

**SUBCHAPTER F. REINSURANCE**  
**28 TAC §§7.601-7.612, 7.614, and 7.621-7.627**

**INTRODUCTION.** The Texas Department of Insurance adopts amendments to 28 Texas Administrative Code §§7.601-7.612 and 7.614, and new §§7.621-7.627 concerning credit for reinsurance under Insurance Code Chapter 493. The amendments and new sections are adopted with changes to the proposed text published in the March 30, 2018, issue of the *Texas Register* (43 TexReg 1391). TDI adopts amended §§7.602, 7.603, 7.605, 7.607-7.611 and new §§7.621, 7.623, 7.624, 7.626, and 7.627 without changes to the proposed text. TDI revised §§7.601, 7.604, and 7.606 in response to public comments. TDI revised the effective date in §7.612. TDI revised typographical errors in §§7.604, 7.614, 7.622, and 7.625.

**REASONED JUSTIFICATION.**

The amendments and new sections are necessary to implement Insurance Code Chapter 493, including changes made by Senate Bill 1070, 85th Legislature, Regular Session (2017). New §§7.621-7.627 implement legislative amendments to Insurance Code Chapter 493 made by SB 1070 that enacted Insurance Code §§493.1033-493.1038, which allows certified assuming insurers from qualified jurisdictions to post reduced collateral amounts for reinsurance ceded by Texas domestic insurers. Amendments to §§7.601-7.612 and 7.614 implement amendments that SB 1070 made to modernize reinsurance processes, including trust accounts and letters of credit that may affect certified assuming insurers; clarify filing requirements and reduce the administrative burden and cost of submissions both in number of filings and through alternative electronic means; update statutory references resulting from the nonsubstantive revision of statutes enacted in HB 2017, 79th Legislature, Regular Session (2005); and make nonsubstantive amendments to the prior sections to conform to the TDI style guidelines.

SB 1070 also repealed Insurance Code Chapter 492. However, the repeal of Insurance Code Chapter 492 does not substantively affect the requirements under §§7.601-7.612 and 7.614, because SB 1070 adopted provisions similar to those in Insurance Code Chapter 492 in Insurance

Code Chapter 493, and §§7.601-7.612 and 7.614 applied similar requirements to reinsurance transactions sourced under Insurance Code Chapter 492 or Chapter 493.

Amendments to §7.601 divide the prior section into new subsections (a)-(c), update citations to applicable statutes, eliminate text that simply restates lists in the statute, and remove references to the titles of administrative code sections in this subchapter. The intent is to make the section more readable without changing the substance. An exception applicable to ceding insurers domiciled in another state, which is included in the last two sentences of the text incorporated in §7.601(b), has been removed because SB 1070 repealed §493.002(b), the provision on which the exception was based. In response to public comments, TDI has removed the term "between insurers" from §7.601(b). Restating that the activities are between insurers is unnecessary, because §7.602(1) and (3) define the activities of assuming and ceding insurance to be between insurers. The change does not add additional costs or affect persons not on notice of the proposed rules.

Section 7.601(c) is amended to reference Insurance Code §2551.3055, which is applicable to a title insurer seeking reinsurance under Chapter 493. Otherwise, title reinsurance is subject to the requirements of Insurance Code Chapter 2551, Subchapter G. The last two sentences of §7.601 are removed because they are redundant and unnecessary.

Amendments to §7.602 add new definitions, revise some prior definitions for clarity and consistent terminology, update citations, renumber the definitions, and make changes to conform to TDI drafting style guidelines.

The defined term "anniversary" is removed because it is not used in the revised subchapter.

The definition of "assuming insurer" is amended to reference the statutory definition for the term and clarify that the term includes insurers that assume obligations that the ceding insurer may have assumed under a reinsurance agreement and obligations assumed under an assumption reinsurance agreement.

The definition of "assumption reinsurance" is amended to refer to the defined term "reinsurance agreement," rather than reinsurance transaction. Throughout this adoption the terms "reinsurance," "reinsurance contract," and "reinsurance transaction" have been revised to "reinsurance agreement" for consistency.

The definition of "ceding insurer" is revised for consistent reference to the transfer of an "insurance risk of loss" and use of the term "assuming insurer."

The definition of "indemnity reinsurance" is amended for consistent terminology as previously discussed and to clarify that the consideration must be commensurate with the risk transferred. The definition is also revised to clarify that certain references are to the ceding insurer.

The definition of "insurer" is amended to remove the reference to business entity, which is included in the new definition of "person." The amendments also clarify that the term insurer includes those entities listed in Insurance Code §493.002. The amended definition includes title insurers and domestic surplus lines insurers (DSLIs). Both are within the scope of Insurance Code §493.002, which by use of the term "includes" is not limited to the listed insurers as provided in Government Code §311.005(13). Title insurers are listed because they are insurers and under Insurance Code §2551.3055 may obtain reinsurance under Insurance Code Chapter 493; and DSLIs are included because they must be formed as stock property and casualty companies under Insurance Code Chapter 822 and because Insurance Code §981.073(a)(2) applies Insurance Code Title 4, which includes Insurance Code Chapter 493, to DSLIs.

The definition of "qualified United States financial institution" is updated to reflect the current location of the statutory definition.

The term "reinsurance" is amended to "reinsurance agreement" and the language limiting it to indemnity reinsurance has been deleted.

The defined term "nationally recognized statistical rating organization (NRSRO)" is added. These organizations are registered by the United States Securities and Exchange Commission. Although NRSROs can be registered to rate five classes of credit ratings, the definition is limited to those organizations registered to rate insurance companies because under this subchapter, NRSRO ratings are only considered in the scope of rating certified assuming insurers. The amendments to §7.602 also add definitions for four frequently used terms to avoid repetitive restatements in various sections and for style: "Commissioner," "GAAP," "NAIC," "Person," and "TDI."

Amendments to §7.603 change the title of the section, use the defined term "insurers" instead of "companies," update statutory references, and refer to "insurance risk of loss" for

consistency with other references in the subchapter. The term "authorized" is substituted for "licensed," based on the consideration that in context the term "licensed" indicates an authorization, but most insurers will have a certificate of authority as an authorizing document. This substitution is repeated throughout the subchapter. These amendments do not change the substantive requirement of the section.

Amendments to §7.604 include a revision to the section's title to use the defined term "assumption reinsurance." References within the section are also revised to clarify that the section relates to assumption reinsurance agreements. The section is also revised to emphasize that the information required by the section is to be provided to TDI before an insurer enters into an assumption reinsurance transaction. Additional language is added to §7.604(a)(1)-(7) and (b) to better explain the filing requirement encompassed within the scope of the prior requirement to submit "the written plan of reinsurance, including the assumption reinsurance agreement, and all necessary documents to allow the Commissioner to determine that the interests of all policyholders are fully protected." In response to public comment expressing concerns with the requirement for parties to submit a signed written assumption reinsurance agreement, TDI has changed the text of §7.604(a)(2) to read: "a copy of the assumption reinsurance agreement to be signed by officers of the parties to the agreement." TDI has changed §7.604(a)(3) to correct a typographical error by deleting the word "the." The changes do not add additional costs or affect persons not on notice of the proposed rules.

Forms, filing instructions, and filing locations for §7.604 and this subchapter are addressed in amendments to §7.614. These amendments do not change the substantive requirement of §7.604.

The amendment to §7.605 clarifies that the fee schedule in 28 TAC §7.1301 applies to assumption reinsurance agreements. TDI does not have specific fees for other types of reinsurance agreement filings, though other fees, such as affiliated transaction filing fees, may apply.

Amendments to §7.606 reduce accreditation filing requirements, implement changes in SB 1070, make conforming changes for consistent use of terminology in the subchapter, update statutory citations, and make changes in line with the TDI style guidelines. The amendment changes the title of the section to use the defined term "assuming insurer," and this change is also

made throughout the section. The term "authorized" is substituted for "licensed" for reasons previously discussed in this adoption.

Section 7.606(a) addresses which insurers may apply for accreditation and that an insurer that cedes business to an accredited assuming insurer may receive the same credit for reinsurance that the ceding insurer would be entitled to receive from ceding to an authorized assuming insurer. Amendments to the section replace the use of pronouns with defined terms and make nonsubstantive changes for consistent references and for style.

Section 7.606(b) is amended to remove requirements for certified copies and to reduce the application requirements so that they include general identification and contact information and information that an accredited assuming insurer has likely already prepared for filings with its domiciliary regulator. The amendments also ask for form AR-1 in place of an affidavit for the way an insurer meets the requirement to submit to the state's jurisdiction and TDI's right to examine the accredited assuming insurer's books and records as required under Insurance Code §493.103. Form AR-1 is adopted by reference under §7.614, and TDI anticipates that most insurers will submit the required filings electronically as provided in that section.

Section 7.606(c) is amended to clarify that filings under the section are required, to provide consistent use of terminology, and to update a statutory reference.

Section 7.606(d) is amended to clarify the timing of submissions an accredited assuming insurer must submit to maintain its accreditation. The amendment does not change the required submission, and these submissions should be the same as the accredited assuming insurer is required in its domiciliary jurisdiction.

Section 7.606(e) has been removed because, as previously discussed, TDI does not have a specific fee for accreditation reinsurance filings. Prior §7.606(f) has been redesignated as §7.606(e) and amended to update a statutory citation.

Section 7.606(g) and (h) have been redesignated §7.606(f) and (g). These subsections have been substantively amended to implement the suspension and revocation provision for accredited assuming insurers in Insurance Code §493.1038, which was enacted in SB 1070.

Section 7.606(f) addresses notice and hearing. Insurance Code §493.1038(b) provides that an accredited assuming insurer is entitled to notice and the opportunity for hearing prior to having

accreditation suspended or revoked, with three listed exceptions. In response to public comments, TDI has changed §7.606(f) for clarity. Section 7.606(f) is changed to read "As provided in Insurance Code §493.1038, the Commissioner may suspend or revoke an assuming insurer's accreditation after notice and opportunity for hearing." The change does not add additional costs or affect persons not on notice of the proposed rules.

Section 7.606(g) addresses the effective date of a Commissioner's order suspending or revoking an assuming insurer's accreditation. It also addresses the requirement on the accredited assuming insurer to notify its ceding insurers.

