

§784. Approved transactions and operation of special purpose reinsurance vehicles

1. Contracts. Special purpose reinsurance vehicles authorized under this subchapter may enter into and effectuate special purpose reinsurance vehicle contracts with one or more ceding insurers as long as the contracts:

A. Obligate the reinsurance vehicle to indemnify the ceding insurer for losses; [PL 2003, c. 249, §2 (NEW).]

B. Are securitized in full through a single special purpose reinsurance vehicle insurance securitization or, if protected cells are used, through a single special purpose reinsurance vehicle insurance securitization for each protected cell; and [PL 2007, c. 386, §10 (AMD).]

C. Are fully funded and secured with assets held in trust in accordance with the requirements of this section pursuant to agreements proposed under this subchapter, and invested in a manner that meets the criteria set forth in section 795. [PL 2003, c. 249, §2 (NEW).]

[PL 2007, c. 386, §10 (AMD).]

2. Eligible lines of business. A special purpose reinsurance vehicle contract may only provide catastrophe excess of loss property reinsurance coverage or catastrophe life or health reinsurance coverage, unless the superintendent adopts rules pursuant to section 797 specifying additional lines of business that may be reinsured by a special purpose reinsurance vehicle or approves a waiver of the requirement of this subsection for good cause shown with respect to a particular application.

[PL 2007, c. 386, §11 (AMD).]

3. Multiple ceding insurers. A special purpose reinsurance vehicle may enter into contracts with multiple ceding insurers only if each contract is attributable to a different protected cell or if:

A. The special purpose reinsurance vehicle reinsures no more than 10 ceding insurers; and [PL 2003, c. 249, §2 (NEW).]

B. Each ceding insurer has no more than \$50,000,000 in surplus as reported in its most recent financial statement filed with its domiciliary regulator, as of the date the special purpose reinsurance vehicle is licensed. A group of ceding insurers under common control may elect to be treated as separate insurers for purposes of this subsection, but only if each insurer in the group that is reinsured by the same special purpose reinsurance vehicle is counted separately for purposes of the 10-cedent limit. [PL 2003, c. 249, §2 (NEW).]

[PL 2007, c. 386, §12 (AMD).]

4. Terms of operation. A special purpose reinsurance vehicle may enter into agreements with 3rd parties and conduct business necessary to fulfill its obligations and administrative duties incident to the insurance securitization and the special purpose reinsurance vehicle contract. The agreements may include entering into swap agreements or other transactions that have the objective of leveling timing differences in funding upfront or ongoing transaction expenses or managing credit or interest rate risk of the investments in trust to ensure that the assets held in trust are sufficient to satisfy payment or repayment of the securities issued pursuant to an insurance securitization transaction and any other obligations of the special purpose reinsurance vehicle. In fulfilling its function, the special purpose reinsurance vehicle shall adhere to the following requirements and shall, to the extent of its powers, ensure that contracts obligating other parties to perform certain functions incident to its operations are substantively and materially consistent with the following requirements and guidelines.

A. A special purpose reinsurance vehicle must have a distinct name, which must include the designation "SPRV" or "Special Purpose Reinsurance Vehicle." The name of the reinsurance vehicle may not be deceptively similar to, or likely to be confused with or mistaken for, any other existing business name registered in this State. [PL 2003, c. 249, §2 (NEW).]

B. Unless otherwise provided in the plan of operation, the principal place of business and office of any reinsurance vehicle organized under this subchapter must be located in this State. [PL 2003, c. 249, §2 (NEW).]

C. The assets of a reinsurance vehicle must be preserved and administered by or on behalf of the reinsurance vehicle to satisfy the liabilities and obligations of the reinsurance vehicle incident to the insurance securitization and other related agreements including the contract. [PL 2003, c. 249, §2 (NEW).]

D. Except as provided in paragraph D-1, assets of the reinsurance vehicle that are pledged to secure obligations of the reinsurance vehicle to a ceding insurer under a contract must be held in trust and administered by a qualified United States financial institution serving as trustee. The qualified United States financial institution may not control, be controlled by or be under common control with the reinsurance vehicle or any ceding insurer. [PL 2007, c. 386, §13 (AMD).]

