possession of, or in trust for, the ceding insurer on or before the filing date of its annual statement. Letters of credit meeting applicable standards of issuer acceptability as of the dates of their issuance, or confirmation shall, notwithstanding the issuing or confirming institution's subsequent failure to meet applicable standards of issuer acceptability, continue to be acceptable as security until their expiration, extension, renewal, modification, or amendment, whichever first occurs; or

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

(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 3 AAC 21.635 and the applicable portions of 3 AAC 21.664, 3 AAC 21.665, and 3 AAC 21.685 of this regulation have been satisfied. (Eff. ____/____/____, Register ____)

Authority: AS 21.06.090 AS 21.12.020

3 AAC 21 is amended by adding a new section to read:

3 AAC 21.664. Letters of credit. (a) The letter of credit must be clean, irrevocable, unconditional, and issued or confirmed by a qualified United States financial institution as

defined in AS 21.12.020(h). The letter of credit shall contain an issue date and expiration date and shall stipulate that the beneficiary need only draw a sight draft under the letter of credit and present it to obtain funds and that no other document need be presented. The letter of credit also shall indicate that it is not subject to any condition or qualifications outside of the letter of credit. In addition, the letter of credit itself shall not contain reference to any other agreements, documents, or entities, except as provided in (h)(1) of this section.

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

(c) The letter of credit shall contain a statement to the effect that the obligation of the qualified United States financial institution under the letter of credit is in no way contingent upon reimbursement with respect thereto.

(d) The term of the letter of credit shall be for at least one year and shall contain an "evergreen clause" that prevents the expiration of the letter of credit without due notice from the issuer. The "evergreen clause" shall provide for a period of no less than 30-day notice prior to expiration date or nonrenewal.

(e) The letter of credit shall state whether it is subject to and governed by the laws of this state or the Uniform Customs and Practice for Documentary Credits of the International Chamber of Commerce Publication 600 (UCP 600) or International Standby Practices of the International Chamber of Commerce Publication 590 (ISP98), or any successor publication, and

all drafts drawn thereunder shall be presentable at an office in the United States of a qualified United States financial institution.

(f) If the letter of credit is made subject to the Uniform Customs and Practice for Documentary Credits of the International Chamber of Commerce Publication 600 (UCP 600) or International Standby Practices of the International Chamber of Commerce Publication 590 (ISP98), or any successor publication, then the letter of credit 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 Publication 600 or any other successor publication, occur.

(g) 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 as described in subsection (a) of this section, then the following additional requirements shall be met:

(1) 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

(2) the "evergreen clause" shall provide for 30-day notice prior to expiration date for nonrenewal.

(h) The reinsurance agreement in conjunction with which the letter of credit is obtained may contain provisions that:

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

(2) stipulate 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;

(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 prior to 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, and deposit those amounts 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 (h)(2)(A) of this section as may remain after withdrawal and for any period after the termination date.

(3) All of the provisions of this subsection shall be applied without diminution because of insolvency on the part of the ceding insurer or assuming insurer.

(i) Nothing contained in subsection (h) shall preclude the ceding insurer and assuming insurer from providing for:

(1) an interest payment, at a rate not in excess of the prime rate of interest, on the amounts held pursuant to (h)(2) of this section; or

(2) 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. (Eff. ___ / ___ / ____, Register _____)

Authority: AS 21.06.090 AS 21.12.020

3 AAC 21.665 is repealed and readopted to read:

3 AAC 21.665. Conditions required for a trust agreement for an unauthorized assuming insurer. (a) A valid trust agreement shall:

(1) be entered into between the beneficiary, the grantor, and a trustee, which shall be a qualified United States financial institution as defined in AS 21.12.020(h);

(2) create a trust account into which assets shall be deposited. All assets in the trust account shall be held by the trustee at the trustee's office in the United States.

(3) 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 shall not contain references to any other agreements or documents except as provided for in (b) and (c) of this section;

(4) be established for the sole benefit of the beneficiary.