Insurance Code §493.1038(c) and (d) address how a ceding insurer may continue to take credit for reinsurance following the suspension or revocation of an assuming insurer's accreditation, but it is silent as to allowing ceding insurers an adjustment period, if the reinsurance agreement is not secured as required under Insurance Code §493.1038(c) and (d). If the assuming insurer meets the requirement, the effect could be minimal. If the assuming insurer does not meet the requirement, ceding insurers could be rendered insolvent before they have an opportunity to remedy their situation. Prior to the amendments in this adoption, §7.606(h) allowed ceding insurers to claim credit for reinsurance for a four month period following the suspension or revocation of an assuming insurer's accreditation. This allowed ceding insurers an opportunity to obtain replacement coverage without a disruption to their financial statements. Adopted §7.606(g) recognizes the Commissioner's discretion in determining the effective date of the order while maintaining a period for ceding insurers to obtain replacement reinsurance. Section 7.606(g) allows up to 90 days rather than the four months under the prior provision. TDI considers this to be reasonable because advances in electronic commerce have reduced time periods for completing transactions.

Section 7.606(g) also shifts the ceding insurer notice requirement from TDI to the assuming insurer. The assuming insurer and ceding insurer have a contractual relationship that should require notice of events such as loss of accreditation. Notice under this section is not the only means that ceding insurers have of identifying changes in the status accredited assuming insurers, because TDI will continue to maintain and update its online list of accredited assuming insurers.

Amendments to §7.607 implement changes to Insurance Code §493.153, clarify submission requirements, update statutory citations, and make nonsubstantive changes for consistent references and for style, including its title.

Section 7.607(a) is amended to incorporate a March 1 submission date for filings required under Insurance Code §493.155(b). Section 7.607(a) amendments also add to the annual March 1 submission deadline a requirement for basic identifying information and the trustee's report that must be delivered to the assuming insurer under Insurance Code §493.155(a) and made part of the trust agreement under §7.607(c)(5).

Section 7.607(b) is amended to indicate the current applicable Insurance Code sections.

Section 7.607(c) is amended to implement the change in Insurance Code §493.153 that a single assuming insurer's trust fund must be in a form approved by Commissioner or the insurance regulatory official of another state who is designated in the trust as having primary oversight of the trust. The subsection is also amended to indicate the requirements of a trust that is subject to TDI approval. The remaining changes in the section are for consistent terminology and to conform to TDI style.

Amendments to §7.608 revise the title of the section for consistency with the wording used in other sections. The amendments also add references to the statutory requirements in Insurance Code §493.104, update wording for terminology consistent with other sections, and make updates to conform to TDI style.

Amendments to §7.609 change the title of the section for consistency with the wording used in other sections and to remove obsolete statutory references. The amendments also update wording for terminology consistent with other sections, and make updates to conform to TDI style. In addition, §7.609(b)(13) is added to provide notice that the new trust requirements stated in new Insurance Code §493.1561 exist, and they must, by statute, be incorporated into any trust agreement entered into or renewed on or after January 1, 2018, for the credit to be allowed.

Amendments to §7.610 change the title of the section for consistency with the wording used in other sections and to remove obsolete statutory references. The adopted amendments also correct a typographical error in the prior version of §7.610(a) that referenced subsection (i)(1),

which does not exist. The section is corrected to refer to subsection (h)(1) of §7.610. Section 7.610(e) and (f) are amended to remove a version restriction on parties that agree to be governed by the Uniform Customs and Practice for Documentary Credits of the International Chamber of Commerce. The letters of credit must comply with Insurance Code §493.104 and §493.105 and 28 TAC Chapter 7, Subchapter F. Other amendments in the section are made for consistency with the wording used in other sections and for TDI style.

Amendments to §7.611 update statutory references and amend the section for consistency with the wording used in other sections and for TDI style.

Section 7.612 is amended to add text stating that compliance with the regulatory filing requirements in the subchapter are required as of "July 1, 2018, or earlier date as the parties may agree." The date is extended from the proposed date of June 1, 2018, as indicated that it might be in the proposal. TDI has added that language allowing parties to proceed under the adopted sections prior to July 1, 2018, because agreements may be in process based on the proposed June 1, 2018, date. Adopted §7.612 continues in effect §§7.601-7.612, and §7.614 as they existed prior to July 1, 2018, for agreements that were entered into or renewed prior to July 1, 2018, and not agreed to by the parties to be governed by the rules in this adoption. The decision of which rules to apply is a business decision of the parties and not an additional cost imposed under these rules.

Amendments to §7.614 address submission requirements, forms adopted by reference, and other forms that TDI may create to assist insurers. The section title is amended to better reflect the content of the section. New subsection (a) and (c) are added, and the prior text is incorporated into new subsection (b).

In §7.614(b) TDI has added a comma following the phrase "subject to change," and in §7.614(b)(4) TDI has replaced the semi-colon at the end of the series with a period. These changes are to correct typographical errors in the proposal.

Section 7.614(a) provides that submissions may be submitted either on paper or electronically. TDI prefers electronic submissions. The method of submission will depend on the form being submitted. In many cases, submissions required by the adopted sections are documents that are filed in the insurer's domiciliary jurisdiction. In these instances, the insurer may be able to

complete the filing process by submitting that same filing to TDI directly, or by allowing TDI access to the filing with the domiciliary jurisdiction.

Section 7.614(b) is amended to list the four forms that TDI is adopting by reference for use as required in the rules. The forms comply with Insurance Code Chapter 493 requirements. The forms are also similar to those used in other states. This is intended to reduce administrative burdens on insurers that are required to make similar filings in other states. Because the forms are adopted by reference, substantive requirements on the forms will not change except through a subsequent rule amendment process. Nonsubstantive information on the forms is indicated in brackets, including TDI's physical, mailing address, and electronic addresses, and calendar year filing periods. Nonsubstantive information is subject to change. The current versions of the forms will be posted on TDI's website.

Section 7.614(c) requires information submitted under the subchapter to be submitted to the location stated on the form being used, or if not stated on the form or if the submitter is not using a TDI form, to the location stated on the TDI website. The section also provides a list of locations where information may be submitted if the submission location is not available on the form or the TDI website.

Sections 7.621-7.627 implement the certified assuming insurer provisions in SB 1070.

Section 7.621(a) sets forth the scope of insurers that can claim a credit for ceding insurance to a certified assuming insurer. As required under Insurance Code §493.1036(a) and (c), §7.621(b) and (c) provide requirements related to the assuming insurer's assigned financial strength rating and the amount of security that the assuming insurer must have for the ceding insurer to claim the reinsurance credit. Section 7.621(b) also addresses the form of security that must be held by the certified assuming insurer. As required under Insurance Code §493.1036(c), §7.621(c)(1) and Figure: 28 TAC 7.621(c)(1) list the minimum amounts of security that must be withheld to claim the credit for each rating that the Commissioner may assign. The amounts are stated as a minimum because the ceding insurance and assuming insurer may agree by contract to a greater amount of security as provided in §7.621(c)(5).

Section 7.621(c)(2) clarifies that the required minimum amount of security is the same for affiliated and non-affiliated transactions. Based on the Commissioner's authority to determine

adequate amounts of collateral under Insurance Code §493.104(a)(4), §7.621(c)(3) allows certified assuming insurers to defer posting collateral for reinsurance recoverables for listed lines of business for one year following a catastrophic event recognized by the Commissioner. The Commissioner has sole discretion to determine catastrophic events. To qualify for this deferral, a certified assuming insurer must continue to pay claims in a timely manner. Section 7.621(c)(4) provides that reinsurance agreements existing prior to an assuming insurer being certified will not be subject to the reduced collateral requirements. A new contract would be required.

In §7.622(d)(3), TDI has changed the reference to "applicants" into the possessive "applicant's" and removed an additional "s" to correct two typographical errors in the proposed text.

Section 7.622(a) and (b) provide the process and considerations for certifying and rating certified assuming insurers. Section 7.622(c) provides the time for submission of applications and the effective dates of certifications. Section 7.622(d) lists the documents required to complete the certification and rating process and when those documents must be submitted or made available to TDI.

Section 7.622(a)(1) provides that the certification is good for one year. The assuming insurer must reapply annually to continue the certification. This is the process in other states that have implemented similar credit for reinsurance programs to those set forth in Insurance Code §§493.1033-493.1038. Having a similar process and time lines as other states will reduce administrative burdens and costs on applicants while maintaining TDI's ability to thoroughly and efficiently evaluate the financial strength of all certified assuming insurer applicants, including those that have qualified in other states. As addressed in §7.614, submission of documents is not limited to paper filings. TDI considers electronic filings administratively more efficient and less burdensome. Further, TDI seeks the information, not a unique filing, and in these rules has tried to not duplicate the preparation of documents if the information is included in a filing the insurer must already make, or to duplicate the filing of a document filed in another jurisdiction that TDI can access.

Section 7.622(a)(2) provides that TDI will post on its website notice of the application and instructions for public comment on the application. The posting is not required by statute; however,

the procedure is used in other states and will provide a means for TDI to receive additional information on the applicant. This subsection does not require a hearing on the application; require TDI to respond to any submission; or create any right in a commenter to object to the Commissioner's action on an application. Section 7.622(a)(3) provides that TDI will provide written notice to the applicant that its application has been approved. The application will not be deemed to have been approved at the expiration of any time period. An applicant may not act as a certified assuming insurer until after the applicant's application has been approved and it has been certified. TDI will publish a list of certified assuming insurers and their assigned ratings to provide notice to ceding insurers and the public.

Section 7.622(a)(4) states the eligibility requirements for a certified assuming insurer. Section 7.622(a)(4)(A) restates the qualified jurisdiction domicile requirement in Insurance Code §493.1033(b)(1). Section 7.622(a)(4)(B) establishes the minimum capital and surplus amount requirement that the Commissioner must adopt by rule under Insurance Code §493.1033(b)(2). The amount is set at \$250 million as calculated under §7.622(b)(1)(G)(i), which requires audited United States Generally Accepted Accounting Principal (GAAP) statements, or audited International Financial Reporting Standards (IFRS) basis financial statements reconciled to GAAP.

Insurance Code §493.1034(b) requires that an association including incorporated and individual unincorporated underwriters must satisfy minimum capital and surplus requirements through the capital and surplus equivalents, net of liabilities, of the association and its members that must include a joint central fund in an amount determined by the Commissioner to provide adequate protection that may be applied to any unsatisfied obligation of the association or any of its members. Section 7.622(a)(4)(B) provides that the association may satisfy the requirement by having minimum capital and surplus equivalents, net of liabilities, of at least \$250 million and a joint central fund containing a balance of at least \$250 million.

This amount of capital and surplus limits eligible certified assuming insurers to insurers that should have significant experience in the reinsurance markets. TDI considered that other states that have implemented similar certified assuming insurer programs have settled on the same or similar capital and surplus amount. Selecting a lesser amount of capital and surplus could open

Texas insurers to greater financial risks. Selecting a greater amount could limit market competition and deprive Texas ceding insurers access to assuming insurers.

