

Chapter Ins 47

REINSURANCE INTERMEDIARY REGULATION

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Note: Chapter Ins 47 was created as an emergency rule effective March 12, 1993.

Ins 47.01 Definitions. In this chapter:

(1) "Actuary" means a person who is a member in good standing of the American academy of actuaries.

(2) "Controlling person" means any person who directly or indirectly has the power to direct or cause to be directed, the management, control or activities of the reinsurance intermediary.

(3) "Insurer" means an insurer as defined under s. 600.03 (27), Stats., which has a certificate of authority under ch. 611, 612, 613, 614 or 618, Stats.

(4) "Policyholder surplus" means capital and surplus.

(5) "Reinsurer" means an insurer licensed in this state with the authority to assume reinsurance under ch. 627, Stats.

(6) "Reinsurance intermediary" means a reinsurance intermediary-broker or a reinsurance intermediary-manager.

(7) "Reinsurance intermediary-broker" means any person, other than an officer or employe of the ceding insurer, who solicits, negotiates or places reinsurance cessions or retrocessions on behalf of a ceding insurer.

(8) (a) "Reinsurance intermediary-manager" means any person not excluded under par. (b) who:

1. Has authority to bind, manages a separate division, department or underwriting office with responsibility for, or manages all or part of, assumed reinsurance business of a reinsurer; and

2. Acts as an agent for the reinsurer.

(b) "Reinsurance intermediary-manager" does not include:

1. An employe of the reinsurer;

2. A United States manager of the United States branch of an alien reinsurer;

3. An underwriting manager which, pursuant to contract, manages all or part of the reinsurance operations of the reinsurer, is under common control with the reinsurer, is subject to ch. 617, Stats., and ch. Ins 40, or the laws and rules of another state which are substantially similar to ch.

617, Stats., and ch. Ins 40, and whose compensation is not based on the volume of premiums written.

4. The manager of a group, association, pool or organization of insurers which engage in joint underwriting or joint reinsurance and who are subject to examination by the insurance commissioner of the state in which the manager's principal business office is located.

(9) "Qualified United States financial institution" means a financial institution that:

(a) Is organized or, in the case of a United States office of a foreign banking organization, licensed, under the laws of the United States or any state;

(b) Is regulated, supervised and examined by federal or state authorities having regulatory authority over financial institutions; and

(c) Has been determined by either the commissioner, or the securities valuation office of the national association of insurance commissioners, to meet such standards of financial condition and standing as are considered necessary and appropriate to regulate the quality of financial institutions whose letters of credit will be acceptable to the commissioner.

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

Ins 47.02 Licensure. (1) Except as provided by sub. (2):

(a) No person may act as a reinsurance intermediary-broker in this state if the reinsurance intermediary-broker maintains an office either directly or as a member or employe of a firm or association, or an officer, director or employe of a corporation:

1. In this state, unless the reinsurance intermediary-broker is a licensed reinsurance intermediary-broker in this state;

2. In another state, unless the reinsurance intermediary-broker is a licensed reinsurance intermediary-broker in this state or for that function in another state having a law or rule substantially similar to this chapter.

(b) Except as provided by sub. (2), no person may act as a reinsurance intermediary-manager:

1. For a reinsurer domiciled in this state, unless the person is a licensed reinsurance intermediary-manager in this state;

2. In this state, if the person maintains an office either directly or as a member or employe of a firm or association, or an officer, director or employe of a corporation in this state, unless the person is a licensed reinsurance intermediary-manager in this state; or

3. In another state for a nondomestic insurer, unless the person is a licensed reinsurance intermediary-manager in this state or for that function in another state having a law substantially similar to this chapter.

(2) This section does not apply to a natural person if:

(a) The natural person is named in the application or supplement to an application for a reinsurance intermediary license and the license designates the natural person as authorized to act under the license; and Register, July, 1993, No. 451

(b) The natural person is a member or employe of a firm or association licensed as a reinsurance intermediary or is an officer, director or employe of a corporation licensed as an intermediary.