(5) 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;

(6) provide that at least 30 days, but not more than forty-five days, prior to termination of the trust account, written notification of termination shall be delivered by the trustee to the beneficiary;

(7) be made subject to and governed by the laws of the state in which the trust is domiciled;

(8) prohibit invasion of the trust corpus for the purpose of paying commission to, or reimbursing the expenses of, the trustee. In order for a letter of credit to qualify as an asset of the trust, the trustee shall have the right and the obligation pursuant to the deed of trust or some other binding agreement, as duly approved by the director, to immediately draw down the full amount of the letter of credit and hold the proceeds in trust for the beneficiaries of the trust if the letter of credit will otherwise expire without being renewed or replaced; and

(9) provide that the trustee shall be liable for its negligence, willful misconduct, or lack of good faith. The failure of the trustee to draw against the letter of credit in circumstances where such draw would be required shall be deemed to be negligence or willful misconduct.

(b) Notwithstanding other provisions of this section, 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:

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

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

(3) where the ceding insurer has received notification of termination of the trust account and where the assuming insurer's entire 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 as defined in AS 21.12.020(h) apart from its general assets, in trust for such uses and purposes specified in (1) and (2) of this subsection may remain executory after such withdrawal and for any period after the termination date.

(c) Notwithstanding other provisions of this section, when a trust agreement is established to meet the requirements of 3 AAC 21.662 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:

(1) 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 cancellations 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;

(2) 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

(3) 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 (1) and (2) of this subsection as may remain executory after withdrawal and for any period after the termination date.

(d) 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 AS 21 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 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 the reinsurance agreement.

(e) 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.

(f) 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.

(g) 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 j(2) of this section.

(h) 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.

(i) 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 over to the grantor.

(j) A reinsurance agreement may contain provisions that:

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

(2) 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;

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

(4) 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:

(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 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; or

(B) to make payment to the assuming insurer of 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.

(k) The reinsurance agreement also may contain provisions that:

(1) give the assuming insurer the right to seek approval from the ceding insurer, which shall 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:

(A) the assuming insurer shall, at the time of withdrawal, replace the withdrawn assets with other qualified assets having a current fair market value equal to the market value of the assets withdrawn so as to maintain at all times the deposit in the required amount; or

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

(2) provide for the return of any amount withdrawn in excess of the actual amounts required for (j)(4) of this subsection, and for interest payments at a rate not in excess of the prime rate of interest on such amounts; or

(3) permit the award by any arbitration panel or court of competent jurisdiction of:

(A) interest at a rate different from that provided in paragraph (2) of this subsection;

(B) court or arbitration costs;

(C) attorney's fees; and

(D) any other reasonable expenses.

(l) 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 regulation 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 shall be no greater than the specific obligations under the reinsurance agreement that the trust account was established to secure.

(m) Any trust agreement or underlying reinsurance agreement in existence prior to the effective date of this regulation will continue to be acceptable until 12 months after the effective date of this regulation, at which time the agreements will have to fully comply with this regulation for the trust agreement to be acceptable.

(n) The failure of any trust agreement to specifically identify the beneficiary as defined in Subsection o of this section shall not be construed to affect any actions or rights that the director may take or possess pursuant to the provisions of the laws of this state.

(o) As used in this section:

(1) "beneficiary" means the entity for whose sole benefit the 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).

(2) "grantor" means the entity that has established a trust for the sole benefit of the beneficiary. When established in conjunction with a reinsurance agreement, the grantor is the unlicensed, unaccredited assuming insurer.

(3) "obligations" as used subsection (b) of this section 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.

(Eff. 11/25/94, Register 132; am 11/21/2004, Register 172; am ___/___/___,

Register _____)

Authority: AS 21.06.090 AS 21.09.200 AS 21.09.205
AS 21.12.020

3 AAC 21 is amended by adding a new section to read:

3 AAC 21.694. Credit for Reinsurance-Certified Reinsurers. (a) Pursuant to AS 21.12.020(a)(5), the director 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 director. The security shall be in a form consistent with

the provisions of AS 21.12.020(a)(5) and AS 21.12.020(c) and 3 AAC 21.663, 3 AAC 21.664, and 3 AAC 21.685.

