COMMONWEALTH OF PUERTO RICO
OFFICE OF THE COMMISSIONER OF INSURANCE

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Secretary of State
By: [signature]
Assistant Secretary of State

INDEX TO RULE LXIV OF THE REGULATION OF THE INSURANCE CODE OF PUERTO RICO

SECTION		PAGE
1	Definitions	1-3
2	Unauthorized Insurers Eligible to Arrange Reinsurance Contracts	3
3	The Commissioner as Proxy	3-4
4	Declaration of Ineligibility	4
5	Notification	4-5
6	Guarantee of Liabilities	5-7
7	Credit Reserves	7
8	Total of Reinsurance Assigned to Eligible Non-Authorized Insurers	7-8
9	Eligible Non-Authorized Reinsurers reference in Annual Statement	8
10	Eligibility Limit Authorization	8-9
11	Automatic Derogation	9
12	Cases not Provided in this Rule	9
13	Declaration of Unconstitutionality of Illegality	9
14	Effectiveness	9

COMMONWEALTH OF PUERTO RICO
OFFICE OF THE COMMISSIONER OF INSURANCE
SAN JUAN, PUERTO RICO

RULE LXIV 4828

PROCEDURE FOR THE CEDING OF REINSURANCE TO
ELIGIBLE NON-AUTORIZED INSURERS

Legal Authority: Section 4.120

The Commissioner of Insurance of Puerto Rico adopts Rule LXIV of the Regulation of the Insurance Code of Puerto Rico.

The adoption of Rule LXIV pursues to offer a more flexible alternative to the procedure for the ceding of reinsurance to eligible non-authorized insurers as contained in Section 4.120(a) of the Insurance Code of Puerto Rico and in Ruling Letter N-E-2-17-88 issued by the Office of the Commissioner of Insurance on April 5, 1988.

SECTION I: By virtue of the provisions of Article 2.040 and Article 4.120 of Law No. 77 of June 19, 1957, as amended, known as the Insurance Code of Puerto Rico and Law No. 170 of August 12, 1988, known as the Uniform Administrative Procedures Act, Rule LXIV of the Regulation of the Insurance Code is adopted.

SECTION 1: Definitions

The following terms shall have the meaning as expressed, with the exception that from the text of any article of this rule a different meaning is clearly inferred.

a) Reinsurance:

An agreement or contractual arrangement under which an insurer, known as a ceding primary or insurer or assigner, transfers to another insurer known as the reinsurer, all or part of one or more risks which the primary insurer has assumed under one or more of its insurance contracts. The term reinsurance includes the excess of loss catastrophic contract.

b) Ceding or Primary Insurer:

Insurer which cedes a participation of its risks in reinsurance.

c) Reinsurer:

Insurer which assumes part of the contractual liabilities which a ceding or primary insurer has ceded by means of reinsurance.

d) Quota share contract:

Contract under which a ceding insurer commits itself to retain and to cede fixed proportions of all the written business corresponding to a determined type of insurance, up to a limit fixed beforehand. Immediately, the reinsurer participates proportionately in all the casualties and receives in turn the same proportion of all premiums.

e) Excess of loss Treaty:

Reinsurance contract under which the reinsurer, subject to an established limit, compensates the ceding insurer for all or a portion of the excess losses of a specific retention.

f) Catastrophic Treaty:

A type of excess of loss contract under which the reinsurer compensates the ceding insurer for incurred losses in excess of the specified retention, in order to protect the ceding insurer in the assumption of an accumulation of losses in its retentions as a result of any event or series of events of a catastrophic nature.

g) Automatic Treaty:

Any reinsurance contract under which the parties determine, prior to the acceptance of any risk, the nature and circunstances under which the cession in reinsurance shall be made. In this agreement, the insurer is obligated to cede said risks and the reinsurer is obligated to accept them.

h) Facultative contract:

Any reinsurance contract under which the ceding insurer has the option to cede and the reinsurer has the option

to accept or reject individual risks. Each policy ceded under a facultative contract is a separate contract.

i) Qualified financial institution:

(1) is organized or authorized in accordance to the laws of Puerto Rico, of the United States or its states;

(2) is regulated, supervised and examined by state or federal authorities which have the regulatory authority over the financial institutions; and

(3) is not owner, subsidiary or affiliated of the applicant or beneficiary of the letter of credit or trust of which Article 6(a) of this Rule makes reference to.