D-1. If approved by the superintendent, the reinsurance vehicle and the ceding insurer may enter into a written agreement, in compliance with the ceding insurer's applicable domiciliary credit for reinsurance laws, under which the assets pledged as security, in lieu of being held in trust, are held in the United States subject to withdrawal solely by the ceding insurer and under its exclusive control. The security agreement may not be approved unless the superintendent determines that the agreement is consistent with the purposes of this subsection, that the ceding insurer has unconditional access to the funds necessary to fulfill the reinsurance vehicle's obligations to the ceding insurer and that the assets withheld under the control of the ceding insurer are never less than the amount that would otherwise be required to be held in trust. [PL 2007, c. 386, §13 (NEW).]

E. The trust described in paragraph D must be governed by a written agreement between the reinsurance vehicle and the ceding insurer that creates one or more trust accounts into which all pledged assets must be deposited and held until distributed in accordance with the trust agreement. The pledged assets must be held by the trustee at the trustee's office in the United States and may be held in certificated or electronic form. [PL 2007, c. 386, §13 (AMD).]

F. The provisions for withdrawal by the ceding insurer of funds from the trust must comply with the ceding insurer's applicable domiciliary credit for reinsurance laws and be clean and unconditional, subject only to the following requirements:

- (1) The ceding insurer has the right to withdraw assets from the trust account at any time without notice to the reinsurance vehicle subject only to written notice to the trustee from the ceding insurer that funds in the amount requested are due and payable by the reinsurance vehicle;
- (2) No other statement or document need be presented in order to withdraw assets, except that the ceding insurer may be required to acknowledge receipt of withdrawn assets;
- (3) The trust agreement described in paragraph E must indicate that it is not subject to any conditions or qualifications outside of the trust agreement;
- (4) The trust agreement described in paragraph E may not contain references to any other agreements or documents; and
- (5) Reference may not be made to the fact that these funds may represent reinsurance premiums or that the funds have been deposited for any specific purpose. [PL 2007, c. 386, §13 (AMD).]

G. The trust agreement described in paragraph E must be established for the sole use and benefit of the ceding insurer at least to the full extent of the reinsurance vehicle's obligations to the ceding insurer under the contract. In the case of more than one ceding insurer or more than one reinsurance

contract with the same ceding insurer, a separate trust agreement must be entered into with each ceding insurer and a separate trust account must be maintained for each ceding insurer. [PL 2007, c. 386, §13 (AMD).]

H. The trust agreement described in paragraph E must provide for the trustee to:

- (1) Receive assets and hold all assets in a safe place;
- (2) Determine that all assets are in a form that the ceding insurer or the trustee, upon direction by the ceding insurer, may whenever necessary negotiate the assets, without consent or signature from the reinsurance vehicle or any other person or entity;
- (3) Furnish to the reinsurance vehicle, the superintendent and the ceding insurer a statement of all assets in the trust account referred to in paragraph E reported at fair value upon its inception and at intervals no less frequent than the end of each calendar quarter;
- (4) Notify the reinsurance vehicle and the ceding insurer within 10 days of any deposits to or withdrawals from the trust account referred to in paragraph E;
- (5) Upon written demand of the ceding insurer, immediately take steps necessary to transfer absolutely all right, title and interest in the assets held in the trust account referred to in paragraph E to the ceding insurer and deliver physical custody of the assets to the ceding insurer; and
- (6) Allow no substitutions or withdrawals of assets from the trust account referred to in paragraph E except on written instructions from the ceding insurer. [PL 2003, c. 249, §2 (NEW).]

I. The trust agreement described in paragraph E must provide that at least 30 days but not more than 45 days before termination of the trust account written notification of termination must be delivered by the trustee to the ceding insurer. [PL 2007, c. 386, §13 (AMD).]

J. The trust agreement described in paragraph E may be made subject to and governed by the laws of any state in addition to the requirements for the trust as provided in this subchapter as long as the state is disclosed in the plan of operation filed with and approved by the superintendent. [PL 2003, c. 249, §2 (NEW).]

K. The trust agreement described in paragraph E must prohibit invasion of the trust account referred to in paragraph E for the purpose of paying compensation to or reimbursing the expenses of the trustee. [PL 2003, c. 249, §2 (NEW).]

L. The trust agreement described in paragraph E must provide that the trustee be liable for the trustee's own negligence, willful misconduct or lack of good faith.

