AUGUST 1, 1994

DIRECTIVE NO. 121
REINSURANCE IN LOUISIANA

PART I. CREDIT FOR REINSURANCE

SECTION 1. PURPOSE

The purpose of this directive is to provide information and direction to enable Louisiana domestic insurers and fraternal benefit societies (the "ceding insurer") to receive credit for reinsurance ceded to another insurer ("assuming insurer") under a reinsurance agreement. The legislative authority for a ceding insurer to receive credit for reinsurance ceded is Louisiana Revised Statutes 22:941-948, and both the ceding insurer and the assuming insurer must comply with the applicable provisions therein as well as with any other applicable provisions of the Louisiana Insurance Code, other provisions of the Louisiana Revised Statutes, and rules, regulations, directives, and orders of the Louisiana Department of Insurance (the "Department") or the Commissioner of Insurance (the "Commissioner").

SECTION 2. REQUIREMENTS FOR DOMESTIC INSURERS TO RECEIVE CREDIT FOR REINSURANCE CEDED

In addition to complying with any applicable provisions referred to in Section 1, for a ceding insurer to receive credit for reinsurance ceded to an assuming insurer under a reinsurance agreement:

1. The assuming insurer must be included on the list of approved assuming insurers maintained by the Department (See Section 3), or

2. The requirements for a reduction from liability, as stated in Louisiana Revised Statutes 22:941.1 et seq, must be met (See Section 4).

SECTION 3. HOW AN ASSUMING INSURER MAY BE INCLUDED ON THE LIST OF APPROVED ASSUMING INSURERS

The Department will maintain a list of approved assuming insurers which will be periodically updated. An assuming insurer will be included on the list of approved assuming insurers maintained by the Department if the assuming insurer complies with one of the following Subsections A, B, C or D:

A. The assuming insurer is licensed to transact insurance in this state.

1. An assuming insurer is licensed if it possesses a certificate of authority to transact insurance in this state, and, if a foreign or alien insurer, possesses at least TEN MILLION AND NO/100 DOLLARS ($10,000,000.00) in surplus as regards to policyholders. No additional application is required to qualify for inclusion on the list of approved assuming insurers.

2. If a foreign or alien assuming insurer possessing a certificate of authority to transact business in this state does not possess at least TEN MILLION AND NO/100 DOLLARS ($10,000,000.00) in surplus as regards policyholders as reported on such insurer's last annual statement, then, in the case of:

   (1) reinsurance agreements or amendments to reinsurance agreements with an effective date prior to July 1, 1994, and executed by both parties prior to July 1, 1994, or

   (2) reinsurance agreements or amendments to reinsurance agreements with an effective date prior to July 1, 1994 and executed by both parties prior to October 1, 1994 where a letter of intent was executed by both parties prior to July 1, 1994,

   the foreign or alien insurer will be included on the list of approved assuming insurers until the end of the term of the reinsurance agreements or amendments, provided that:

   (1) no new business is ceded under the agreements after June 30, 1994,

   (2) no renewal of the agreement is entered into after June 30, 1994, and

   (3) no extension of the term of the agreement is entered into after June 30, 1994.

OR

B. The assuming insurer is accredited as a reinsurer.

The following assuming insurers, which maintain a surplus as regards to policyholders in an amount not less than $20,000,000, may become accredited reinsurers:

1. An assuming insurer which has been approved by the Commissioner after completing and filing with the Department the Annual Registration for Reinsurers Form of the Department to become an accredited reinsurer and which is licensed to transact insurance or reinsurance in at least one state, or, in the case of the United States branch of an alien assuming insurer, is entered through and licensed to transact insurance or reinsurance in at least one state, or

2. An assuming insurer which has been approved by the Commissioner after completing and filing with the Department the Annual Registration for Reinsurers Form of the Department to become an accredited reinsurer and which is domiciled and licensed in, or, in the case of a United States branch of an alien assuming insurer, is entered through a state which employs standards regarding credit for reinsurance equal to or exceeding those applicable under Louisiana law, or

3. An assuming insurer which has been approved in advance by the Commissioner. Such approval may be granted by the Commissioner in his sole discretion, only after the insurer has completed and filed with the Department the Annual Registration for Reinsurers Form of the Department to become an accredited reinsurer.

OR

C. The assuming insurer maintains a trust fund approved by the Department.

An assuming insurer may be included on the list of approved assuming insurers if such insurer has been approved by the Commissioner after completing and filing with the Department the Annual Registration for Reinsurers Form of the Department and after the Department has received and approved such insurer's trust instrument.

OR

D. The assuming insurer's insurance of risks is located in jurisdictions where the reinsurance is required by applicable law or regulation of that jurisdiction, and the assuming insurer has been approved by the Commissioner after completing and filing with the Department the Annual Registration for Reinsurers Form of the Department.

SECTION 4. REQUIREMENTS FOR A REDUCTION FROM LIABILITY (LOUISIANA REVISED STATUTES 22:941.1 et seq)

A reduction in liability for reinsurance ceded by a ceding insurer to an assuming insurer shall be allowed, on a case by case basis, where an assuming insurer is not included on the list of approved assuming insurers, subject to the following conditions:

A. The assuming insurer has been approved by the Commissioner after completing and filing with the Department the Annual Registration for Reinsurers Form of the Department.