(b) The amount of security required in order for full credit to be allowed shall correspond with the following requirements:

(1)

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

(2) affiliated reinsurance transactions shall receive the same opportunity for reduced security requirements as all other reinsurance transactions;

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

(4) 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 director. 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 National Association of Insurance Commissioners 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: Farm owners 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;

(5) 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; and

(6) 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.

(c) The director shall post notice on the division of insurance website promptly upon receipt of any application for certification, including instructions on how members of the public may respond to the application. The director may not take final action on the application until at least 30 days after posting the notice required by this section.

(d) The director 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 (c) of this section. The director shall publish a list of all certified reinsurers and their ratings.

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

(1) the assuming insurer must be domiciled and licensed to transact insurance or reinsurance in a Qualified Jurisdiction, as determined by the director pursuant to (l) - (o) of this section;

(2) the assuming insurer must maintain capital and surplus, or its equivalent, of no less than \$250,000,000 calculated in accordance with (f)(8) 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;

(3) the assuming insurer must maintain financial strength ratings from two or more rating agencies deemed acceptable by the director. 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 director in determining the rating that is assigned to the assuming insurer. Acceptable rating agencies include the following:

- (A) Standard & Poor's;
- (B) Moody's Investors Service;
- (C) Fitch Ratings;
- (D) A.M. Best Company; or
- (E) Any other Nationally Recognized Statistical Rating Organization; and

(4) the certified reinsurer must comply with any other requirements reasonably imposed by the director.

(f) 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:

(1) 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 director 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:

<u>Ratings</u>	<u>Best</u>	<u>S&P</u>	<u>Moody's</u>	<u>Fitch</u>
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-, CCC, CC, C, D, R	Ba1, Ba2, Ba3, B1, B2, B3, Caa, Ca, C	BB+, BB, BB-, B+, B, B-, CCC+, CC, CCC-, DD

(2) the business practices of the certified reinsurer in dealing with its ceding insurers, including its record of compliance with reinsurance contractual terms and obligations;

(3) for certified reinsurers domiciled in the United States, a review of the most recent applicable the National Association of Insurance Commissioners Annual Statement Blank, either Schedule F for property/casualty reinsurers or Schedule S for life and health reinsurers;

(4) for certified reinsurers not domiciled in the United States, a review annually of Form CR-F for property/casualty reinsurers or Form CR-S for life and health reinsurers;

(5) 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;

(6) regulatory actions against the certified reinsurer;

(7) the report of the independent auditor on the financial statements of the insurance enterprise, on the basis described in (8) below;

(8) for certified reinsurers not domiciled in the United States, audited financial statements, audited United States GAAP basis if available, audited IFRS basis statements are allowed but must include an audited footnote reconciling equity and net income to a United States GAAP basis, or, with the permission of the state insurance director, audited IFRS statements with reconciliation to United States GAAP certified by an officer of the company, regulatory filings, and actuarial opinion as filed with the non-United States jurisdiction supervisor. Upon the initial application for certification, the director will consider audited financial statements for the last three years filed with its non-United States jurisdiction supervisor;

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

(10) a certified reinsurer's participation in any solvent scheme of arrangement, or similar procedure, which involves United States ceding insurers. The director shall receive prior notice from a certified reinsurer that proposes participation by the certified reinsurer in a solvent scheme of arrangement; and

(11) any other information deemed relevant by the director.

(g) Based on the analysis conducted under (f)(5) of this section of a certified re insurer's reputation for prompt payment of claims, the director may make appropriate adjustments in the security the certified reinsurer is required to post to protect its liabilities to United States ceding insurers, provided that the director shall, at a minimum, increase the security the certified reinsurer is required to post by one rating level under (f)(1) if the director finds that:

(1) more than 15 percent 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

(2) 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.