(1) Notwithstanding the provisions of paragraph F, subparagraphs (3) to (5) and paragraph M, subparagraph (5), when a trust agreement described in paragraph E is established in conjunction with a contract, then the trust agreement may provide that the ceding insurer shall undertake to use and apply any amounts drawn upon the trust account without diminution because of the insolvency of the ceding insurer or the reinsurance vehicle for the following purposes:

- (a) To pay or reimburse the ceding insurer amounts due to the ceding insurer under the contract, including, but not limited to, unearned premiums due to the ceding insurer if not otherwise paid by the reinsurance vehicle in accordance with the terms of that trust agreement; or
- (b) When the ceding insurer has received notification of termination of the trust account referred to in paragraph E and when some or all of the reinsurance vehicle's obligations under the specific contract remain unliquidated and undischarged 10 days before the termination date, to withdraw amounts equal to the undischarged obligations and deposit

the 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 sole purpose of discharging any contractual obligations of the reinsurance vehicle that may remain executory after the withdrawal and for any period after the termination date. Assets so held must revert to the reinsurance vehicle when they are no longer necessary to secure the obligations of the reinsurance vehicle and may not exceed the sum of the following amounts as determined in good faith by the ceding insurer:

- (i) Losses and loss expenses paid by the ceding insurer but not recovered from the reinsurance vehicle;
- (ii) Reserves for losses reported and outstanding;
- (iii) Reserves for losses incurred but not reported;
- (iv) Reserves for loss expenses;
- (v) Reserves for unearned premiums; and
- (vi) Any additional amount necessary to maintain full funding of the aggregate limit remaining under the contract if the period of coverage or the agreed-upon period of loss development has yet to expire.

(2) The provisions to be included in the trust agreement described in paragraph E pursuant to this paragraph may instead be included in the underlying contract. [PL 2003, c. 249, §2 (NEW).]

M. A special purpose reinsurance vehicle contract must contain provisions that:

(1) Require the reinsurance vehicle to :

- (a) Enter into a trust agreement described in paragraph E and establish a trust account referred to in paragraph E for the benefit of the ceding insurer; or
- (b) Enter into a security agreement described in paragraph D-1.

The trust agreement or security agreement must specify what recoverables or reserves or both the agreement is to cover;

(2) Stipulate that assets pledged as security be valued according to their current fair value for purposes of the contract and may consist only of permitted investments;

(3) If applicable, require the reinsurance vehicle, before 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 any such assets without consent or signature from the reinsurance vehicle or any other entity;

(4) Require that all settlements of account between the ceding insurer and the reinsurance vehicle be made in cash or its equivalent; and

(5) Stipulate that the reinsurance vehicle and the ceding insurer agree that the assets in any trust account referred to in paragraph E and established pursuant to the provisions of the contract may be withdrawn by the ceding insurer at any time notwithstanding any other provisions in the contract and must be used and applied by the ceding insurer or any successor by operation of law of the ceding insurer, including, but not limited to, and subject to the provisions of section 793, any liquidator, rehabilitator, receiver or conservator of the ceding insurer, without diminution because of insolvency on the part of the ceding insurer or the reinsurance vehicle, only for the following purposes:

- (a) To transfer all such assets into one or more trust accounts pursuant to paragraph L for the benefit of the ceding insurer pursuant to the terms of the contract and in compliance with this subchapter; and
- (b) To pay any other amounts that the ceding insurer claims are due under the contract. [PL 2007, c. 386, §13 (AMD).]

N. The contract entered into by the reinsurance vehicle may contain provisions that give the reinsurance vehicle the right to seek approval from the ceding insurer to withdraw from the trust account referred to in paragraph E all or part of the assets contained in the trust account and to transfer the assets to the reinsurance vehicle as long as:

- (1) The reinsurance vehicle shall at the time of the withdrawal replace the withdrawn assets with other qualified assets having a fair value equal to the fair value of the assets withdrawn and that meet the requirements of section 795; and
- (2) After the withdrawals and transfer, the fair value of the assets in the trust account referred to in paragraph E securing the obligations of the reinsurance vehicle under the contract is no less than an amount needed to satisfy the full funding requirement of the contract. The ceding insurer has the sole discretion to determine whether these provisions have been satisfied but may not unreasonably nor arbitrarily withhold its approval. [PL 2003, c. 249, §2 (NEW).]

O. The contract must provide that investors in the reinsurance vehicle agree that any obligation to repay principal, interest or dividends on the securities issued by the reinsurance vehicle must be reduced upon the occurrence of a triggering event, to the extent that the assets of the reinsurance vehicle held in trust for the benefit of the ceding insurer are remitted to the ceding insurer in fulfillment of the obligations of the reinsurance vehicle under the contract. [PL 2003, c. 249, §2 (NEW).]