Section 7.622(a)(4)(C) lists five acceptable rating agencies and requires financial strength ratings from at least two of the listed rating agencies, which is the minimum number required under Insurance Code §493.1033(b)(3). Section 7.622(a)(4)(C) further establishes that an acceptable financial strength rating must be based on interactive communication between the rating agency and the assuming insurer and must not be based solely on publicly available information. The five listed rating agencies are NRSROs, as defined in §7.602. The listed NRSROs performed the greatest number of insurance company ratings during the 2015 calendar year according to the SEC's 2016 Report on NRSROs ([www.sec.gov/files/2016-annual-report-on-nrsros.pdf](http://www.sec.gov/files/2016-annual-report-on-nrsros.pdf)) and have also been determined to be acceptable rating agencies by other states that have adopted similar certified assuming insurer programs, which will reduce costs and administrative burdens for insurers doing business in multiple jurisdictions. TDI has adopted a procedure for recognizing additional NRSRO as acceptable rating agencies in §7.727.

Section 7.622(a)(4)(D) is adopted under Insurance Code §493.102(4)(a) to ensure that the certified assuming insurer posts adequate collateral for a financially troubled or insolvent ceding insurer. Section 7.622(a)(4)(E) provides that the certified assuming insurer must also meet, or agree to, the eligibility requirements under Insurance Code §493.1033 and form CR-1.

Section 7.622(b) provides how a certified assuming insurer will be rated. As required under Insurance Code §493.1033(b)(3) and §493.1036(a), §7.622(b)(1)(A) provides that the rating will be based, in part, on the assuming insurer's lowest financial strength rating from an acceptable NRSROs. The financial strength ratings must be dated within at least 15 months prior to the assuming insurer's annual certification application as required in §7.622(d)(2)(G). The rating level in Figure: 28 TAC §7.622(b)(1)(A), and as may be expanded under §7.627, corresponds to the ratings in Figure: 28 TAC §7.621(c)(1) that states the minimum amount of collateral that certified assuming insurer must withhold. The rating based on the NRSRO's financial strength rating is the maximum rating that a certified assuming insurer may be assigned; additional rating considerations may reduce the certified assuming insurer's final assigned rating.

Additional rating considerations in §7.622(b)(1)(B)-(J) include the assuming insurer's reinsurance business practices; Schedule F or S filed with the assuming insurer's domiciliary jurisdiction or forms CR-F or CR-S; the reputation of the assuming insurer for prompt payment based on TDI's analysis of ceding insurers' Schedule F reporting of overdue reinsurance recoverables; regulatory actions against the certified assuming insurer; the report of the independent auditor on the financial statements of the certified assuming insurer and its financial statements prepared on a United States GAAP basis, or reconciled to a United States GAAP basis; the liquidation priority of obligations to a ceding insurer in the certified assuming insurer's domiciliary jurisdiction; a certified assuming insurer's participation in any solvent scheme of arrangement, or similar procedure, involving United States ceding insurers; and any other information the Commissioner deems relevant. Assuming insurers must submit information related to these considerations in §7.622(c) and (d).

Section 7.622(b)(2) provides that the Commissioner may require a certified assuming insurer to adjust the security it is required to post based on TDI's analysis of a certified assuming insurer's reputation for prompt payment of claims under subsection (b)(1)(E) of the section. Section 7.622(b)(2) further requires a certified assuming insurer to, without action of the Commissioner or TDI, increase the amount of posted security by one rating level if either of two stated situations occur.

Section 7.622(c) and §7.622(d) state submission requirements for assuming insurers seeking certification. The requirements are necessary for the Commissioner to qualify a certified assuming insurer and authorized under Insurance Code §493.1033, which provides a list of eligibility requirements that a certified assuming insurer applicant must comply with, including Insurance Code §493.1033(b)(8), which authorizes the Commissioner to supplement the list of requirements in that subsection with any other requirements for certification required by the Commissioner by rule.

Section 7.622(c) and §7.622(d)(1)-(7) address the component requirements of form CR-1.

Item 1 of form CR-1 is the certified assuming insurer submission to the jurisdiction of any court of competent jurisdiction in any state for the adjudication of any issues arising out of reinsurance agreements, and its agreement to abide by the final decision of such court or appellate

court. This requirement is stated in §7.622(c)(1) and is based on the requirement to submit to the jurisdiction of a court of competent jurisdiction of any state under Insurance Code §493.1033(b)(4) and the requirement to post collateral if the insurer attempts to resist enforcement of the judgment under Insurance Code §493.1033(b)(6). Form CR-1 includes an exception for arbitration requirements in the reinsurance agreement.

Item 2 of form CR-1 is the certified assuming insurer's designation of the Commissioner as agent for service of process in Texas, as required under Insurance Code §493.1033(b)(5) and §7.622(c)(2).

Item 3 of form CR-1 is the certified assuming insurer's agreement to provide security in an amount equal to 100 percent of liabilities attributable to all United States ceding insurers if it resists enforcement of a final United States judgment or properly enforceable arbitration award, which is required under Insurance §493.1033(b)(6) and §7.622(c)(3).

Item 4 of form CR-1 is the certified assuming insurer's agreement to notify TDI within 10 days of any regulatory action taken against the certified assuming insurer, any change in the provisions of the certified assuming insurer's domiciliary license, or any change in the certified assuming insurer's rating by an approved rating agency, and to provide a statement describing the changes and reasons for the changes. Submission of this agreement is required under §7.622(d)(1) and (2) based on the authority in Insurance Code §493.1033(b)(8). The purpose of this agreement is to monitor that the certified assuming insurer maintains the qualifications under which it was certified, including Insurance Code §§493.102(a)(4); 493.1033(b)(1), (2), and (3); and 493.1036(c); and §7.622(b)(1)(A), (B), and (F).

Item 5 of form CR-1 is the certified assuming insurer's agreement to annually file information comparable to relevant provisions of the National Association of Insurance Commissioners (NAIC) financial statement for use by insurance markets in accordance with TDI rules at §7.622(b)(1)(C) and (D). Section 7.622(d)(3) requires the submission. For insurers domiciled in the United States or otherwise filing NAIC annual statement forms, this is Schedule F or S depending on the type of business the certified assuming insurer writes. Alien insurers that do not submit Schedule F or S would submit form CR-F or CR-S, which are adopted by reference in §7.614.

Item 6 of form CR-1 is the certified assuming insurer's agreement to annually submit the report of the independent auditor on the financial statements of the certified assuming insurer's insurance enterprise. Section 7.622(d)(4) requires the submission. The submission will provide TDI with necessary information to aid in its analysis of the each certified assuming insurer's financial condition under §7.622(b)(1)(G) and is based on the authority in Insurance Code §493.1033(b)(8).

Item 7 of form CR-1 is the certified assuming insurer's agreement to annually file audited financial statements, regulatory filings, and actuarial opinion filed with its domiciliary supervisor. Section 7.622(d)(4) and (5) requires the submission. The submission will provide TDI with information to aid in its analysis of the each certified assuming insurer's financial condition under §7.622(b)(1)(H) and is based on the authority in Insurance Code §493.1033(b)(8).

Item 8 of form CR-1 is the certified assuming insurer's agreement to annually file an updated list of all disputed and overdue reinsurance claims regarding reinsurance assumed from United States domestic ceding insurers. Section 7.622(d)(6) requires the submission. The submission will provide TDI with information to supplement TDI's review of the certified assuming insurer's reputation for prompt payment of claims under §7.622(b)(1)(E) and is based on the authority in Insurance Code 493.1033(b)(8).

Item 9 of form CR-1 is the certified assuming insurer's agreement to submit to TDI a statement that the certified assuming insurer is in good standing as an insurer or reinsurer with the supervisor of its domiciliary jurisdiction. Section 7.622(d)(7) requires the submission. Being in good standing with its domiciliary regulator is required under Insurance Code §493.1033(b)(1) and §7.622(a)(4)(A).

Section 7.622(d)(8)-(12) requires the submission of additional information, including interactive financial strength ratings, based on Insurance Code §493.1033(b)(3) and §493.1036(a) and §7.622(b)(1)(A); mechanisms certified assuming insurers will use to secure obligations incurred as a certified assuming insurer, including multibeneficiary trusts, based on Insurance Code §493.1036(d) and (e); descriptions of any past, present, or proposed future participation in any solvent scheme of arrangement, or similar procedure, involving United States ceding insurers, based on §7.622(b)(1)(J); and basic applicant information and contact information.

Section 7.623(a) provides that the Commissioner will assign a new rating if the certified assuming insurer's NRSRO financial strength rating is downgraded.

Section 7.623(b) addresses the treatment of upgrades and downgrades in the certified assuming insurer's assigned rating. If the Commissioner upgrades the assigned rating, the new rating applies only to reinsurance agreements entered into after the effective date of the new rating, and not to existing reinsurance agreements. If the Commissioner downgrades the rating, the new rating applies to all the certified assuming insurer's outstanding reinsurance agreements.

Section 7.623(c) provides that suspension and revocation of a certified assuming insurer's certification will be after notice and opportunity for hearing as required under Insurance Code §493.1038(b). This does not affect the three circumstances under §493.1038(b) that allow for the suspension or revocation to take effect prior to the date of the Commissioner's order on the hearing.

Section 7.623(d) provides that after the effective date of the suspension or revocation of the certified assuming insurer's certification, ceding insurers may not continue to take credit for reinsurance ceded to the assuming insurer unless the assuming insurer posts security as required under Insurance Code §493.1038. Section 7.623(d) further provides that the Commissioner may delay the effective date of the order suspending or revoking the certified reinsurer's certification for up to 90 days.

The reasons for delaying the effective date of the order are the same as those in the discussion of delaying the effective date of an order suspending or revoking an accreditation under §7.606(g). Insurance Code §493.1038(c) and (d) address how a ceding insurer may continue to take credit for reinsurance following the suspension or revocation of an assuming insurer's accreditation, but it is silent as to allowing ceding insurers an adjustment period, if the reinsurance agreement is not secured as required under Insurance Code §493.1038(c) and (d). If the assuming insurer meets the requirement, the effect could be minimal. If the assuming insurer does not meet the requirement, ceding insurers could be rendered insolvent before they had an opportunity to remedy their situation. Because qualification of the security under Insurance Code §493.1038(c) and (d) this information could be known in a suspension or revocation action, §7.623(d) recognizes the Commissioner's discretion in determining the effective date of the order.