(h) The assuming insurer must submit a properly executed Form CR-1 as evidence of its submission to the jurisdiction of this state, appointment of the director as an agent for service of process in this state, and agreement to provide security for one hundred percent of the assuming insurer's liabilities attributable to reinsurance ceded by United States ceding insurers if it resists enforcement of a final United States judgment. The director shall not certify any assuming insurer that is domiciled in a jurisdiction that the director has determined does not adequately and promptly enforce final United States judgments or arbitration awards.

(i) The certified reinsurer must agree to meet applicable information filing requirements as determined by the director, 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 AS 40.25.110-

AS 40.25.220 and shall be withheld from public disclosure. The applicable information filing requirements are, as follows:

(1) 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;

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

(3) annually, the report of the independent auditor on the financial statements of the insurance enterprise, on the basis described in (4) below;

(4) annually, audited financial statements, audited United States GAAP basis if available, audited IFRS basis statements are allowed but must include an audited footnote reconciling equity and net income to a United States GAAP basis, or, with the permission of the state insurance director, audited IFRS statements with reconciliation to United States 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 three years filed with the certified reinsurer's supervisor;

(5) at least annually, an updated list of all disputed and overdue reinsurance claims regarding reinsurance assumed from United States domestic ceding insurers;

(6) 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

(7) any other information that the director may reasonably require.

(j) In the case of a downgrade by a rating agency or other disqualifying circumstance, the director shall upon written notice assign a new rating to the certified reinsurer in accordance with the requirements of (f)(1).

(k) The director 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 director to reconsider the certified reinsurer's ability or willingness to meet its contractual obligations.

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

(m) In order to determine whether the domiciliary jurisdiction of a non-United States assuming insurer is eligible to be recognized as a qualified jurisdiction, the director shall evaluate the reinsurance supervisory system of the non-United States jurisdiction, both initially and on an ongoing basis, and consider the rights, benefits and the extent of reciprocal recognition afforded by the non-United States jurisdiction to reinsurers licensed and domiciled in the United States. The director 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 director as eligible for certification. A qualified jurisdiction must agree to share

information and cooperate with the director 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 director, include but are not limited to the following:

- (1) the framework under which the assuming insurer is regulated;
- (2) the structure and authority of the domiciliary regulator with regard to solvency regulation requirements and financial surveillance;
- (3) the substance of financial and operating standards for assuming insurers in the domiciliary jurisdiction;
- (4) 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;
- (5) the domiciliary regulator's willingness to cooperate with United States regulators in general and the director in particular;
- (6) the history of performance by assuming insurers in the domiciliary jurisdiction;
- (7) any documented evidence of substantial problems with the enforcement of final United States judgments in the domiciliary jurisdiction. A jurisdiction will not be considered to be a qualified jurisdiction if the director has determined that it does not adequately and promptly enforce final United States judgments or arbitration awards;

(8) 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

(9) any other matters deemed relevant by the director.

(n) A list of qualified jurisdictions shall be published through the National Association of Insurance Commissioners Committee Process. The director shall consider this list in determining qualified jurisdictions. If the director approves a jurisdiction as qualified that does not appear on the list of qualified jurisdictions, the director shall provide thoroughly documented justification with respect to the criteria provided under (m) of this section.

(o) United States jurisdictions that meet the requirements for accreditation under the National Association of Insurance Commissioners financial standards and accreditation program shall be recognized as qualified jurisdictions.

(p) If an applicant for certification has been certified as a reinsurer in a National Association of Insurance Commissioners accredited jurisdiction, the director 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 director requires. The assuming insurer shall be considered to be a certified reinsurer in this state.

(q) 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 director of any change in its status or rating within 10 days after receiving notice of the change.