SECTION 2: Non-Authorized Insurers Eligible to Arrange Reinsurance Contracts

In accordance to Section 4.120 of the Insurance Code of Puerto Rico, the Commissioner shall publish annually and keep up to date a list of non-authorized insurers eligible to procure reinsurance contracts on risks located in Puerto Rico. In order to compile said list, the following listings are adopted:

a) Non-Admitted Insurers Quarterly Listing of the National Association of Insurance Commissioners (NAIC).

b) Directory of Insurance Companies Regulated by the New York State Insurance Department:

(1) Accredited Property and Casualty Reinsurers

(2) Stock Property and Casualty Insurance Companies

Any domestic insurer may arrange property reinsurance contracts with any of the insurers which appear in said lists, and these may accept reinsurance transfers as if they were authorized, subject to the requirements established in this rule. Those unauthorized insurers which are not included in this list shall be subject to that which is provided in Ruling Letter N-E-2-17-88 of April 5, 1988 issued by the Office of the Commissioner of Insurance.

SECTION 3: The Commissioner as Attorney-in-Fact

The Commissioner of Insurance shall be considered to be the attorney-in-fact of any eligible unauthorized insurer which

transacts reinsurance contracts in Puerto Rico. As such, he shall be served all lawful process issued within Puerto Rico in any action or proceeding against said insurer arising out of any such reinsurance contracts, subject to the provisions of section 10.050 of the Insurance Code.

SECTION 4: Declaration of Ineligibility

The Commissioner of Insurance may declare ineligible any insurer which appears in the lists published periodically by the National Association of Insurance Commissioners (NAIC) and the New York State Insurance Department adopted by virtue of this Rule if for any basis in law or of this Rule, it is considered pertinent or necessary.

SECTION 5: Notice

Any domestic insurer which arranges a property reinsurance contract with one or more eligible unauthorized insurers in Puerto Rico must notify the Office of the Commissioner of Insurance. Said insurer shall request an informative form from the Office of the Commissioner of Insurance which shall be forwarded to the reinsurer so that it may fully complete it. The form shall contain the following information:

a) Name and address of the eligible unauthorized insurer.

b) Name and address of the ceding insurer.

c) Type of contract made.

d) Type of coverage.

e) Risks covered by the contract.

f) The effective dates of the contract.

g) An acknowledgment by the eligible unauthorized insurer of its submission to the jurisdiction of any court of justice with competent jurisdiction located in Puerto Rico for the adjudication of claims which may arise as a result of the reinsurance contract and that it will heed to the final decision of said court of justice or of any judicial review to that respect. This provision does not imply the arbitration procedures exclusion or other dispute resolution mechanisms customarily used in the

insurance industry, as long as the same are subject to supervision and its decision to review by a competent court of justice located in Puerto Rico.

h) An acknowledgement by the eligible unauthorized insurer of its submission to the jurisdiction of the Office of the Commissioner of Insurance of Puerto Rico for the adjudication of disputes, which do not relate to claims, related to the written reinsurance contract.

i) A statement by the eligible unauthorized insurer that it has guaranteed its liabilities in Puerto Rico in one of the forms contemplated in Section 6 of this Rule.

For such purposes, the domestic insurer must request from the Commissioner the corresponding original form and send it to the eligible unauthorized insurer, within 90 days after the effective date of the reinsurance contract. The eligible unauthorized insurer must fill out said form completely and return it to the Office of the Commissioner, through the ceding insurer, within the same 90 days term, in conjuction with a copy of the reinsurance contract signed by both parties and a copy of the cover note, or a placement slip attached. The reinsurance contract must include the corresponding insolvency clause recommended by the National Association of Insurance Commissioners (NAIC). The informative form must be submitted attached with sufficient documentation to accredit compliance with Section 6 of this Rule.

SECTION 6: Guarantee of Liabilities

The eligible unauthorized insurer which Section 2 of this rule refers shall guarantee its liabilities in Puerto Rico under the reinsurance contract of one or a combination of the following ways:

A. Money in cash under the possession of the ceding insurer or in a trust fund in a financial institution as defined in Section 1(i) of this Rule. The trust fund shall be governed by the following terms:

(1) The trust fund shall be established only and exclusively for the purposes of guarantee of its liabilities in Puerto Rico for, with, and for the benefit of the ceding insurer and/or the policyholders in Puerto Rico.

(2) The trust fund, or the funds deposited in it, shall not make reference to other agreement and/or liabilities between the parties which do not arise by virtue of the reinsurance assignment contract.

(3) The beneficiary shall have the right to withdraw funds from the account opened for such effects, when a valid claim arises by virtue of the reinsurance ceding contract as defined herein;

and by the laws applicable to trust funds in Puerto Rico.

B. Securities which qualify as admitted assets deposited in pledge with the ceding insurer or in a trust fund for its benefit and which are deposited in a financial institution as defined in Section 1(i) of this Rule.

C. By means of a clean, unconditional and irrevocable letter of credit issued by a qualified financial institution, as defined by Section 1(i) of this Rule, for the sum to be agreed by the ceding insurer and the eligible unauthorized insurer.

The letter of credit shall be issued for an effective period not less than one (1) year from the effective date of the reinsurance contract.