Section 7.624 addresses qualified jurisdictions. Section 7.624(a) provides that TDI will post a list of active and suspended qualified jurisdictions on its website. Section 7.624(a) provides that the Commissioner will review jurisdictions outside of the United States. United States jurisdictions are qualified under Insurance Code §493.1035(f) and as stated in §7.624(f).

The general qualifications stated in §7.624(b) are derived from the requirements of Insurance Code §493.105(c) and (d). Items listed in §7.624(b)(1)-(8) are considered necessary qualifications to evaluate the appropriateness and effectiveness of the reinsurance supervisory system of the jurisdiction as required under Insurance Code §493.1038(b).

Section 7.624(c) implements Insurance Code §493.1035(a) and (e) concerning consideration of qualified jurisdictions included on the qualified jurisdiction list published by the NAIC and Commissioner approval of qualified jurisdictions not included on the qualified jurisdiction list published by the NAIC. Consideration of jurisdictions included on the NAIC's list does not change the requirements under Insurance Code §493.1035(b) to evaluate each jurisdiction prior to determining that it is a qualified jurisdiction for Texas.

Section 7.625 applies to assuming insurers that have been certified in other NAIC accredited jurisdictions and are seeking certification in Texas. In §7.625(d), TDI has capitalized "Commissioner" to correct a typographical error in the proposal.

Section 7.625(a) establishes the application timing requirement, the period the certification will be valid for, and the information that must be submitted. TDI will review the same information that is required of any other applicant under §7.622 and apply the same criteria. Because this same information is required by many states that have implemented certified assuming insurer programs, the information should be readily available to the applicant.

Section 7.625(b) provides a public comment process for certification applications similar to the public comment process for certified assuming insurer applications in §7.622(a)(2).

Section 7.625(c) provides that the Commissioner may approve the applicant with the same rating the applicant has already received from the other jurisdiction or a different rating determined by the Commissioner. The rating awarded will be based on the Commissioner's evaluation.

Section 7.625(d) provides that a change in rating by another jurisdiction will immediately apply to the certified assuming insurer just as a change in rating would apply to a Texas certified

insurer under §7.623. The Commissioner may accept the rating issued in the other state or set a different rating under §7.622.

Section 7.625(e) and (f) provides that the Commissioner may withdraw recognition of another jurisdiction's rating or certification. If withdrawal of the other jurisdiction's recognition is part of an action to suspend or revoke the assuming insurer's certification, TDI will use the procedure set forth in Insurance Code §493.1038 and §7.723.

Section 7.626 prohibits a ceding insurer from entering into or renewing a reinsurance agreement with a certified assuming insurer, unless the certified reinsurance agreement includes a funding clause that requires the certified assuming insurer to provide and maintain security in an amount sufficient to avoid the imposition of any financial statement penalty on the ceding insurer for reinsurance ceded to the certified assuming insurer.

Section 7.627 sets forth the criteria and procedure that TDI will use to consider adding financial rating agencies to the list in §7.622(a)(4)(C). Insurance Code §493.1033(b)(3) requires the certified assuming insurer to have at least two financial ratings from agencies determined to be acceptable in accordance with rules adopted by the Commissioner. This statutory requirement does not limit TDI to either adopting a group of rating agencies by rule or alternatively an approval procedure. The adoption limits approved financial rating agencies to NRSROs that TDI has approved in accordance with TDI rules, either in §7.622(a)(4)(C) or by the process set out in §7.627. The section also provides that the Commissioner may withdraw recognition of an NRSRO that has been determined to be acceptable under the section if the Commissioner determines that the NRSRO no longer meets the requirements of this section.

#### **SUMMARY OF COMMENTS AND AGENCY RESPONSE.**

**Commenters:** TDI received written comments from seven commenters. The American Council of Life Insurers; American Insurance Association; Association of Fire and Casualty Companies of Texas; Insurance Council of Texas; and Reinsurance Association of America commented in support of the proposal. Mitchell, Williams, Selig, Gates & Woody P.L.L.C.; and the Texas Association of Life and Health Insurers commented in support of the proposal with changes.

**General.**

Five commenters supported the proposal.

**Agency Response to Comment.**

TDI appreciates the supportive comments.

**General.**

A commenter noted that in the future, changes to state laws and regulations may be required to comply with collateral requirements under the recently executed Bilateral Agreement between the United States and the European Union on Prudential Measures Regarding Insurance and Reinsurance, which is also known as the covered agreement.

**Agency Response to Comment.**

TDI appreciates the comment. TDI will comply with the statutes enacted by the Texas Legislature, including adopting necessary rules to implement those statutes.

**Comment on §7.601(b).**

A commenter is concerned that the reference to "between insurers" in §7.601(b) creates an ambiguity. Specifically, the commenter is concerned that the reference would not apply to a non-authorized assuming insurer, because that transaction would not be "between insurers in this state."

**Agency Response to Comment.**

TDI disagrees that the statement between insurers limits the subchapter only to insurers authorized in Texas. Section 7.602(7) defines the term insurers to mean: "A person legally organized in and authorized by its domiciliary jurisdiction to do the business of insurance . . . ." The definition includes insurers authorized in Texas and those not authorized in Texas, but authorized in other jurisdictions.

However, TDI agrees to remove the term "between insurers" because §7.602(1) and (3) define the activities of assuming and ceding insurance to be between insurers. Restating that the activities are "between insurers" is unnecessary. The change does not add additional costs or affect persons not on notice of the proposed rules.

**Comments on §7.602(1)(A) and (B).**

A commenter suggests that §7.602 (1)(A) and (B) be clarified to provide that the agreement is with the ceding insurer as follows:

"(A) the insurance risk of loss of the ceding insurer under the an indemnity reinsurance agreement with the ceding insurer, or

"(B) the policy obligations of the ceding insurer under an assumption reinsurance agreement with the ceding insurer."

**Agency Response to Comment.**

TDI disagrees with the commenter. Section 7.602(1)(A) tracks the language in the existing definition. The replacement of the word "its" with "ceding insurer's" clarifies that the word "its" referred to the ceding insurer.

The addition of the phrase "with the ceding insurer" in §7.602 (1)(A) and (B) is unnecessary. The references to the terms "assumption reinsurance" and "indemnity reinsurance" are defined in §7.602(2) and (6) as being between a ceding and assuming insurer. TDI has made no change based on this comment.

**Comments on §7.603.**

A commenter asserts that TDI has substantively changed §7.603, because companies under §841.204 would be prohibited from ceding risks to unlicensed insurers.

The commenter states that the current rule applies only to domestic stock life insurers and prohibits a company that has less than the minimum capital and surplus required for formation of a new company and prohibits such a company from "reinsuring" any risk with a company not licensed to do business in Texas. The commenter asserts that the current rules do not have a similar requirement applicable to a property and casualty insurance company.

The commenter states that the proposed changes to §7.603 would prohibit a company, with less than the minimum capital and surplus of a new company, from ceding an insurance risk with an assuming insurer not licensed in Texas. The commenter further states that §7.603 applies to a company operating under Insurance Code §841.204, which applies to certain grandfathered insurance companies that do not have to increase capital and surplus unless there is a change of

control. The commenter asserts that these companies would now be prohibited from ceding risks to unlicensed insurers. This appears to be a material and substantive change that is inconsistent with §841.204, which allows such a company to continue to transact the kinds of business for which it holds a certificate of authority.

The commenter asserts that the concept of being able to cede risks to reinsurers that are not licensed is a concept firmly allowed in Texas law both before and after SB 1070. The commenter asserts that this could also be a material change and prohibit a company from being able to cede any business to a stronger assuming insurer authorized in another jurisdiction that is accredited, certified, or has provided adequate security as allowed by Ch. 493.

The commenter also questions the need to begin the section with the phrase "notwithstanding any other section in this subchapter." The commenter asserts that statutory requirement to impose such a broad sweeping change is inconsistent with statute and other proposed changes to the rules in Subchapter F. The commenter is concerned that this phrase would seem to eliminate the use of accredited reinsurers not licensed under amendments to §7.606; a trustee assuming insurer under the amendments to §7.607; or unlicensed assuming insurers providing collateral under amendments to §7.608.

**Agency Response to Comments.**

TDI disagrees that the amendments to §7.603 substantively change the section and has made no changes based on the comments.

As the commenter states, the current rule applies only to domestic stock life insurers and prohibits a company that has less than the minimum capital and surplus required for formation of a new company and prohibits such a company from "reinsuring" any risk with a company not licensed to do business in Texas. The commenter asserts that the current rules do not have a similar requirement applicable to a property and casualty insurance company. The amendments to §7.603 do not change the prohibition under §7.603 or add any similar prohibition applicable to a property and casualty insurance company.

TDI disagrees with the commenter's statement concerning the application of §7.603. The section only applies to certain grandfathered insurance companies operating under Insurance Code

§841.204. These are the same companies that the prior version of §7.603 applied to in its reference to Insurance Code Article 3.02, §2(a). The amendments update the reference to Insurance Code §841.204 that resulted from the nonsubstantive revision of statutes enacted in HB 2017, 79th Legislature, Regular Session (2005). The commenter does not question these references. The amendments do not change the application of the prohibition.

TDI disagrees that the prohibition is inconsistent with prior application of the current statute. Section 7.603 was adopted to be effective August 16, 1990. It has not been amended since that adoption. SB 1070 merged former Insurance Code Chapter 492 into Chapter 493, and added provisions related to certified assuming insurers. However, the statutory amendments do not affect the prohibition in this section or TDI's charge to adopt necessary and reasonable rules to protect the public interest under Insurance Code §493.003.

The use of the term "notwithstanding" is to clarify the prohibition, but it does not change the prior requirement.

TDI specifically proposed nonsubstantive amendments to §7.603. Removing the prohibition or changing its application would be a substantive change. A substantive change to §7.603 is beyond the scope of the proposal and the notice it provided. TDI has made no change to §7.603 based on the comments.

**Comment on §7.604(a)(2).**

A commenter notes a timing issue because §7.604(a) requires the filing of a plan of reinsurance prior to entering into an assumption reinsurance agreement, but §7.604(a)(2) requires the filing to include the signed agreement. The commenter suggests changing §7.604(a)(2) to refer to the unexecuted proposed agreement. This would also allow for the inclusion of any revisions that might result from TDI's review of the plan.

**Agency Response to Comment.**

TDI agrees with the suggested change. The text of §7.604(a)(2) has been changed to read: "a copy of the assumption reinsurance agreement to be signed by officers of the parties to the agreement."