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

(s) The director may withdraw recognition of the other jurisdiction's certification at any time, with written notice to the certified reinsurer. Unless the director suspends or revokes the certified reinsurer's certification in accordance with (k) 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.

(t) In addition to the clauses required under 3 AAC 21.635, 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 re insurer.

(u) The director shall comply with all reporting and notification requirements that may be established by the National Association of Insurance Commissioners with respect to certified reinsurers and qualified jurisdictions. (Eff. ____/____/____, Register _____)

Authority: AS 21.06.090 AS 21.12.020

3 AAC 21.710(a) is amended to read:

(a) The director may extend the due date of the annual audited financial report for **30-day periods** [30 days] if the insurer and its independent certified public accountant submit a request that gives the reasons for needing an extension and the director determines there is good

cause to grant an extension. The request for extension must be submitted in writing not fewer than 10 days before the due date of the report and in sufficient detail to permit the director to make an informed decision with respect to the requested extension. If the director grants an extension, a similar extension is also granted for the filing of management's report of internal control over financial reporting. (Eff. 8/31/2008, Register 187, am ___/___/_____, Register ___)

Authority: AS 21.06.060 AS 21.06.090 AS 21.09.200

3 AAC 21.720(g) is amended by adding a new subsection to read:

(11) Any other services that the director determines are impermissible. (Eff. 8/31/2008, Register 187; am 1/1/2010, Register 192; am ___/___/_____, Register ___)

Authority: AS 21.06.090 AS 21.09.200

3 AAC 21.770 is amended by adding a new subsection to read:

(o) The audit committee of an insurer or group of insurers shall be responsible for overseeing the insurer's Internal audit function and granting the person or persons performing the function suitable authority and resources to fulfill their responsibilities if required by 3 AAC 21.780 of this regulation. (Eff. 1/1/2010, Register 192; am ___/___/_____, Register ___)

Authority: AS 21.06.090 AS 21.09.200

3 AAC 21 is amended by adding a new section to read:

3 AAC 21.780. Internal Audit Function Requirements. (a) An insurer is exempt from the requirements of this section if:

(1) The insurer has annual direct written and unaffiliated assumed premium, including international direct and assumed premium but excluding premiums reinsured with the Federal Crop Insurance Corporation and Federal Flood Program, less than \$500,000,000; and,

(2) If the insurer is a member of a group of insurers, the group has annual direct written and unaffiliated assumed premium including international direct and assumed premium, but excluding premiums reinsured with the Federal Crop Insurance Corporation and Federal Flood Program, less than \$1,000,000,000.

(b) The insurer or group of insurers shall establish an internal audit function providing independent, objective and reasonable assurance to the audit committee and insurer management regarding the insurer's governance, risk management, and internal controls. This assurance shall be provided by performing general and specific audits, reviews and tests and by employing other techniques deemed necessary to protect assets, evaluate control effectiveness and efficiency, and evaluate compliance with policies and regulations.

(c) To ensure that internal auditors remain objective, the internal audit function must be organizationally independent. Specifically, the internal audit function will not defer ultimate judgment on audit matters to others, and shall appoint an individual to head the internal audit function who will have direct and unrestricted access to the board of directors. Organizational independence does not preclude dual-reporting relationships.

(d) The head of the internal audit function shall report to the audit committee regularly, but no less than annually, on the periodic audit plan, factors that may adversely impact the Internal audit function's independence or effectiveness, material findings from completed audits and the appropriateness of corrective actions implemented by management as a result of audit findings.

(e) If an insurer is a member of an insurance holding company system or included in a group of insurers, the insurer may satisfy the internal audit function requirements set forth in this section at the ultimate controlling parent level, an intermediate holding company level or the individual legal entity level. (Eff. ____/____/____, Register ____)

Authority AS 21.06.090 AS 21.09.200

Editor's Note: An insurer or group of insurers exempt from the requirements of this section is encouraged, but not required, to conduct a review of the insurer business type, sources of capital, and other risk factors to determine whether an Internal audit function is warranted. The potential benefits of an internal audit function should be assessed and compared against the estimated costs.