By "clean, unconditional and irrevocable" letter of credit shall be understood as follows:

(i) that it does not make reference to nor is conditioned to any other agreement, document or entity:

(ii) that is provides that only the presentation of a sight draft of the credit of letter, without any other document, shall be sufficient to draft the funds established in the credit of letter, and

(iii) that it cannot be modified or revoked without the ceding insurer's consent once it has been identified.

The letter of credit must contain a clause by which its expiration, cancellation or renewal is prevented without prior written notice to the ceding insurer o behalf of the financial entity which issued it, whose notification must be given no less than sixty days before the date of the proposed mofification.

D. By means of a deposit derived form retentions to the reinsurer and which in under the exclusive control of the ceding insurer.

E. Any other form of guarantee acceptable to the Commissioner.

Any ceding insurer shall be responsible in that the eligible unauthorized insurer which participates in its reinsurance contract complies with the necessary requirements in order to establish any of these guarantee of liabilities. Said guarantees shall be kept in effect since the reinsurance cession and until the liabilities assumed under the reinsurance contract are completely eliminated.

SECTION 7: Reserves Credit

Any domestic insurer that procures reinsurance contracts with eligible unauthorized insurers to which Section 2 of this rule refers and complies with the provisions of the same may obtain reserves credit on risks ceded to said reinsurers, as provided in Article 5.110 of the Insurance Code of Puerto Rico unless it does not comply with the requirement to submit the informative form required by Article 5 of this Rule to the Insurance Commissioner. Credit by Reserves credit shall be granted for a sum equal to the amount of the guarantee of liability established in accordance to Section 6 of this Rule.

SECTION 8: Total of Reinsurance Ceded to Eligible Unauthorized Insurers

Any domestic insurer shall be able to cede in reinsurance to the eligible unauthorized insurers included in the listing established in Section 2 of this rule:

(a) up to a total of 55% of reinsurance ceded under automatic treaties including quota share and excess of loss contracts,

(b) up to 60% of the total of reinsurance ceded under facultative contracts,

(c) up to 70% of the total of the ultimate not loss ceded in the catastrophic treaties

SECTION 9: Eligible Unauthorized Reinsurers, reference in the Annual Statement

Any domestic insurer that transact reinsurance contracts with eligible unauthorized insurers of those included in the listing established in Section 2 of this Rule, must indicate it in schedule F of its annual statement specifying the name of said eligible unauthorized insurers within a line of business which must specifically provide for such purposes.

SECTION 10: Limit of Eligible Authorization

The eligible unauthorized insurer to which Section 2 of this rule refers to must transact the application for authorization in order to transact reinsurance in Puerto Rico in accordance with Chapter 3 of the Insurance Code of Puerto Rico and comply with the necessary requirements for such purpose provided by the Office of the Commissioner of Insurance when:

(a) said insurer has received in a calendar year $2,000,000 in the agregate of gross premiums for any reinsurance contract or treaty those being quota share, catastrophic, excess, loss or facultative; or

(b) said insurer has estimated to assume for a determined contract year a sum higher than to $25,000,000 in absolute heaps of catastrophic nature in Puerto Rico;

(c) said insurer has accepted for a contract upon a sum in excess of $2,500,000 of the ultimate net loss ceded in the catastrophic pacts; or

(d) three (3) years have elapsed since the issuance of the first reinsurance contract in Puerto Rico; whatever it occurs first. Provided, as for the supposition considered under letter (d), supra that the Commissioner shall have discretion to obviate the requirement when the volume of ceded premium or maximum net loss ceded to the eligible unauthorized insurer does not justify that

its authorization be required, all that also in response to world market conditions.

Non-compliance with the provision of this Article 10 shall be the basis for declaring it ineligible in accordance with the provisions of Section 4 of this Rule. In such case, the reserve credit shall not also be recognized to the ceding insurer, except for that portion contracted when the reinsurer mantained its eligibility in accordance with this Rule and by which the guarantee of liabilities required by Section 6 of this Rule is in effect.

SECTION 11. Automatic Derogation

The operation and efectiveness of this rule shall automatically cease on December 31, 1997, with the exception that the Commissioner, by means of a resolution, expressly ratifies and extends its operation.

SECTION 12. Cases not Provided in this Rule

When a procedure has not been provided in this rule, the Office may use the criteria which from time to time the Commissioner sets forth and which, are consistent with any applicable legal provision.

SECTION 13. Declaration of Unconstitutionality or Illegality

A competent court of justice's declaration that any part of this rule is unconstitutional or illegal shall not affect the validity and constitutionality of the remaining provisions.

SECTION 14. Effectiveness

The provisions of this rule shall be effective five (5) days after the Commissioner publishes, once a week, for two consecutive weeks, an advertisement in a newspaper of general circulation in Puerto Rico, notifying in the same that the rule has been approved.

Date of Approval: November 20, 1992

Amended on:

Amended on:

Filing Date with the State Department: November 20, 1992

(Signed)
RALPH J. REXACH CHANDRI
COMMISSIONER OF INSURANCE