B. The reduction from liability shall be allowed in an amount not exceeding the liabilities carried by the ceding insurer.

C. The reduction from liability shall be in the amount of funds held by or on behalf of the ceding insurer, including funds held in trust for the ceding insurer, under a reinsurance agreement with the assuming insurer as security for the payment of obligations thereunder, if such security is 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.

1. A qualified United States financial institution means an institution that:

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

b. Is regulated, supervised, and examined by United States federal or state authorities having regulatory authority over banks and trust companies; and

c. Has been determined by either the Commissioner or the Securities Valuation Office of the National Association of Insurance Commissioners (NAIC) to satisfy the standards of financial condition and standing as are considered necessary and appropriate to regulate to quality of financial institutions whose letters of credit may be acceptable to the Commissioner.

2. The security may be in the form of:

a. Cash,

b. Securities listed by the Securities Valuation Office of the NAIC and qualifying as admitted assets,

c. Letters of credit meeting the standards of Section 5 of this directive, or

d. Any other form of security acceptable to the Commissioner.

SECTION 5. LETTERS OF CREDIT

A. As used in this Section, the following terms shall have the following meanings:

1. A "beneficiary" means a domestic insurer for whose benefit the letter of credit has been established and any successor of the beneficiary by operation of law.

2. A letter of credit is "clean" if it requires that the beneficiary present only a demand for payment, and no other documentation, to the issuing bank.

3. A letter of credit is "irrevocable" if it can be modified only with the consent of the parties specified in the contract.

4. A letter of credit is "unconditional" if it makes no reference to any other agreement, document or entity.

5. A letter of credit is "evergreen" if it is renewed automatically unless the issuing bank gives advance written notice to both parties not less than 30 days prior to the expiration date.

B. A letter of credit is acceptable if it meets the following criteria:

1. The letter of credit is clean, irrevocable, unconditional and contains an evergreen clause;

2. The letter of credit is issued or confirmed by a qualified United States financial institution, as defined in Section 5, no later than December thirty-first of the year for which the filing is being made, and is in the possession of the ceding company on or before the filing date of its annual statement;

3. The letter of credit has a term of at least one year; and

4. The letter of credit has an issue date and a date of expiration.

C. 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 occurs first.

PART II. REINSURANCE AGREEMENTS REQUIRING APPROVAL

SECTION 6. REINSURANCE AGREEMENTS WHICH MUST BE APPROVED BY THE COMMISSIONER

Certain reinsurance agreements must be approved in writing by the Commissioner before they are entered into by a ceding insurer, even if the assuming insurer is included on the list of approved assuming insurers or the requirements for a reduction from liability are met.

A. The following types of reinsurance agreements must be approved in writing by the Commissioner before they are entered into by a ceding insurer:

1. Any reinsurance agreement between a ceding insurer and a non-admitted or unauthorized assuming insurer, unless the Commissioner, in writing, states that such approval is not required.

2. Agreements of reinsurance of any life insurer other than agreements made in the ordinary course of business covering reinsurance of individual lives or joint lives under reinsurance agreements relating to current business.

3. Agreements whereby any insurer, other than a life insurer, cedes to any insurer or insurers at one time, or during a period of six consecutive months more than twenty percent of the total amount of its outstanding risks, not including in either case in such outstanding risks those ceded by agreements made in the ordinary course of business covering the reinsurance of individual risks under reinsurance relating to current business.

B. For the purposes of this directive, an agreement "made in the ordinary course of business," as used herein, is defined as an agreement which:

1. is related to the regular and ongoing issuance of new business, including but not limited to:

   a. a yearly renewable term agreement (if calculated by the net amount at risk method),
   b. an agreement involving the reinsurance of group term life policies,

2. has an effective date which is prior to the issuance of any policy covered by the agreement, and

3. includes the date it is executed, and is executed not later than 90 days after the effective date of the agreement, unless the Commissioner extends or waives such 90 day period in writing, upon good cause shown, or

4. is a facultative agreement meeting the provisions of Section 6(B)(1), (2), and (3) above, and the provisions of which do not violate the laws of the State of Louisiana or the rules, regulations, directives or orders of the Department or the Commissioner.

C. For the purposes of this directive, an agreement "made in the ordinary course of business," as used herein, shall not include the following:

1. an assumption agreement,

2. an arrangement which does not meet the transfer of risk criteria of the NAIC Accounting Practices and Procedures Manual for Property and Casualty Insurance Companies,

3. a modified coinsurance agreement,

4. a financial reinsurance agreement, and

5. other agreements, as the Commissioner in his sole discretion may determine.

SECTION 7. PENALTIES FOR NON-COMPLIANCE

A ceding insurer or an assuming insurer may be subject to the following penalties for entering into a reinsurance agreement which has not been approved in writing by the Commissioner in accordance with the provisions of this directive:

1. Disallowance of credit for reinsurance

2. Suspension of certificate of authority, if applicable

3. Revocation of certificate of authority, if applicable

4. Cease and desist order

5. Termination of the reinsurance agreement

6. Fines

7. Any other penalties allowed by law

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