**Comment on §7.604(a)(3).**

A commenter notes that the "settlement fee" identified in §7.604(a)(3) is commonly referred to as the "ceding commission." The commenter suggests adding that language to the description of the consideration for the transaction.

**Agency Response to Comment.**

TDI disagrees that a change is necessary. Section 7.604(a)(3) as drafted refers to the "the settlement fee or consideration reflecting the acquisition cost." Adding additional descriptions would not enhance, and may confuse, the reference to "consideration reflecting the acquisition cost." TDI has not made a change based on this comment.

**Comments on §7.606 and §7.623.**

A commenter suggests changes to proposed §7.606 and §7.623, because ceding insurers and their policyholders are the most at risk in the event an accredited or certified reinsurer fails to meet the requirements to maintain their status. The commenter recommends the following changes to the rules:

1. Provide the ceding company the opportunity to request an additional 90 days to negotiate replacement reinsurance.

The commenter states that allowing only 90 days for securing replacement reinsurance severely limits the ceding companies' negotiating options, placing them at a disadvantage in seeking new reinsurance that is compatible with their existing rating and underwriting plans. It seems unfair to allow the reinsurers' failures to adversely impact the ceding companies and their Texas policyholders.

2. Require accredited and certified reinsurers to notify all ceding companies in writing immediately of any suspension or revocation of their status, and provide that the 90 day period for securing new reinsurance does not begin until that notice is provided.

**Agency Response to Comment.**

TDI disagrees with the commenter's suggestions to allow for an additional discretionary period or to base the beginning of the time period on the action of the assuming insurer.

Section 7.606 and §7.623 provide the Commissioner with discretion to grant up to 90 days for a ceding insurer to obtain replacement reinsurance coverage following the suspension or revocation of an assuming insurer's accreditation or certification. As stated in the proposal, the period is a reasonable change from the four month period allowed under the prior rule last amended in 1993, because advances in electronic commerce have reduced time periods for completing transactions. In addition, the 90 day period is consistent with time periods allowed in other states indicating that obtaining replacement coverage within the period is not a uniquely or unduly burdensome expectation.

Further, the requirement is reasonable based on the risk to the ceding insurer's policyholders and other insurers in the market place, particularly if the policies have guaranty fund protection. Extending the time for allowing an insurer to claim a credit for possibly non-existent reinsurance only increases the risk to policyholders and the insurance market place.

The decision to obtain reinsurance is a business decision of the ceding insurer. That decision comes with the credit risk that the assuming insurer may fail or no longer qualify to provide the ceding insurer with a credit for reinsurance. It is incumbent upon the ceding insurer to maintain a robust enterprise risk framework to monitor the credit risk associated with its reinsurance program. Ceding insurers are not prohibited from communicating directly with the assuming insurer or through brokers.

Section 7.606 and §7.623 requires the assuming insurer to notify their ceding insurers. But statute does not provide that an insurer may avoid statutory solvency requirements because another insurer has violated a statute or rule. Notice from the assuming insurer is also not the only means the ceding insurer may become aware of the suspension or revocation. As discussed, communication can provide a ceding insurer notice of a pending action against an assuming insurer under §7.606 or §7.623, and also the result of that action. In addition, TDI will still maintain its online list of accredited and certified reinsurers.

TDI has made no change in response to these comments.

**Comment on §7.606(f).**

A commenter suggests that §7.606(f) should be revised to clarify that the Commissioner can suspend the accreditation only if the insurer fails to meet the requirements of the statute. The commenter suggests revising §7.606(f) to read as follows:

"(f) The Commissioner may suspend or revoke an assuming insurer's accreditation as provided under Insurance Code §493.1038, after notice and opportunity for hearing as provided in that section."

**Agency Response to Comment.**

TDI disagrees with the commenter's suggestion that the statement adds to the reasons stated in Insurance Code §493.1038 for suspended or revoking an assuming insurer's accreditation. However, TDI has changed the statement for clarity. The statement is changed to read "As provided in Insurance Code §493.1038, the Commissioner may suspend or revoke an assuming insurer's accreditation after notice and opportunity for hearing."

**Comment on §7.610.**

A commenter suggests that TDI remove the word "clean" from §7.610(a), because the commenter has had recent experience with financial institutions no longer recognizing the term. This creates a problem for bank compliance departments and the assuming insurer.

**Agency Response to Comment.**

TDI disagrees with the commenter's suggestion. The term "clean" is set forth as a required condition for letters of credit in Insurance Code §493.104(b)(2)(C). The Texas Legislature recently amended §493.104 in SB 1039, 84th Legislature, Regular Session (2015), but did not amend §493.103(b)(2)(C). Because the condition is required by statute, TDI has not made a change to §7.610(a) based on the comment.

**Comment on §7.611.**

A commenter requests that TDI review the final accounting requirement in §7.611(7), because the requirement is unnecessary with certain permanent yearly renewable term life reinsurance contracts. Those contracts cede only mortality risks on certain policies in excess of attachment points and become permanent reinsurance. If a particular insured dies, there is an

accounting and payment after the death. There is typically no need for a final accounting and settlement because each policy is accounted for until the last insured dies or the policy lapses. There is quarterly accounting on a policy-by-policy basis.

The commenter states that final accounting and settlement is appropriate for most indemnity reinsurance, particularly in property and casualty lines, where risks are ceded over a certain period of time. It is somewhat unusual for permanent yearly renewal term life reinsurance contracts.

The commenter states that many other states do not have this requirement for these type of life reinsurance contracts. The commenter requests that this section be re-evaluated after closer review and inspection of this type of life reinsurance arrangement.

**Agency Response to Comment.**

TDI appreciates the comment, but has not made a change in §7.611(7). The section lists required provisions in an indemnity reinsurance contract. Section 7.611(7) requires that the contract "provide for a final accounting and settlement." But §7.611 does not prescribe the exact form that the final accounting and settlement must take. This allows the parties to contract in a reasonable and suitable manner concerning the transaction.

TDI did not propose a change to §7.611(7). A substantive change to §7.611 as requested by the commenters is beyond the scope of the proposal and the notice it provided.

**STATUTORY AUTHORITY.** The amended subchapter is adopted under Insurance Code §§404.005, 493.003, 493.1033(b)(3), 493.1035(e), 2551.003, 36.001, and 36.002(2)(D).

Insurance Code §404.005(a) provides that the Commissioner may adopt rules establishing uniform standards and criteria for early warning that the continued operation of an insurer might be hazardous to the insurer's policyholders or creditors or to the public, and that the Commissioner may establish standards for evaluating the financial condition of an insurer.

Insurance Code §493.003 provides that the Commissioner may adopt necessary and reasonable rules under Insurance Code Chapter 493 to protect the public interest.

Insurance Code §493.1033(b)(3) provides that to be eligible for certification, an assuming insurer must maintain a financial strength rating from not fewer than two rating agencies determined to be acceptable in accordance with rules adopted by the Commissioner.

Insurance Code §493.1035(e) addresses rules adopted by the Commissioner to approve a qualified jurisdiction that does not appear on the list of qualified jurisdictions published through the National Association of Insurance Commissioners committee process. The section provides that such rules must require a thoroughly documented justification of the approval of a qualified jurisdiction that is not on the NAIC list of qualified jurisdictions.

Insurance Code §2551.003 provides that the Commissioner may adopt and enforce rules the Commissioner determines are necessary to accomplish the purposes of Insurance Code Title 11, relating to title insurance.

Insurance Code §36.001 provides that the Commissioner may adopt any rules necessary and appropriate to implement the department's powers and duties under the Insurance Code and other laws of this state.

Insurance Code §36.002(2)(D) provides that the Commissioner may adopt reasonable rules that are appropriate to accomplish the purposes of a provision of Insurance Code Chapter 493.

**TEXT.****§7.601. Scope.**

- (a) This subchapter implements Insurance Code Chapter 493.
- (b) This subchapter applies to all insurers engaged in the business of ceding and assuming insurance in this state.
- (c) This subchapter does not apply to the reinsurance of all or part of the liability of a policy of title insurance, except as provided under Insurance Code §2551.3055.

**§7.602. Definitions.**

The following words and terms, when used in this subchapter, have the following meanings, unless the context clearly indicates otherwise.

(1) Assuming insurer--An insurer as defined in Insurance Code §493.001. The term includes an insurer that assumes:

(A) the insurance risk of loss of the ceding insurer under the ceding insurer's indemnity reinsurance agreement, or

(B) the policy obligations of the ceding insurer under an assumption reinsurance agreement.

(2) Assumption reinsurance--A reinsurance agreement under which the assuming insurer assumes in writing the direct policy obligations of the ceding insurer in substitution for the obligations of the ceding insurer.

(3) Ceding insurer--The insurer that transfers an insurance risk of loss or part of an insurance risk of loss to an assuming insurer pursuant to a reinsurance agreement.

(4) Commissioner--Texas Commissioner of Insurance.

(5) GAAP--United States Generally Accepted Accounting Principles.

(6) Indemnity reinsurance--A reinsurance agreement that transfers an insurance risk of loss between insurers for a consideration commensurate with the risk transferred and under which an assuming insurer indemnifies a ceding insurer against all or part of the insurance risk of loss that the ceding insurer may sustain under the insurance policy or policies that the ceding insurer has issued or assumed.

(7) Insurer--A person legally organized in and authorized by its domiciliary jurisdiction to do the business of insurance, including those types of entities listed in Insurance Code §493.002, a title insurer operating under Insurance Code Title 11, or a domestic surplus lines insurance company operating under Insurance Code Chapter 981.

(8) NAIC--National Association of Insurance Commissioners.

(9) Nationally recognized statistical rating organization (NRSRO)--A credit rating agency currently registered as such with the United States Securities and Exchange Commission to issue credit ratings for insurance companies.

(10) Person--An individual, corporation, partnership, or other legal entity.

(11) Qualified United States financial institution--Those institutions as defined in the Insurance Code §493.001.

(12) Reinsurance agreement--A written contract that transfers an insurance risk of loss between insurers for a consideration commensurate with the risk transferred.

(13) Surplus as regards policyholders--The excess of net admitted assets over the sum of total liabilities.

(14) TDI--Texas Department of Insurance.

**§7.603. Prohibition against Reinsurance with Assuming Insurers not Authorized to do the Business of Insurance in Texas.**

Notwithstanding any other section in this subchapter, an insurer operating under Insurance Code §841.204 having less than the minimum capital and surplus required for the formation of new companies under Insurance Code §841.054 is prohibited from ceding an insurance risk of loss or part of an insurance risk of loss with any assuming insurer not authorized to do the business of insurance in Texas.

