WEST VIRGINIA CODE CHAPTER 33 ARTICLE 3A

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§33-3A-1. Definitions.

(a) "Non-U.S. insurer" means an insurer organized under the laws of a foreign country.

(b) "United States branch" or "U.S. branch" means the business unit through which business is transacted within the United States by a non-U.S. insurer and the assets and liabilities of the insurer within the United States pertaining to such business.

(c) "Home jurisdiction" means the foreign country under whose laws the non-U.S. insurer has been organized.

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§33-3A-2. Scope.

This article applies to a U.S. branch using this state as a state of entry to transact insurance in the United States. The U.S. branch shall also be subject to all state laws applicable to an insurer domiciled in this state unless otherwise provided.

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§33-3A-3. Authorization of entry.

(a) A non-U.S. insurer may use this state as a state of entry to transact insurance in the United States through a U.S. branch by:

(1) Qualifying as an insurer to do business in this state; and

(2) Establishing a trust account, pursuant to a trust agreement approved by the commissioner with a U.S. bank approved by the commissioner, in an amount at least equal to the minimum capital and surplus or authorized control level risk based capital, whichever is greater, required to be maintained by a domestic insurer licensed to transact the same kind of insurance.

(b) Before authorizing the entry through this state of a U.S. branch of any non-U.S. insurer, the commissioner shall require the non-U.S. insurer, in addition to meeting the requirements of section five of this article and any other requirement of this chapter:

(1) To submit a copy of its charter and bylaws, if any, currently in force, and any other documents necessary to show the kinds of business which it is empowered to transact in its home jurisdiction, attested to as accurate and complete by the insurance supervisory official of its home jurisdiction; and a full statement, subscribed and affirmed as true under the penalties of perjury by two officers, or equivalent responsible representatives, in a manner as the commissioner shall prescribe, of its financial conditions as of the close of its latest fiscal year, showing its assets, liabilities, income disbursements, business transacted and other facts required to be shown in its annual statement, as reported to the insurance supervisory official of its home jurisdiction; an English language translation, as necessary, of any other documents required herein; and

(2) To submit to an examination of the insurer's affairs at its principal office within the United States. However, the commissioner may instead accept a report of the insurance supervisory official of the insurer's home jurisdiction.

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§33-3A-4. Maintenance of trust account.

The assets in the trust account shall be known as "trusteed assets" and shall at all times be in an amount equal to the U.S. branch's reserves and other liabilities plus the minimum capital and surplus, or authorized control level risk based capital, whichever is greater, required to be maintained by a domestic insurer licensed to do the same kind of insurance.

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§33-3A-5. Requirements for trust agreement.

(a) The deed of trust and all amendments thereto shall be authenticated in a form and manner as the commissioner may prescribe and shall not be effective unless approved by the commissioner upon a finding that:

(1) A deed of trust or its amendments are sufficient in form and in conformity with law;

(2) The trustee or trustees are eligible as such; and

(3) The deed of trust is adequate to protect the interests of the beneficiaries of the trust.

(b) If at any time the commissioner finds, after reasonable notice and hearing, that the requisites for the approval no longer exist, the commissioner may withdraw approval.

(c) The commissioner may from time to time approve modifications of, or variations in any deed of trust, which in the commissioner's judgment are not prejudicial to the interests of the people of this state or the United States policyholders and creditors of the U.S. branch.

(d) The deed of trust shall contain provisions which:

(1) Vest legal title to trusteed assets in the trustees, and their successors lawfully appointed;

(2) Require that all assets deposited in the trust shall be continuously kept within the United States;

(3) Provide for substitution of a new trustee or trustees in case of a vacancy by death; resignation or otherwise, subject to the approval of the commissioner;

(4) Require that the trustee or trustees shall continuously maintain a record at all times sufficient to identify the assets of the fund;

(5) Require that the trusteed assets shall consist of cash and/or investments eligible for investment of the funds of domestic insurers and accrued interest thereon if collectible by the trustee;

(6) Require that the trust shall be for the exclusive benefit, security and protection of the policyholders, or policyholders and creditors, of the U.S. branch in the United States and that it shall be maintained as long as there is outstanding any liability of the nonU.S. insurer arising out of its insurance transactions in the United States; and

(7) Provide, in substance, that no withdrawals of assets, other than income as specified in subsection (e) of this section shall be made or permitted by the trustee or trustees without the approval of the commissioner except to:

(A) Make deposits required by law in any state for the security or benefit of all policyholders,

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or policyholders and creditors, of the U.S. branch in the United States;

(B) Substitute other assets permitted by law and at least equal in value and quality to those withdrawn, upon the specific written direction of the United States manager of the U.S. branch when duly empowered and acting pursuant to either general or specific written authority previously given or delegated by the board of directors; or

(C) Transfer such assets to an official liquidator or rehabilitator pursuant to an order of a court of competent jurisdiction.

(e) The deed of trust may provide that income, earnings, dividends or interest accumulations of the assets of the fund may be paid over the United States manager of the U.S. branch upon request, provided that the total trusteed assets shall not thereby be less than the amount required to be maintained pursuant to section four of this article.

(f) Upon withdrawal of trusteed assets deposited in another state in which the insurer is authorized to do business, it shall be sufficient if the deed of trust requires similar written approval of the insurance supervising official of that state in lieu of approval of the commissioner provided that the total trusteed assets shall not thereby be less than the amount required to be maintained pursuant to section four of this article. In all such cases the U.S. branch shall notify the commissioner in writing of the nature and extent of the withdrawal.

(g) The commissioner may from time to time:

(1) Make examinations of the trusteed assets of any authorized U.S. branch at the insurer's expense; and

(2) Require the trustee or trustees to file a statement, in such form as the commissioner may prescribe, certifying the assets of the trust fund and the amounts thereof.

