

§793. Conservation, rehabilitation or liquidation

1. Authorized insurer. A special purpose reinsurance vehicle is considered an authorized insurer for purposes of section 4351, subsection 1, and the provisions of chapter 57 apply to a reinsurance vehicle or to any of a reinsurance vehicle's protected cells, except to the extent modified by this section. [PL 2007, c. 386, §19 (AMD).]

2. Grounds for action. Notwithstanding the provisions of sections 4356 and 4357, the Superior Court may issue an order authorizing the superintendent to conserve, rehabilitate or liquidate a special purpose reinsurance vehicle domiciled in this State, or one or more of its protected cells, only if the superintendent proves by clear and convincing evidence or the reinsurance vehicle stipulates after notice and opportunity for hearing that:

A. There has been embezzlement, wrongful sequestration, dissipation or diversion of the assets of the reinsurance vehicle or protected cell intended to be used to pay amounts owed to the ceding insurer or the holders of special purpose reinsurance vehicle securities; or [PL 2007, c. 386, §19 (AMD).]

B. The reinsurance vehicle or protected cell is insolvent and the holders of a majority in outstanding principal amount of each class of special purpose reinsurance vehicle securities request or consent to conservation, rehabilitation or liquidation under this subchapter. [PL 2007, c. 386, §19 (AMD).]

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3. Receiver. Notwithstanding any contrary provision of this Title, rules adopted under this Title or any other applicable law, upon any order of conservation, rehabilitation or liquidation of the special purpose reinsurance vehicle or one or more of its protected cells, a receiver is bound to deal with the reinsurance vehicle's assets and liabilities in accordance with the requirements under this subchapter. [PL 2007, c. 386, §19 (AMD).]

3-A. Protected cells. The following provisions apply to the insolvency of a special purpose reinsurance vehicle with protected cells or to the insolvency of a protected cell.

A. The insolvency of one protected cell does not constitute the insolvency of any other protected cell or of the special purpose reinsurance vehicle itself. The insolvency of a special purpose reinsurance vehicle does not constitute the insolvency of any of its solvent protected cells and is not a basis for the receivership of any solvent protected cell capable of independent operation. [PL 2007, c. 386, §19 (NEW).]

B. Notwithstanding the insolvency of the special purpose reinsurance vehicle or of any other protected cell, the obligations attributed to any solvent protected cell must continue to be paid as they come due. [PL 2007, c. 386, §19 (NEW).]

C. The assets attributed to a protected cell may not be applied to the liabilities attributed to another protected cell or to the reinsurance vehicle generally, except that:

(1) If the insolvency of the special purpose reinsurance vehicle renders a protected cell incapable of being managed independently, a receiver may, after consultation with the creditors of the protected cell, contract for the management of the protected cell and charge to the protected cell a reasonable amount for those services;

(2) A general liability of an insolvent special purpose reinsurance vehicle may be apportioned equitably in whole or in part to one or more of its protected cells if the Superior Court determines that the liability arises out of the operations of the protected cell or cells and that the interests of innocent creditors of the protected cell or cells are not unreasonably impaired; and

(3) If assets or liabilities have been commingled, or have been wrongfully transferred between protected cells or between a protected cell and the general account, the Superior Court shall trace the assets and attribute them to the proper accounts, giving due consideration to the terms of any relevant governing instrument or contract. [PL 2007, c. 386, §19 (NEW).]

D. The plan of rehabilitation or liquidation of any special purpose reinsurance vehicle with protected cells must make reasonable provision for the continued operation of all solvent protected cells, which may involve the formation of one or more new special purpose reinsurance vehicles or the transfer of one or more protected cells. [PL 2007, c. 386, §19 (NEW).]

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4. Recoverable amounts. With respect to amounts recoverable under a special purpose reinsurance vehicle contract, the amount recoverable by the receiver may not be reduced or diminished as a result of the entry of an order of conservation, rehabilitation or liquidation with respect to the ceding insurer, notwithstanding any provisions to the contrary in the contracts or other documentation governing the special purpose reinsurance vehicle insurance securitization.

A. Notwithstanding the provisions of chapter 57, an application or petition in any delinquency proceeding relating to a ceding insurer or any temporary restraining order or injunction issued in any such proceeding may not prohibit the transaction of any business by a reinsurance vehicle, including any payment by a reinsurance vehicle made pursuant to a special purpose reinsurance vehicle security or any action or proceeding against a reinsurance vehicle or its assets. [PL 2003, c. 249, §2 (NEW).]

B. Notwithstanding the provisions of chapter 57, subchapter 2, the commencement of a summary proceeding or other interim proceeding commenced prior to a formal delinquency proceeding with respect to a reinsurance vehicle and any order issued by the court in such proceeding may not prohibit a reinsurance vehicle from making a payment pursuant to a special purpose reinsurance vehicle security or contract or from taking any action required to make the payment. [PL 2003, c. 249, §2 (NEW).]

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5. Nonfraudulent transfer. Notwithstanding any other provision of chapter 57 or other state law:

A. A receiver of a ceding insurer may not void a nonfraudulent transfer by a ceding insurer to a special purpose reinsurance vehicle of money or other property made pursuant to a special purpose reinsurance vehicle contract; and [PL 2007, c. 386, §19 (AMD).]

B. A receiver of a special purpose reinsurance vehicle may not void a nonfraudulent transfer by the reinsurance vehicle of money or other property made to a ceding insurer pursuant to a special purpose reinsurance vehicle contract or made to or for the benefit of any holder of a special purpose reinsurance vehicle security on account of the special purpose reinsurance vehicle security. [PL 2003, c. 249, §2 (NEW).]

[PL 2007, c. 386, §19 (AMD).]

6. Fulfillment of obligations. With the exception of the fulfillment of the obligations under a special purpose reinsurance vehicle contract and notwithstanding any other provisions of this subchapter or other law of this State to the contrary, the assets of a special purpose reinsurance vehicle including assets held in trust may not be consolidated with or included in the estate of a ceding insurer in any delinquency proceeding against the ceding insurer under this subchapter for any purpose, including, without limitation, distribution to creditors of the ceding insurer.

[PL 2003, c. 249, §2 (NEW).]

7. Domiciliary receiver. Notwithstanding any other provision of this subchapter:

A. The domiciliary receiver of a special purpose reinsurance vehicle domiciled in another state is vested by operation of law with the title to all of the assets, property, contracts and rights of action

and all of the books, accounts and other records of the reinsurance vehicle located in this State. The domiciliary receiver has the immediate right to recover all such vested property, assets and causes of action of the reinsurance vehicle located in this State ; and [PL 2007, c. 386, §19 (AMD).]

B. An ancillary proceeding may not be commenced or prosecuted in this State against a special purpose reinsurance vehicle domiciled in another state. [PL 2003, c. 249, §2 (NEW).]
[PL 2007, c. 386, §19 (AMD).]

SECTION HISTORY

PL 2003, c. 249, §2 (NEW). PL 2007, c. 386, §19 (AMD).

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