**§7.604. Assumption Reinsurance.**

(a) An insurer authorized to do the business of insurance in this state must, prior to entering into an assumption reinsurance agreement for its entire outstanding business, submit to TDI the written plan of reinsurance, including the assumption reinsurance agreement, and all necessary documents to allow the Commissioner to determine that the interests of all policyholders are fully protected as follows:

(1) a letter signed by a company officer, and including the phone number and email of the appropriate company contact individual:

(A) explaining the transaction;

(B) identifying all parties involved and specifying which are affiliates;

(C) stating the intentions of all parties post transaction;

(D) stating whether the assumption reinsurance transaction is all of the ceding company's direct insurance exposure or only a portion and whether the transaction cedes all direct insurance exposure, the ceding company's plans going forward to maintain its certificate of authority or dissolve the entity;

(E) providing the date that any required assumption certificate or endorsement was filed with TDI;

(F) stating whether the policy reserves associated with the assumption reinsurance agreement are greater than 10 percent of the assuming insurer's total policyholder surplus or 25 percent of the ceding insurer's total assets;

(G) stating whether there is a settlement fee or consideration associated with the assumption reinsurance agreement;

(H) stating whether any parties to the agreement have assets deposited with or pledged to TDI and, if applicable, the party's expectations related to such deposits; and

(I) addressing any due diligence issues, including disclosure of any currently owned assets that may be nonadmitted as a result of the assumption reinsurance;

(J) stating the number of policies to be reinsured broken down by type of policy, form number, or other appropriate means;

(K) specifying in detail any changes in the policy coverage, provisions, rights or privileges, or in the actuarial reserving basis; and

(L) specifying a "date certain" for the effective date and contain the date by which all of the assumption certificates will be delivered or mailed (for group policies, each individual certificate holder must receive an assumption certificate);

(2) a copy of the assumption reinsurance agreement to be signed by officers of the parties to the agreement;

(3) a copy of any agreement governing the settlement fee or consideration reflecting the acquisition cost;

(4) if associated policy reserves of the business being ceded is greater than 10 percent of assuming insurer's total policyholder surplus or greater than 25 percent of ceding insurer's total assets, a four column balance sheet reflecting historical numbers from the most recently filed annual or quarterly statement, consistent with the following subparagraphs:

(A) the first column should reflect the ceding insurer's financial position pre-transaction;

(B) the second column should reflect assuming insurer's financial position pre-transaction;

(C) the third column should reflect the effect of the transaction on the applicable balance sheet accounts; and

(D) the fourth column should reflect the financial position of the assuming insurer post-transaction;

(5) if one of the companies involved in the transaction is a foreign domiciled insurer, provide evidence that the state of domicile has approved the assumption reinsurance, or if no approval is required in the state of domicile, an original letter from the domiciliary state insurance department stating such; and

(6) a copy of the letter appointing agents of the ceding insurer to the assuming insurer.

(b) If the assumption reinsurance agreement is between only foreign domiciled insurers that have policyholders or certificate holders located in Texas, the insurer must submit only the information and documents listed in subsection (a)(1), (2), (3), and (5) of this section.

**§7.605. Fees.**

The fees for submitting assumption reinsurance agreements are set forth in §7.1301 of this title.

**§7.606. Accredited Assuming Insurer.**

(a) An assuming insurer authorized by its state of domicile to assume the kind or kinds of insurance ceded to it, but which is not authorized to transact the business of insurance in this state, may apply for accreditation and such assuming insurer may be referred to as the "applicant" where appropriate in this section. A ceding insurer which cedes business to an accredited assuming insurer may receive the same credit for reinsurance as either an asset or a deduction from liability that the ceding insurer would be entitled to receive from ceding to an authorized assuming insurer.

(b) To apply for accreditation, the applicant must submit to TDI the following:

(1) applicant information, including the applicant's:

- (A) full name;
  - (B) physical address for its principal place of business;
  - (C) mailing address;
  - (D) NAIC number, United States federal tax identification number, and International Securities Identification Number, as applicable; and
  - (E) contact individual's name, phone number, and email;
- (2) a list of states where the applicant currently transacts business;
  - (3) a list of all lines and classifications of insurance business the applicant is authorized to insure or reinsure;
  - (4) the most recent financial statement the applicant submitted to its state of domicile;
  - (5) a copy of the applicant's certificate or letter of authority or of compliance issued by the state of domicile; and
  - (6) Form AR-1, signed by the applicant's president or chief executive officer, which submits the assuming insurer to both this state's jurisdiction and to this state's right to examine the applicant's books and records.
- (c) Accreditation will not be granted by the Commissioner until the applicant has submitted all information and documents required under subsection (b) of this section, and has demonstrated to the satisfaction of the Commissioner that the applicant qualifies for accreditation under Insurance Code Chapter 493 and this subchapter.
- (d) To maintain accreditation, the accredited assuming insurer must submit to TDI:
- (1) annually on or before March 1 of each year, an annual financial statement, as filed with the insurance regulator of the accredited assuming insurer's state of domicile; and
  - (2) quarterly on or before March 1, May 15, August 15, and November 15 of each year, a listing of ceding insurers with whom reinsurance agreements have been entered during that calendar quarter, including the complete name and address of each ceding insurer.
- (e) Renewal of accreditation will occur annually, subject to continuing compliance with Insurance Code Chapter 493 and this subchapter.

(f) As provided in Insurance Code §493.1038, the Commissioner may suspend or revoke an assuming insurer's accreditation after notice and opportunity for hearing.

(g) The Commissioner may allow up to 90 days for an order suspending or revoking an assuming insurer's accreditation to become effective. No credit will be allowed a ceding insurer with respect to reinsurance ceded after the effective date an assuming insurer's accreditation has been suspended or revoked, except as provided under Insurance Code §493.1038. TDI will maintain a list of accredited assuming insurers on the TDI website. The assuming insurer must notify all affected ceding insurers at the time an order is entered that the assuming insurer's accreditation is withdrawn, suspended, or revoked.

**§7.607. Trusteed Assuming Insurer.**

(a) Credit for ceded insurance. Pursuant to Insurance Code §493.102(a)(3), a ceding insurer may be allowed credit for insurance risk of loss ceded to an assuming insurer that maintains a trust fund in a qualified United States financial institution for the payment of the valid claims of its United States policyholders and ceding insurers, their assigns, and successors in interest. Initially on establishing the trust and not later than March 1 of each subsequent year the assuming insurer must report to TDI information substantially the same as that required to be reported on the NAIC annual statement form by authorized insurers to enable TDI to determine the sufficiency of the trust fund, and the following information:

(1) the assuming insurer's:

(A) full name;

(B) physical address for its principal place of business;

(C) mailing address;

(D) NAIC number, United States federal tax identification number, and International Securities Identification Number, as applicable; and

(E) contact individual's name, phone number, and email; and

(2) the trustee report required under Insurance Code §493.155(a) and subsection (c)(5) of this section.

(b) Three types of trusteed assuming insurers.

(1) A single assuming insurer must have a trust fund consisting of a trustee account representing the assuming insurer's liabilities attributable to business written in the United States and, in addition, include a trustee surplus of not less than \$20 million, except as provided in Insurance Code §493.152(a)(2) and (a-1).

(2) A group of individual unincorporated underwriters must have a trust fund consisting of a trustee account representing the group's liabilities attributable to business written in the United States and, include a trustee surplus of not less than \$100 million. The group must make available to TDI an annual certification by the group's domiciliary regulator and its independent public accountants of the solvency of each underwriter.

(3) A group of incorporated insurers under common administration which has continuously transacted an insurance business for at least three years, which is under the supervision of the Department of Trade and Industry of the United Kingdom, and which has aggregate policyholders' surplus of \$10 billion, must consist of a trustee account representing the group's several liabilities attributable to business written in the United States pursuant to reinsurance agreements issued in the name of the group and include a trustee surplus of not less than \$100 million that must be held jointly for the benefit of United States insurers ceding business to any member of the group. Each member of the group must make available to TDI an annual certification by the member's domiciliary regulator and its independent public accountants of the solvency of each member.

(c) Form of trust. Each trust must be established in a form approved by TDI or the chief insurance regulatory official of another state who, under the trust agreement has principal oversight over the trust. A copy of the trust and any amendments to the trust must be submitted to TDI and the chief insurance regulatory official of each state in which the ceding insurer beneficiaries of the trust are domiciled. If the Commissioner has principal regulatory oversight over the trust, the form of the trust must provide as follows:

(1) Contested claims are valid and enforceable out of funds in trust to the extent remaining unsatisfied 30 days after entry of the final order of any court of competent jurisdiction in the United States.

(2) Legal title to the assets of the trust must be vested in the trustees for the benefit of the grantor's United States policyholders and ceding insurers, their assigns, and successors in interest.

(3) The trust and the assuming insurer are subject to examination as determined by TDI.

(4) The trust must remain in effect for as long as the assuming insurer has outstanding obligations due under the reinsurance agreements subject to the trust.

(5) Not later than February 28 of each year, the trustees of the trust must report to TDI in writing and set forth the balance of the trust, list the trust's investments at the preceding year end, certify the date of termination of the trust, if so planned, or certify that the trust will not expire prior to the next following December 31.

(6) The grantor of the trust must notify TDI of any amendment to the trust within 10 business days of adoption of the amendment. If the Commissioner determines subsequent to receipt of this notice that the amendment is not acceptable and the amendment is not brought into compliance with Insurance Code and TDI rules, the trustee status of the assuming insurer will be automatically revoked. TDI will provide notice by certified mail to the most recent address of the trustee assuming insurer according to TDI records. The trustee assuming insurer may request a public hearing to show compliance and seek reinstatement within 20 days of notification.

**§7.608. Insurance Ceded to Assuming Insurers not Authorized in Texas, or Accredited, Trustee, or Certified under this Subchapter.**

(a) A ceding insurer domiciled in this state may not take credit for insurance ceded to an insurer that is not authorized in Texas, accredited in Texas, trustee in Texas, or certified in Texas, except as authorized under Insurance Code §493.104.

(b) The funds held by or on behalf of the ceding insurer must be held as required under Insurance Code §493.104(b) and must be segregated from other operating accounts and securities invested by the ceding insurer. The segregated account must clearly acknowledge ownership by the company on whose annual statement these assets are listed. The ceding insurer must maintain

at all times a subsidiary ledger detailing by each assuming insurer all transactions pertinent to each cash account or security held under the respective reinsurance agreements.