(3) The commissioner may require a reinsurance intermediary-manager required to be licensed under sub. (1) to:

(a) File a bond in an amount and from an insurer acceptable to the commissioner for the protection of the reinsurer; and

(b) Maintain an errors and omissions policy in an amount acceptable to the commissioner.

(4) The commissioner may issue a reinsurance intermediary license to any person who complies with the requirements of this chapter and s. Ins 6.58 or 6.59.

(5) If the applicant for a reinsurance intermediary license is a nonresident, the applicant, as a condition precedent to receiving or holding a license, shall:

(a) Designate the commissioner as agent for service of process in the manner, and with the same legal effect, provided for by this chapter for designation of service of process upon unauthorized insurers; and

(b) Furnish the commissioner with the name and address of a resident of this state upon whom notices or orders of the commissioner or process affecting the nonresident reinsurance intermediary may be served.

(6) A nonresident reinsurance intermediary licensee shall promptly notify the commissioner in writing of every change in its designated agent for service of process, and the change is not effective until acknowledged by the commissioner.

(7) The commissioner may refuse to issue or revoke, suspend or summarily suspend, a reinsurance intermediary license if the applicant, anyone named on the application or supplement to the application, or any member, principal, officer or director of the applicant, is not trustworthy, or any controlling person is not trustworthy or any of them has given cause for revocation or suspension of a license, or has failed to comply with any prerequisite for the issuance of a reinsurance intermediary license.

(8) The commissioner may refuse to issue, suspend, summarily suspend or revoke the license of a reinsurance intermediary for violation of chs. 600 to 645, Stats., a rule adopted under ch. 600 to 645, Stats., or on any grounds described in s. 628.10, Stats.

(9) Licensed attorneys at law who act solely in their professional capacity as attorneys are exempt from this section.

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

Ins 47.03 Required contract provisions-reinsurance intermediary-brokers. No reinsurance intermediary-broker or insurer may enter into an agreement or arrangement after August 1, 1993 and after September 30, 1994, no reinsurance intermediary-broker may continue an agreement or arrangement, for the reinsurance intermediary-broker to represent the insurer as a reinsurance intermediary-broker unless the reinsurance intermediary-broker obtains written authorization from the insurer, the

reinsurance intermediary-broker complies with the terms of the authorization, and the authorization specifies the responsibilities of each party, including, but not limited to, the following:

(1) The insurer may terminate the reinsurance intermediary-broker authority at any time.

(2) The reinsurance intermediary-broker will render accounts to the insurer accurately detailing all material transactions, including information necessary to support all commissions, charges and other fees received by, or owing, to the reinsurance intermediary-broker, and remit all funds due to the insurer within 30 days of receipt.

(3) The reinsurance intermediary-broker will hold all funds collected for the insurer's account in a fiduciary capacity in a qualified United States financial institution.

(4) The reinsurance intermediary-broker will comply with s. Ins 47.04.

(5) The reinsurance intermediary-broker will comply with the written standards established by the insurer for the cession or retrocession of all risks.

(6) The reinsurance intermediary-broker will disclose to the insurer any relationship with any reinsurer to which business will be ceded or retroceded.

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

Ins 47.04 Books and records-reinsurance intermediary-brokers. (1) A reinsurance intermediary-broker shall keep a complete record for each transaction for at least 10 years after expiration of each contract of reinsurance transacted by the reinsurance intermediary-broker, showing:

(a) Type of contract, limits, underwriting restrictions, classes or risks and territory;

(b) Period of coverage, including effective and expiration dates, cancellation provisions and notice required of cancellation;

(c) Reporting and settlement requirements of balances;

(d) Rate used to compute the reinsurance premium;

(e) Names and addresses of assuming reinsurers;

(f) Rates of all reinsurance commissions, including the commissions on any retrocessions handled by the reinsurance intermediary-broker;