3 AAC 21 is amended by adding a new section to read:

3 AAC 21.785 Filing Procedures. (a) An insurer, or the insurance group of which the insurer is a member, required to file a corporate governance annual disclosure under AS 21.09.400 – AS 21.09.460, shall, no later than June 1 of each calendar year, submit to the director a corporate governance annual disclosure that contains the information described in 3 AAC 21.790 of these regulations.

(b) The corporate governance annual disclosure must include a signature of the insurer's or insurance group's chief executive officer or corporate secretary attesting to the best of that individual's belief and knowledge that the insurer or insurance group has implemented the corporate governance practices and that a copy of the corporate governance annual disclosure has been provided to the insurer's or insurance group's board of directors or the appropriate committee thereof.

(c) The insurer or insurance group shall have discretion regarding the appropriate format for providing the information required by these regulations and is permitted to customize the corporate governance annual disclosure to provide the most relevant information necessary to permit the director to gain an understanding of the corporate governance structure, policies, and practices utilized by the insurer or insurance group.

(d) For purposes of completing the corporate governance annual disclosure, the insurer or insurance group may choose to provide information on governance activities that occur at the ultimate controlling parent level, an intermediate holding company level, or the individual legal entity level, depending upon how the insurer or insurance group has structured its system of corporate governance. The insurer or insurance group is encouraged to make the corporate governance annual disclosure at the level at which the insurer's or insurance group's risk appetite is determined, or at which the earnings, capital, liquidity, operations, and reputation of the insurer are overseen collectively and at which the supervision of those factors are coordinated and exercised, or the level at which legal liability for failure of general corporate governance duties would be placed. If the insurer or insurance group determines the level of reporting based

on these criteria, it shall indicate which of the three criteria was used to determine the level of reporting and explain any subsequent changes in level of reporting.

(e) An insurer or insurance group may comply with this section by referencing other existing documents (e.g., Own Risk and Solvency Assessment (ORSA) Summary Report, Holding Company Form B or F Filings, Securities and Exchange Commission (SEC) Proxy Statements, foreign regulatory reporting requirements, etc.) if the documents provide information that is comparable to the information described in 3 AAC 21.790. The insurer or insurance group shall clearly reference the location of the relevant information within the corporate governance annual disclosure and attach the referenced document if it is not already filed or available to the regulator.

(f) Each year following the initial filing of the corporate governance annual disclosure, the insurer or insurance group shall file an amended version of the previously filed corporate governance annual disclosure indicating where changes have been made. If no changes were made in the information or activities reported by the insurer or insurance group, the filing should so state. (Eff. ____/____/____, Register _____)

Authority: AS 21.06.060 AS 21.06.090 AS 21.09.200
AS 21.09.400 AS 21.09.410 AS 21.09.420
AS 21.09.430

3 AAC 21 is amended by adding a new section to read:

3 AAC 21.790. Contents of Corporate Governance Annual Disclosure. (a) The insurer or insurance group shall be as descriptive as possible in completing the corporate governance

annual disclosure, with inclusion of attachments or example documents that are used in the governance process.

(b) The corporate governance annual disclosure shall describe the insurer or insurance group's corporate governance framework and structure including consideration of the following:

(1) the board of directors and any committees of the board ultimately responsible for overseeing the insurer or insurance group and the level at which that oversight occurs (e.g., ultimate control level, intermediate holding company, legal entity, etc.). The disclosure shall describe and discuss the rationale for the current board size and structure; and

(2) the duties of the board and each of its significant committees and how they are governed (e.g., bylaws, charters, informal mandates, etc.), how the board's leadership is structured, and a discussion of the roles of chief executive officer and chairman of the board within the organization.