(h) Refusal or neglect of any trustee to comply with the foregoing requirements shall be grounds for the revocation of the insurer's license or the liquidation of its United States branch.

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§33-3A-6. Reporting requirements for U.S. branches of nonU.S. insurers.

(a) In addition to other requirements of this article, every authorized U.S. branch shall, not later than March 1 in each year and forty-five days after the end of each of the first three calendar-year quarters, file with the commissioner and with the National Association of Insurance Commissioners (NAIC):

(1) Annual and quarterly statements of the business transacted within the U.S. and the assets held by or for it within the United States for the protection of United States policyholders and creditors within the United States, and of the liabilities incurred against the assets. The forms shall not contain any statement in regard to its assets and business elsewhere. The statements shall be in the same format required of an insurer domiciled in the U.S. branch's state of entry state and licensed to write the same kinds of insurance; and

(2) A statement of trusteed surplus, in such form as the commissioner may prescribe, as of the end of the same period covered by the statement filed pursuant to subdivision (1) of this subsection. The aggregate value of the insurer's general state deposits and trusteed assets deposited with a trustee in compliance with section five of this article, plus accrued investment income thereon where the interest is collected by the states for trustees, less the aggregate net amount of all of its reserves and other liabilities in the United States, as determined in accordance with this section, shall be known as its "trusteed surplus" in the United States. In determining the net amount of the U.S. branch's liabilities in the United States to be reported in the statement of trusteed surplus, the U.S. branch shall make adjustments to total liabilities reported on the accompanying annual or quarterly statement as follows:

(A) Add back liabilities used to offset admitted assets reported in the accompanying quarterly or annual statement; and

(B) Deduct:

(i) Unearned premiums on agent's balances or uncollected premiums not more than ninety days past due;

(ii) Reinsurance on losses with authorized insurers, less unpaid reinsurance premiums;

(iii) Reinsurance recoverables on paid losses from unauthorized insurers that are included as an asset in the annual statement, but only to the extent a liability for unauthorized recoverables is included in the liabilities report in the trusteed surplus statement;

(iv) Special state deposits held for the exclusive benefit of policyholders, or policyholders and creditors, of any particular state not exceeding net liabilities reports for that state;

(v) Secured accrued retrospective premiums;

(vi) If the insurer is a life insurer:

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(I) The amount of its policy loans to policyholders within the United States, not exceeding the amount of legal reserve required on each policy; and

(II) The net amount of uncollected and deferred premiums; and

(vii) Any other nontrusteed asset which the commissioner determines secures liabilities in a substantially similar manner; and

(3) Any additional information that the commissioner may require relating to the total business or assets, or any portion thereof, of the non-U.S. insurer.

(b) The annual statement and trusteed surplus statement shall be signed and verified by the United States manager, attorney-in-fact, or a duly empowered assistant United States manager, of the U.S. branch. The items of securities and other property held under trust deeds shall be certified in the trusteed surplus statement by the United States trustee or trustees.

(c) Every report on examination of a U.S. branch shall include a trusteed surplus statement as of the date of examination in addition to the general statement of the financial condition of the U.S. branch.

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§33-3A-7. Additional requirements for the U.S. branch license.

(a) Before issuing any new or renewal license to any U.S. branch, the commissioner may require satisfactory proof, either in the non-U.S. insurer's charter or by an agreement evidenced by a duly certified resolution of its board of directors, or otherwise as the commissioner may require, that the insurer will not engage in any insurance business in contravention of the provisions of this article or not authorized by its charter.

(b) The commissioner shall issue a renewal license to any U.S. branch if satisfied, by proof as he or she considers satisfactory, that the insurer is not delinquent with respect to any requirement imposed by this article, and that its continuance in business in this state will not be hazardous or prejudicial to the best interests of the people of this state.

(c) No U.S. branch shall be licensed to do in this state any kind of insurance business, or any combination of kinds of insurance business, which are not permitted to be done by domestic insurers licensed under the provisions of this article. No U.S. branch shall be authorized to do an insurance business in this state if it does anywhere within the United States any kind of business other than an insurance business and the business necessarily or properly incidental to the kind or kinds of insurance business which it is authorized to do in this state.

(d) Except as otherwise specifically provided, no U.S. branch, entering through this state or another state, shall be or continue to be authorized to do an insurance business in this state if it fails to comply substantially with any requirement or limitation of this chapter, applicable to similar domestic insurers hereafter organized, which in the judgment of the commissioner is reasonably necessary to protect the interest of the policyholders.

(e) No U.S. branch which does outside of this state any kind or combination of kinds of insurance business not permitted to be done in this state by similar domestic insurers hereafter organized, shall be or continue to be authorized to do an insurance business in this state, unless in the judgment of the commissioner the doing of such kind or combination of kinds of insurance business will not be prejudicial to the best interests of the people of this state.

(f) No U.S. branch shall be or continue to be authorized to do an insurance business in this state if it fails to keep full and correct entries of its transactions, which shall at all times be open to the inspection of persons invested by law with the rights of inspection and be maintained in its principal office within this state.

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§33-3A-8. Authority of commissioner.

Whenever it appears to the commissioner from any annual or quarterly statement or trusteed surplus statement or any other report that a U.S. branch's trusteed surplus is reduced below minimum capital and surplus, or the authorized control level risk based capital, whichever is greater, required to be maintained by a domestic insurer licensed to transact the same kinds of insurance, the commissioner may proceed against the insurer pursuant to the provisions of sections ten and eleven of article three of this chapter, and treat the insurer as one whose condition is such that its further transaction of business in the United States will be hazardous to its policyholders, its creditors or the public in the United States.

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