(g) Related correspondence and memoranda;

(h) Proof of placement;

(i) Details regarding retrocessions handled by the reinsurance intermediary-broker including the identity of retrocessionaries and percentage of each contract assumed or ceded;

(j) Financial records, including but not limited to, premium and loss accounts; and

(k) When the reinsurance intermediary-broker procures a reinsurance contract on behalf of a licensed ceding insurer:

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1. Directly from any assuming reinsurer, written evidence that the assuming reinsurer has agreed to assume the risk; or
2. If placed through a representative of the assuming reinsurer, other than an employee, written evidence that the reinsurer has delegated binding authority to the representative.

(2) A reinsurance intermediary-broker shall give each insurer it represents access to and the right to copy and audit all accounts and records maintained by the reinsurance intermediary-broker related to the insurer's business in a form usable by the insurer.

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

Ins 47.05 Duties of insurers utilizing the services of a reinsurance intermediary-broker; prohibited function. (1) An insurer may not use the services of any person to act as a reinsurance intermediary-broker on its behalf unless the person is licensed as required by this chapter.

(2) An insurer may not employ an individual who is employed by a reinsurance intermediary-broker with which it transacts business, unless the reinsurance intermediary-broker is under common control with the insurer and subject to ch. 617, Stats. and ch. Ins 40, or the laws and rules of another state which are determined by the commissioner to be substantially similar to ch. 617, Stats., and ch. Ins 40.

(3) An insurer shall annually obtain a copy of statements of the financial condition of each reinsurance intermediary-broker with which it transacts business.

(4) A reinsurance intermediary-broker required to be licensed under this chapter may not bind, and an insurer may not give the reinsurance intermediary-broker authority to bind, ceded reinsurance on behalf of the insurer, except that the reinsurance intermediary-broker may bind ceded facultative reinsurance pursuant to obligatory facultative agreements if the contract with the insurer contains reinsurance underwriting guidelines for the retrocessions. The guidelines shall include a list of reinsurers with which the automatic agreements are in effect, and for each such reinsurer, the coverages and amounts or percentages that may be reinsured, and commission schedules.

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

Ins 47.06 Required contract provisions-reinsurance intermediary-manager. No reinsurance intermediary-manager or reinsurer may enter into an agreement or arrangement, or amend or renew an agreement or arrangement, after August 1, 1993 for the reinsurance intermediary-manager to represent the reinsurer, or continue an agreement or arrangement in effective on August 1, 1993 after September 30, 1994, unless the agreement or arrangement is a written contract which specifies the responsibilities of each party and complies with this section, the reinsurance intermediary-manager complies with the contract, and the contract is approved by the reinsurer's board of directors, is filed with the commissioner for approval at least 30 days before the reinsurer assumes or cedes business through the reinsurance intermediary-manager, and the commissioner approves the contract. The contract shall specify the responsibilities of the reinsurance intermediary-manager, including, but not limited to, the following:

(1) The reinsurer may terminate the contract for cause upon written notice to the reinsurance intermediary-manager. The reinsurer may immediately suspend the authority of the reinsurance intermediary-manager to assume or cede business during the pendency of any dispute regarding the cause for termination.

(2) The reinsurance intermediary-manager will render accounts to the reinsurer accurately detailing all material transactions, including information necessary to support all commissions, charges and other fees received by, or owing to the reinsurance intermediary-manager, and remit all funds due under the contract to the reinsurer on not less than a monthly basis.

(3) All funds collected for the reinsurer's account will be held by the reinsurance intermediary-manager in a fiduciary capacity in a qualified United States financial institution. The reinsurance intermediary-manager may retain no more than 3 months estimated claims payments and allocated loss adjustment expenses. The reinsurance intermediary-manager shall maintain a separate financial institution account for each reinsurer that it represents.