**§7.609. Trust Agreement Requirements.**

(a) Definitions for this section. The following words and terms, when used in this section, have the following meanings, unless the context clearly indicates otherwise.

(1) Beneficiary--The entity for whose benefit the trust has been established; the ceding insurer and any successor by operation of law of the ceding insurer including, without limitation, any liquidator, receiver, conservator, or supervisor.

(2) Grantor--The entity that has established a trust for the sole benefit of the beneficiary; the assuming insurer.

(3) Obligations--The sum total of trust property as set forth in subsection (b)(11) of this section which, unless specifically excluded under the reinsurance agreement is:

(A) reinsured losses and allocated loss expenses paid by the ceding insurer, but not recovered from the assuming insurer;

(B) reserves for reinsured losses reported and outstanding;

(C) reserves for reinsured losses incurred but not reported and corresponding allocated loss expenses;

(D) reserves for unearned premiums; and

(E) reserves for mortality and morbidity.

(4) Trustee--A qualified United States financial institution.

(b) Required conditions in trust agreements.

(1) The agreement must be in the form of a written trust agreement made and entered into among the beneficiary, the grantor, and a trustee, which must be a qualified United States financial institution.

(2) The trust agreement must create a trust account into which assets must be deposited.

(3) All assets in the trust account must be held by the trustee at the trustee's office in the United States. The written notice described in paragraph (4) of this subsection must be presentable at the trustee's office in the United States.

(4) The trust agreement must comply with subparagraphs (A)-(C) of this paragraph.

(A) The trust agreement must stipulate that the beneficiary will have the right to withdraw assets from the trust account at any time, without notice to the grantor, subject only to written notice from the beneficiary to the trustee and the terms of the trust agreement.

(B) No statement or document, other than the written notice from the beneficiary to the trustee, will be accepted to withdraw assets; the beneficiary may be required to acknowledge receipt of withdrawn assets.

(C) The trust agreement must indicate that it is not subject to any conditions or qualifications outside of the trust agreement and must not be conditioned on any other agreements or documents except as provided in paragraph (11) of this subsection.

(5) The trust agreement must be established for the sole benefit of the beneficiary.

(6) The trust agreement must provide for the trustee to:

(A) receive assets and hold all assets in safekeeping;

(B) determine that all assets are in such form that the beneficiary, or the trustee on direction by the beneficiary, may, whenever necessary, negotiate any such assets, without consent or signature from the grantor or any other person;

(C) furnish to the grantor and the beneficiary a statement of all assets in the trust account on its inception and at intervals no less frequent than the end of each calendar year quarter;

(D) notify the grantor and the beneficiary, within 10 days, of any deposits to or withdrawals from the trust account;

(E) on written demand of the beneficiary, immediately take any and all steps necessary to transfer absolutely and unequivocally all right, title, and interest in the assets held in the trust account to the beneficiary and deliver physical custody of such assets to the beneficiary; and

(F) allow no substitutions or withdrawals of assets from the trust account, except on written instructions from the beneficiary; or the trustee may, without the consent of but with written notice to the beneficiary, on call or maturity of any trust asset, withdraw such asset on condition that the proceeds are paid or deposited into the trust account.

(7) The trust agreement must provide that at least 30 days prior to termination of the trust account, written notification of termination must be delivered by the trustee via certified mail to the beneficiary and TDI.

(8) The trust agreement must specify whether it is subject to and governed by the laws of either the state in which the trust is established or the state in which the ceding insurer is domiciled as specified in the trust agreement.

(9) The trust agreement must prohibit invasion of the trust corpus in excess of one percent of the corpus per annum for the purpose of paying compensation to, or reimbursing the expenses of, the trustee.

(10) The trust agreement must provide that the trustee will be liable for its own negligence, willful misconduct, lack of good faith, or breach of fiduciary duty.

(11) When a trust agreement is established in conjunction with a reinsurance agreement and where it is customary practice to provide a trust agreement for a specific purpose, such trust agreement must, notwithstanding any other conditions in this section, provide that the ceding insurer must undertake to use and apply amounts drawn on the trust account, without diminution because of the insolvency of the ceding insurer or the assuming insurer, for the following purposes:

(A) to pay or reimburse such ceding insurer for the assuming insurer's share under the specific reinsurance agreement regarding any losses and allocated loss expenses paid by the ceding insurer, but not recovered from the assuming insurer or for unearned premiums due to the ceding insurer, if not otherwise paid by the assuming insurer;

(B) to make payment to the assuming insurer of any amounts held in the trust account that exceed 102 percent of the actual amount required to fund the assuming insurer's obligations under the specific reinsurance agreement; or

(C) where the ceding insurer has received notification of termination of the trust account and where the assuming insurer's entire obligations under the specific reinsurance agreement remain unliquidated and undischarged 10 days prior to such termination date, the ceding insurer withdraws amounts equal to such obligations and deposits such 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 such uses and purposes specified in subparagraphs (A) and (B) of this paragraph as may remain executory after such withdrawal and for any period after such termination date.

(12) The reinsurance agreement entered into in conjunction with such a trust agreement may, but need not, contain the provisions required by subsection (d)(1)(B) of this section, provided that these provisions are included in the trust agreement.

(13) The assuming insurer agrees in the trust agreement to comply with the requirements of Insurance Code §493.1561.

(c) Permitted conditions in trust agreements.

(1) The trust agreement must provide that the trustee may resign on delivery of a written notice of resignation, effective not less than 90 days after receipt by the beneficiary and grantor of the notice and that the trustee may be removed by the grantor by delivery to the trustee and the beneficiary of a written notice of removal, effective not less than 90 days after receipt by the trustee and the beneficiary of the notice, provided that no such resignation or removal will be effective until a successor trustee has been duly appointed and approved by the beneficiary and the grantor and all assets in the trust have been duly transferred to the new trustee.

(2) The trustee must be given authority to invest any of the funds in the account, provided that no investment may be made without prior approval of the beneficiary, unless the trust agreement specifies categories of investments acceptable to the beneficiary that are consistent with the restrictions in subsection (d)(1)(B) of this section.

(3) The trust agreement must provide that, on termination of the trust account, all assets not previously withdrawn by the beneficiary must, with written approval by the beneficiary, be delivered over to the grantor.

(4) The trust agreement must require the assuming insurer, prior to depositing assets with the trustee, to execute assignments, endorsements in blank, or transfer legal title to the trustee of all shares, obligations, or any other assets requiring assignments, in order that the beneficiary, or the trustee on the direction of the beneficiary may, whenever necessary, negotiate any such assets without consent or signature from the assuming insurer or any other entity.

(d) Additional conditions applicable to reinsurance agreements.

(1) A reinsurance agreement, which is entered into in conjunction with a trust agreement and the establishment of a trust account, must contain provisions that:

(A) require the assuming insurer to enter into a trust agreement and to establish a trust account for the benefit of the ceding insurer, and specifying what such agreement is to cover;

(B) stipulate that assets deposited in the trust account must be valued, according to their current fair market value, and must consist only of, in any combination, cash (United States legal tender), certificates of deposit (issued by a bank organized under the laws of the United States, or located in the United States, and payable in United States legal tender), or investments of the types permitted by Insurance Code §493.104 provided that such investments are issued by an institution that is not the parent, subsidiary, or affiliate of either the grantor or the beneficiary;

(C) require that all settlements of account between the ceding insurer and the assuming insurer be made in cash or its equivalent; and

(D) stipulate that the assuming insurer and the ceding insurer agree that the assets in the trust account, established pursuant to the provisions of the reinsurance agreement, may be withdrawn by the ceding insurer at any time, notwithstanding any other provisions in the reinsurance agreement, and must be utilized and applied by the ceding insurer or its successors in interest by operation of law, including any liquidator, rehabilitator, receiver, or conservator of such company, without diminution because of insolvency on the part of the ceding insurer or the assuming insurer, only for the following purposes:

(i) to reimburse the ceding insurer for the assuming insurer's share of premiums returned to the owners of policies reinsured under the reinsurance agreement on account of cancellations of such policies;

(ii) to reimburse the ceding insurer for the assuming insurer's share of surrenders and benefits or losses paid by the ceding insurer pursuant to the provisions of the policies reinsured under the reinsurance agreement;

(iii) in the event of notice of termination of the trust, to fund an account with the ceding insurer in an amount at least equal to the deduction, for reinsurance ceded, from the ceding insurer's liabilities for policies ceded under the agreement, such account must include amounts for policy reserves, claims and losses incurred (including losses incurred but not reported), loss adjustment expenses, and unearned premiums reserves; and

(iv) to pay any other amounts due the ceding insurer under the reinsurance agreement.

(2) The reinsurance agreement may also contain provisions that:

(A) give the assuming insurer the right to seek approval from the ceding insurer to withdraw from the aforementioned trust account all or any part of the assets contained therein and transfer such assets to the assuming insurer, provided:

(i) the assuming insurer must at the time of such withdrawal, replace the withdrawn assets with other qualified assets having a market value equal to the market value of the assets withdrawn so as to maintain at all times the deposit in the required amount; or

(ii) after such withdrawal and transfer, the market value of the trust account is no less than 102 percent of the required amount; and

(iii) the ceding insurer must be the sole judge as to the application of this subparagraph, but must not unreasonably or arbitrarily withhold its approval;

(B) provide for the return of any amount withdrawn in excess of the actual amounts required for paragraph (1)(D)(i)-(iii) of this subsection or, in the case of paragraph (1)(D)(iv) of this subsection, any amounts that are subsequently determined not to be due;

(C) provide for interest payments to the assuming insurer, at a rate not in excess of the rate of interest earned, on the amounts held pursuant to paragraph (1)(D)(iii) of this subsection; or

(D) permit the award by any arbitration panel or court of competent jurisdiction of:

(i) interest at a rate different from that provided in subparagraph (C) of this paragraph;

(ii) court or arbitration costs;

(iii) attorney's fees; and

(iv) any other reasonable expenses.

(e) Reduction in liability for reinsurance ceded to an unauthorized insurer. A trust agreement may be used to reduce any liability for reinsurance ceded to an unauthorized assuming insurer in financial statements required to be filed with TDI in compliance with the provisions of this section when established on or before the date of the financial statement of the ceding insurer. Further, the reduction for the existence of an acceptable trust account may be up to the current fair market value of acceptable assets available to be withdrawn from the trust account at that time, but such reduction must be no greater than the specific obligations under the reinsurance agreement that the trust account was established to secure.