(c) The corporate governance annual disclosure shall describe the policies and practices of the insurer's or insurance group's most senior governing entity and its significant committees, including a discussion of the following factors:

(1) how the qualifications, expertise and experience of each board member meet the needs of the insurer or insurance group;

(2) how an appropriate amount of independence is maintained on the board and its significant committees;

(3) the number of meetings held by the board and its significant committees over the past year, as well as information on director attendance;

(4) how the insurer or insurance group identifies, nominates, and elects members to the board and its committees. The discussion should include, for example:

(A) whether a nomination committee is in place to identify and select individuals for consideration.

(B) whether term limits are placed on directors.

(C) how the election and re-election processes function.

(D) whether a board diversity policy is in place and if so, how it functions;

and

(5) the processes in place for the board to evaluate its performance and the performance of its committees, as well as any recent measures taken to improve performance (including any board or committee training programs that have been put in place).

(d) The corporate governance annual disclosure shall describe the insurer's or insurance group's policies and practices for directing senior management, including a description of the following factors:

(1) any processes or practices (i.e., suitability standards) to determine whether officers and key persons in control functions have the appropriate background, experience, and integrity to fulfill their prospective roles, including:

(A) identification of the specific positions for which suitability standards have been developed and a description of the standards employed; and

(B) any changes in an officer's or key person's suitability as outlined by the insurer's or insurance group's standards and procedures to monitor and evaluate such changes;

(2) the insurer's or insurance group's code of business conduct and ethics, the discussion of which considers:

(A) compliance with laws, rules, and regulations; and

(B) proactive reporting of any illegal or unethical behavior;

(3) the insurer's or insurance group's processes for performance evaluation, compensation, and corrective action to ensure effective senior management throughout the organization, including a description of the general objectives of significant compensation programs and what the programs are designed to reward. The description shall include sufficient detail to allow the director to understand how the organization ensures that compensation programs do not encourage or reward excessive risk taking. Elements to be discussed may include:

(A) the board's role in overseeing management compensation programs and practices;

(B) the various elements of compensation awarded in the insurer's or insurance group's compensation programs and how the insurer or insurance group determines and calculates the amount of each element of compensation paid;

(C) how compensation programs are related to both company and individual performance over time;

(D) whether compensation programs include risk adjustments and how those adjustments are incorporated into the programs for employees at different levels;

(E) any clawback provisions built into the programs to recover awards or payments if the performance measures upon which they are based are restated or otherwise adjusted; and

(F) any other factors relevant in understanding how the insurer or insurance group monitors its compensation policies to determine whether its risk management objectives are met by incentivizing its employees; and

(4) the insurer's or insurance group's plans for CEO and senior management succession.

(e) The corporate governance annual disclosure shall describe the processes by which the insurer's or insurance group's board, its committees, and senior management ensure an appropriate amount of oversight to the critical risk areas impacting the insurer's or insurance group's business activities, including a discussion of:

(1) how oversight and management responsibilities are delegated between the board, its committees, and senior management;

(2) how the board is kept informed of the insurer's strategic plans, the associated risks, and steps that senior management is taking to monitor and manage those risks; and

(3) how reporting responsibilities are organized for each critical risk area. The description should allow the director to understand the frequency at which information on each critical risk area is reported to and reviewed by senior management and the board. This description may include the following critical risk areas of the insurer:

(A) risk management processes (An ORSA Summary Report filer may refer to its ORSA Summary Report pursuant to the Risk Management and Own Risk and Solvency Assessment Model Act.);

(B) actuarial function;

(C) investment decision-making processes;

(D) reinsurance decision-making processes;

(E) business strategy/finance decision-making processes;

(F) compliance function;

(G) financial reporting/internal auditing; and

(H) market conduct decision-making processes. (Eff. ____/____/____,

Register _____)

Authority:	AS 21.06.060	AS 21.06.090	AS 21.09.200
	AS 21.09.400	AS 21.09.410	AS 21.09.420
	AS 21.09.430		

3 AAC 21.799(8) is amended to read:

“audit committee” means a committee established by the governing board of an entity for the purpose of overseeing the

(A) accounting and financial reporting processes of an insurer or group of insurers;

[AND]

(B) **external** audits of financial statements of an insurer or group of insurers; **and**

(C) the internal audit function of an insurer or group of insurers, if applicable.