(4) For at least 10 years after expiration of each contract of reinsurance transacted by the reinsurance intermediary-manager, the reinsurance intermediary-manager will keep a complete record for each transaction showing:

(a) The type of contract, limits, underwriting restrictions, classes or risks and territory;

(b) Period of coverage, including effective and expiration dates, cancellation provisions and notice required of cancellation, and disposition of outstanding reserves on covered risks;

(c) Reporting and settlement requirements of balances;

(d) Rate used to compute the reinsurance premium;

(e) Names and addresses of reinsurers;

(f) Rates of all reinsurance commissions, including the commissions on any retrocessions handled by the reinsurance intermediary-manager;

(g) Related correspondence and memoranda;

(h) Proof of placement;

(i) Details regarding retrocessions handled by the reinsurance intermediary-manager, as permitted under s. Ins 47.08 (4), including the identity of retrocessionaires and percentage of each contract assumed or ceded;

(j) Financial records, including but not limited to, premium and loss accounts; and

(k) When the reinsurance intermediary-manager places a reinsurance contract on behalf of a ceding insurer:

1. Directly from any assuming reinsurer, written evidence that the assuming reinsurer has agreed to assume the risk; or

2. If placed through a representative of the assuming reinsurer, other than an employe, written evidence that the reinsurer has delegated binding authority to the representative.

(5) A reinsurance intermediary-manager shall give the reinsurer it represents access to and the right to copy and audit all accounts and records maintained by the reinsurance intermediary-manager related to the reinsurer's business in a form usable by the reinsurer.

(6) The contract may not be assigned in whole or in part by the reinsurance intermediary-manager.

(7) The reinsurance intermediary-manager will comply with the written underwriting and rating standards established by the insurer for the acceptance, rejection or cession of all risks.

(8) Rates, terms and purposes of commissions, charges and other fees which the reinsurance intermediary-manager may levy against the reinsurer.

(9) If the contract permits the reinsurance intermediary-manager to settle claims on behalf of the reinsurer:

(a) All claims will be reported to the reinsurer in a timely manner;

(b) A copy of the claim file will be sent to the reinsurer at its request or as soon as it becomes known that the claim:

1. Has the potential to exceed the lesser of an amount equal to 3% of the reinsurer's policyholder surplus as of the end of the immediately preceding calendar year or the limit set by the reinsurer;

2. Involves a coverage dispute;

3. May exceed the reinsurance intermediary-manager's claims settlement authority;

4. Is open for more than 6 months; or

5. Is closed by payment of an amount equal to or greater than the lesser of 1% of the reinsurer's policyholder surplus as of the end of the immediately preceding calendar year or an amount set by the reinsurer;

(c) All claim files will be the joint property of the reinsurer and reinsurance intermediary-manager, but upon an order of liquidation of the reinsurer the files shall become the sole property of the reinsurer or its estate and the reinsurance intermediary-manager shall have reasonable access to and the right to copy the files on a timely basis;

(d) Any settlement authority granted to the reinsurance intermediary-manager may be terminated for cause upon the reinsurer's written notice to the reinsurance intermediary-manager or upon the termination of the contract. The reinsurer may suspend the settlement authority during the pendency of the dispute regarding the cause of termination.

(10) If the contract provides for a sharing of interim profits by the reinsurance intermediary-manager, that the interim profits will not be paid until one year after the end of each underwriting period for property business and 5 years after the end of each underwriting period for casualty business, or a later period set by order of the commissioner for speci-

fied lines of insurance, and not until the adequacy of reserves on remaining claims has been verified pursuant to s. Ins 47.08 (3).

(11) The reinsurance intermediary-manager will annually provide the reinsurer with a statement of its financial condition prepared by an independent certified accountant.

(12) The reinsurer shall at least semiannually conduct an on-site review of the underwriting and claims processing operations of the reinsurance intermediary-manager.

(13) The reinsurance intermediary-manager will disclose to the reinsurer any relationship it has with any insurer prior to ceding or assuming any business with the insurer under the contract.