P. Assets held by a reinsurance vehicle in trust must be valued at their fair value. [PL 2003, c. 249, §2 (NEW).]

Q. The proceeds from the sale of securities by the reinsurance vehicle to investors must be deposited with the trustee or under the control of the ceding insurer as described in this subchapter and must be held or invested in accordance with the requirements of section 795. [PL 2007, c. 386, §13 (AMD).]

R. A reinsurance vehicle organized under this subchapter may engage only in fully funded contracts to support in full the ceding insurer's exposures assumed by the reinsurance vehicle. A contract must be indemnity-triggered unless the superintendent adopts rules pursuant to section 797 authorizing nonindemnity-triggered contracts and addressing the treatment of the portion of the risk that is nonindemnity-based, including accounting, disclosure, risk-based capital treatment and the manner in which risks associated with a nonindemnity-based contract may be evaluated and managed. Assets of the reinsurance vehicle may be used to pay interest or other consideration on any outstanding debt or other obligation of the reinsurance vehicle and nothing in this paragraph may be construed or interpreted to prevent a reinsurance vehicle from entering into a swap agreement or other transaction that has the effect of guaranteeing interest or other consideration. [PL 2003, c. 249, §2 (NEW).]

S. In the special purpose reinsurance vehicle insurance securitization, the contracts or other relating documentation must contain provisions identifying the reinsurance vehicle that enters into the reinsurance securitization and the contracts or other documentation must clearly disclose that the assets of the reinsurance vehicle and only those assets are available to pay the obligations of that reinsurance vehicle. Notwithstanding this paragraph, and subject to the provisions of this subchapter and any other applicable law, the failure to include such language in the contracts or

other documentation may not be used as the sole basis by creditors, reinsurers or other claimants to circumvent the provisions of this subchapter. [PL 2003, c. 249, §2 (NEW).]

T. A reinsurance vehicle is not authorized to:

- (1) Issue or otherwise administer primary insurance policies;
- (2) Have any obligation to the policyholders or reinsureds of the ceding insurer;
- (3) Enter into a contract with a person that is not licensed or otherwise authorized to conduct the business of insurance or reinsurance in at least its state or country of domicile; or
- (4) Assume or retain exposure to insurance or reinsurance losses for its own account that is not initially fully funded by proceeds from an insurance securitization that meets the requirements of this subchapter. [PL 2003, c. 249, §2 (NEW).]

U. At the cessation of business of a reinsurance vehicle, the limited certificate of authority granted by the superintendent under section 782 expires and the reinsurance vehicle may no longer be authorized to conduct activities pursuant to this subchapter until a new certificate of authority is issued pursuant to a new filing in accordance with section 782. The completion of a reinsurance vehicle's securitization activities does not constitute the cessation of business for purposes of this paragraph if the reinsurance vehicle's approved business plan contemplates additional securitizations. [PL 2007, c. 386, §13 (AMD).]

V. It is unlawful for a reinsurance vehicle to lend or otherwise invest or place in custody, trust or under management any of its assets with or to borrow money or receive a loan or advance from, other than by issuance of the securities pursuant to an insurance securitization, from anyone convicted of a felony, anyone who is untrustworthy or of known bad character or anyone convicted of a criminal offense involving the conversion or misappropriation of fiduciary funds or insurance accounts, theft, deceit, fraud, misrepresentation or corruption. [PL 2003, c. 249, §2 (NEW).]

W. A special purpose reinsurance vehicle may purchase reinsurance with the approval of the superintendent to retrocede risks assumed through a special purpose reinsurance vehicle contract. Reinsurance purchased by the reinsurance vehicle does not reduce the aggregate limit of the reinsurance vehicle or the covered protected cell and may only be credited toward the funding requirements of the reinsurance vehicle or the covered protected cell to the extent that the ceding insurer has a direct right of recovery against the retrocessionaire that is secured by assets deposited with the trustee or under the control of the ceding insurer in accordance with this section and held or invested in accordance with the requirements of section 795. [PL 2007, c. 386, §13 (NEW).]

[PL 2007, c. 386, §13 (AMD).]

SECTION HISTORY

PL 2003, c. 249, §2 (NEW). PL 2007, c. 386, §§10-13 (AMD).

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