3 AAC 21.799 is amended by adding a new paragraph to read:

(12) “internal audit function” means a person or persons that provide independent, objective and reasonable assurance designed to add value and improve an organization’s operations and accomplish its objectives by bringing a systematic, disciplined approach to evaluate and improve the effectiveness of risk management, control and governance processes.

3 AAC 21.799 is amended by adding a new paragraph to read:

(13) “insurance group means those insurers and affiliates included within an insurance holding company system as defined in AS 21.22.200(6).

3 AAC 21.799 is amended by adding a new paragraph to read:

(14) “senior management” means any corporate officer responsible for reporting information to the board of directors at regular intervals or providing this information to shareholders or regulators and shall include, for example and without limitation, the chief executive officer (“CEO”), chief financial officer (“CFO”), chief operations officer (“COO”), chief procurement officer (“CPO”), chief legal officer (“CLO”), chief information officer (“CIO”), chief technology officer (“CTO”), chief revenue officer (“CRO”), chief visionary officer (“CVO”), or any other “C” level executive.

(Eff. 8/31/2008, Register 187; am 1/1/2010, Register 192; am 12/31/2010, Register 196; am. ___ / ___ / ___, Register _____)

Authority: AS 21.06.060 AS 21.06.090 AS 21.09.200

AS 21.09.400

AS 21.09.410

AS 21.09.420

AS 21.09.430

Chapter 28. Life, Health, Variable, and Related Insurance

3 AAC 28.462(f) is amended to read:

(f) The medicare supplement policy to which an eligible person is entitled

(1) **for individuals eligible for medicare on or before December 31, 2019,**

under (c)(1) - (4) of this section is a medicare supplement policy that has a benefit package classified as plan "A," "B," "C," "F" high deductible "F," **high deductible "G,"** "K," or "L," offered by any issuer;

(2) under (c)(5) of this section is the same medicare supplement policy in which the individual was most recently previously enrolled if available from the same issuer, or if that policy is not available, a policy described in (1) of this subsection;

(3) under (c)(6) of this section is any medicare supplement policy offered by any issuer;

(4) after December 31, 2005, if the individual was most recently enrolled in a medicare supplement policy with an outpatient prescription drug benefit, is

(A) a medicare supplement policy available from the same issuer but modified to remove outpatient prescription drug coverage; or

(B) at the election of the individual, a medicare supplement policy that has a benefit package classified as plan "A," "B," "C," "F," high deductible "F," **high deductible "G,"** "K," or "L" and that is offered by any issuer; and

(5) for individuals eligible for medicare on or before December 31, 2019,

under (c)(7) of this section is a medicare supplement policy that has a benefit package classified as plan "A," "B," "C," "F," high deductible "F," **high deductible "G,"** "K," or "L" and that is offered and available for issue to new enrollees by the same issuer that issued the individual's medicare supplement policy with outpatient prescription drug coverage.

(6) for individuals newly eligible for medicare on or after January 1, 2020,

under (c)(1) - (4) of this section is a medicare supplement policy that has a benefit package classified as plan "A," "B," "D," "G," high deductible "G," "K," or "L," offered by any issuer;

(7) for individuals newly eligible for medicare on or after January 1, 2020,

under (c)(7) of this section is a medicare supplement policy that has a benefit package classified as plan "A," "B," "D," "G," high deductible "G," "K," or "L" and that is offered and available for issue to new enrollees by the same issuer that issued the individual's medicare supplement policy with outpatient prescription drug coverage. (Eff.

4/21/99, Register 150; am 9/17/2003, Register 167; am 9/4/2005, Register 175, am
____ / ____ / _____, Register _____)

Authority: AS 21.06.090 AS 21.42.130 AS 21.96.060