(14) Within the scope of its actual or apparent authority the acts of the reinsurance intermediary-manager are the acts of the reinsurer on whose behalf it is acting.

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

Ins 47.07 Prohibited acts. A reinsurance intermediary-manager may not:

(1) Cede retrocessions on behalf of the reinsurer, except that the reinsurance intermediary-manager may cede facultative retrocessions pursuant to obligatory facultative agreements if the contract with the reinsurer contains reinsurance underwriting guidelines for the retrocessions. The guidelines shall include a list of reinsurers with which the automatic agreements are in effect, and for each such reinsurer, the coverages and amounts or percentages that may be reinsured, and commission schedules.

(2) Commit the reinsurer to participate in reinsurance syndicates.

(3) Appoint any producer without assuring that the producer is lawfully licensed to transact the type of reinsurance for which the producer is appointed.

(4) Without prior approval of the reinsurer, pay or commit the reinsurer to pay a claim, net of retrocessions, that exceeds the lesser of an amount specified by the reinsurer or one percent of the reinsurer's policyholder surplus as of December 31 of the last complete calendar year.

(5) Collect any payment from a retrocessionaire or commit the reinsurer to any claim settlement with a retrocessionaire, without prior approval of the reinsurer. If prior approval is given, the reinsurance intermediary-manager shall promptly forward a report to the reinsurer.

(6) Jointly employ an individual who is employed by the reinsurer unless such reinsurance intermediary-manager is under common control with the reinsurer and subject to ch. 617, Stats., and ch. Ins 40, or the laws and rules of another state which are substantially similar to ch. 617, Stats., and ch. Ins 40.

(7) Appoint a subreinsurance intermediary-manager.

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

Ins 47.08 Duties of reinsurers utilizing the services of a reinsurance intermediary-manager. (1) A reinsurer shall not engage the services of any Register, July, 1993, No. 451

person to act as a reinsurance intermediary-manager on its behalf unless the person is licensed as required by s. Ins 47.02.

(2) A reinsurer shall annually obtain a copy of statements of the financial condition of each reinsurance intermediary-manager which the reinsurer has engaged prepared by an independent certified accountant in a form acceptable to the commissioner.

(3) A reinsurer shall annually obtain the opinion of an actuary attesting to the adequacy of loss reserves established for losses incurred and outstanding on business produced by the reinsurance intermediary-manager if the reinsurance intermediary-manager establishes loss reserves. This opinion is in addition to any other required loss reserve certification required under s. Ins 50.30.

(4) A reinsurer shall require that binding authority for all retrocessional contracts or participation in reinsurance syndicates shall rest with an officer of the reinsurer who shall not be associated with the reinsurance intermediary-manager.

(5) Within 30 days of termination of a contract with a reinsurance intermediary-manager, the reinsurer shall provide written notification of the termination to the commissioner.

(6) A reinsurer may not appoint to its board of directors, any officer, director, employe, controlling shareholder or subproducer of its reinsurance intermediary-manager and no officer, director, employe, controlling shareholder, director or subproducer of its reinsurance intermediary-manager may accept appointment to or serve on the board of directors of the reinsurer. This subsection shall not apply to relationships governed by ch. 617, Stats., or, if applicable, ch. Ins 45 or a similar law of another state.

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

Ins 47.09 Effect of noncompliance on contract terms. A contract between a reinsurance intermediary and an insurer that violates s. Ins 47.03 or 47.06 is enforceable against the reinsurance intermediary as if it conformed to s. Ins 47.03 or 47.06.

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

Ins 47.10 Examination authority. (1) A reinsurance intermediary may be examined by the commissioner. A reinsurance intermediary shall give the commissioner access to all books, financial institution accounts and records of the reinsurance intermediary in a form usable to the commissioner.

(2) A reinsurance intermediary-manager may be examined as if it were the reinsurer.

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