#### **§7.610. Letter of Credit Requirements.**

(a) The letter of credit must be clean, irrevocable, and unconditional, and issued or confirmed by a qualified United States financial institution. The letter of credit must contain an issue date and must stipulate that the beneficiary need only draw a draft under the letter of credit and present it to obtain funds and that no other document need be presented. The letter of credit must also indicate that it is not subject to any condition or qualifications outside of the letter of credit. In addition, the letter of credit itself must not contain reference to any other agreements, documents, or entities, except as provided in subsection (h)(1) of this section.

(b) The heading of the letter of credit may include a boxed section that contains the name of the applicant and other appropriate notations to provide a reference for such letter of credit. If

included, the boxed section must be clearly marked to indicate that such information is for internal identification purposes only. Neither the boxed section nor the internal identification may affect the terms of the letter of credit.

(c) The letter of credit must contain a statement to the effect that the obligation of the qualified United States financial institution under the letter of credit is in no way contingent on reimbursement.

(d) The term of the letter of credit must be for at least one year and must contain an evergreen clause that prevents the expiration of the letter of credit without written notice from the issuer. The evergreen clause must provide for a period of no less than 30 days' written notice prior to expiry date or nonrenewal.

(e) The letter of credit must state that:

(1) it is subject to and governed by either the laws of the State of Texas, the laws of the state of domicile of the issuing bank, or the Uniform Customs and Practice for Documentary Credits of the International Chamber of Commerce (UCP);

(2) in the event of any conflict, whether the laws of Texas or the laws of the state in which the issuing bank is domiciled will apply; and

(3) all drafts drawn under the letter of credit are presentable at an office in the United States of a qualified United States financial institution.

(f) If the letter of credit is made subject to the UCP, then the letter of credit must specifically address and make provision for an extension of time to draw against the letter of credit in the event that one or more of the force majeure occurrences specified in the UCP occur.

(g) If the letter of credit is confirmed by a qualified United States financial institution authorized to issue letters of credit, then the following additional requirements in paragraphs (1) and (2) of this subsection must be met.

(1) The issuing financial institution must formally designate the confirming qualified United States financial institution as its agent for the receipt and payment of the drafts.

(2) The evergreen clause must provide for 60 days' written notice prior to expiry date or nonrenewal.

(h) Reinsurance agreement provisions applicable with letters of credit must comply with the requirements of paragraphs (1)-(4) of this subsection.

(1) The reinsurance agreement, in conjunction with the letter of credit provided pursuant to applicable credit for reinsurance statutes and rules, must contain provisions that:

(A) require the assuming insurer to provide letters of credit to the ceding insurer and specify what they are to cover; or

(B) stipulate that the assuming insurer and ceding insurer agree that the letter of credit provided by the assuming insurer, pursuant to the provisions of the reinsurance agreement, may be drawn on at any time, notwithstanding any other provisions in such agreement, and may be utilized by the ceding insurer or its successors in interest for the following purposes:

(i) to reimburse the ceding insurer for the assuming insurer's share of premiums returned to the owners of policies reinsured under the reinsurance agreement on account of cancellations of such policies;

(ii) to reimburse the ceding insurer for the assuming insurer's share of surrenders and benefits or losses paid by the ceding insurer under the terms and provisions of the policies reinsured under the reinsurance agreement;

(iii) in the event of notice of nonrenewal of the letter of credit, to fund an account with the ceding insurer in an amount at least equal to the deduction, for reinsurance ceded, from the ceding insurer's liabilities for policies ceded under the agreement (such amount must include amounts for policy reserves, claims and losses incurred, and unearned premium reserves); and

(iv) to pay any other amounts due to the ceding insurer under the reinsurance agreement.

(2) All of the provisions of paragraph (1) of this subsection must be applied without diminution because of insolvency on the part of the ceding insurer or assuming insurer.

(3) The reinsurance agreement may, if applicable, provide for the ceding insurer and assuming insurer to:

(A) make an interest payment to the assuming insurer, at a rate not in excess of the prime rate of interest on the amounts held pursuant to paragraph (1)(B)(iii) of this subsection; or

(B) return any amounts drawn down on the letters of credit in excess of the actual amounts required, or in the case of paragraph (1)(B)(iv) of this subsection any amounts that are subsequently determined not to be due.

(4) When a letter of credit is obtained in conjunction with a reinsurance agreement and where it is customary practice to provide a letter of credit for a specific purpose, then such reinsurance agreement may, in lieu of paragraph (1)(B) of this subsection, require that the parties enter into a trust agreement that is incorporated into the reinsurance agreement or be a separate document.

(i) A letter of credit may not be used to reduce any liability for reinsurance ceded to an unauthorized assuming insurer in financial statements required to be filed with TDI unless an acceptable letter of credit specifying the filing ceding insurer as beneficiary has been issued on or before the date of the financial statement. Further, the reduction for the letter of credit may be up to the amount available under the letter of credit but no greater than the specific obligation under the reinsurance agreement which the letter of credit was intended to secure.

(j) Only one expiration date may appear on the letter of credit and the date must be clearly noted on the face of the letter of credit and must set forth the specific month, day, time, and year that the letter of credit will expire.

(k) The aggregate of all letters of credit issued or confirmed to any one ceding insurer by one financial institution on behalf of any one assuming insurer must not exceed 10 percent of the financial institution's total equity capital, as shown in its most recent report of condition as filed with the appropriate federal financial institution regulatory agency. As used in this subsection, the term "any one ceding insurer" also includes all affiliated insurers that are named as beneficiaries in accordance with subsection (l) of this section.

(l) Only one beneficiary may be named on the letter of credit except that, in the event of affiliated insurers all of whom are members of the same holding company system and are participants in a specific intercompany reinsurance pooling arrangement, each affiliate ceding

insurer through participation in the pool to the same assuming insurer may be named as beneficiary.

(m) Only one amount may appear on the letter of credit except that, in the event of affiliated beneficiaries, the letter of credit must show an aggregate amount covering the total reserve credit taken by all such affiliated beneficiaries and also must specifically designate for each named beneficiary, by dollar amount or percentage of the aggregate, the maximum amount that each named beneficiary may draw down.

(n) The term "beneficiary" must include any successor by operation of law of the named beneficiary including, without limitation, any liquidator, receiver, conservator, or supervisor.

(o) The account holder must be the assuming insurer.

(p) No schedule of periodic payments must appear on the letter of credit.

(q) If a letter of credit is issued by a financial institution which does not qualify as a qualified United States financial institution but is confirmed by a qualified United States financial institution, the following requirements in paragraphs (1)-(4) of this subsection must be met.

(1) The letter of credit that is being confirmed must comply in substance and form with Insurance Code §493.104 and §493.105 and this subchapter, except that the period of the evergreen clause as referenced in subsection (g)(2) of this section shall be increased to 60 days.

(2) The confirmation letter must show on its face:

(A) the office in the United States, inclusive of complete name and address, where presentations for draws are to be made; and

(B) the specific month, day, time, and year that the confirmation letter will expire.

(3) The confirmation letter must:

(A) contain an evergreen clause that prevents expiration of the confirmation letter without some affirmative action by the issuer;

(B) coincide with the term of the letter of credit being confirmed; and

(C) provide that the confirmation letter automatically will be extended for a like term unless, prior to the end of the stated term, the confirming bank has given the ceding

insurer (beneficiary), the assuming insurer, and the issuing bank not less than 60 days' written notice of nonrenewal by either certified or registered mail, or other mutually agreed means.

(4) The confirming bank must comply with subsection (k) of this section.

(r) Qualifying foreign branches of Federal Deposit Insurance Corporation banks may issue letters of credit, and such letters of credit will be acceptable if the face of the letter of credit clearly shows that the letter of credit may be drawn down at a United States office of the bank and specifically lists the street address of that office. Similarly, qualifying foreign branches of Federal Deposit Insurance Corporation banks may confirm letters of credit. A confirmation letter will be acceptable if the face of the confirmation letter clearly shows that the letter of credit may be drawn down at a United States office of the confirming bank and specifically lists the street address of that office.

(s) In the event a letter of credit is not renewed or replaced under a reinsurance arrangement between the ceding insurer and assuming insurer, the ceding insurer must not be precluded from withdrawing the balance of the letter of credit and placing such sums in trust to secure continuing obligations under the reinsurance agreement until a renewal letter of credit or a substitution in lieu thereof has been received.

(t) All letters of credit must be readily available for viewing by TDI on request; letters of credit must be available at any time to TDI examiners in connection with the preparation of reports of examination. All confirming letters must be attached to the letters of credit that they confirm.

(u) In the event that either a letter of credit or a confirming letter of credit is not renewed or replaced or is suspended to become inactive, the ceding insurer and the issuing bank must give immediate notice of such nonrenewal or inactive status and the ceding insurer must advise TDI of any amount still outstanding and unsettled under the reinsurance agreement(s). This required notice must be sent to TDI by certified mail, return receipt requested (or by registered mail).

#### **§7.611. Indemnity Reinsurance Agreements--Required Provisions.**

Credit will not be granted to a ceding insurer for reinsurance effected with assuming insurers meeting the requirements of Insurance Code Chapter 493 or otherwise in compliance with this subchapter unless the reinsurance agreement:

(1) includes a proper insolvency clause pursuant to Insurance Code §493.106;

(2) includes a provision that the assuming insurer, if not authorized to transact insurance or reinsurance in this state, has submitted to a court of jurisdiction within the United States, has agreed to comply with all requirements necessary to give such court jurisdiction, has designated an agent on whom service of process may be effected, and has agreed to abide by the final decision of such court or an appellate court to which such court's decision is appealed;

(3) includes a provision for a periodic accounting and cash settlement at quarterly intervals or more frequently as required by the reinsurance agreement, or quarterly accrual for annual settlements for those agreements that are not susceptible to other than annual payments, such periodic accounting and cash settlement to be unconditional on the performance of any other agreement or person;

(4) provides that the operation of any offsetting provisions must be to limit offset to reinsurance agreements between the ceding insurer and the assuming insurer;

(5) includes an effective date on which the inception of the assuming insurer's liabilities commence;

(6) includes a termination date or description of duration;

(7) provides for a final accounting and settlement; and

(8) provides that if payments are made to a reinsurance intermediary, then the assuming insurer assumes all credit risk of the reinsurance intermediary related to payments made to the reinsurance intermediary. The following will be deemed acceptable for evidencing compliance with this subsection: payments by the ceding insurer to the intermediary must be deemed to constitute payments to the assuming insurer and that payments by the assuming insurer to the intermediary must be deemed to constitute payment to the ceding insurer only to the extent that such payments are actually received by the ceding insurer;

(9) includes a provision indicating that the written agreement must constitute the entire agreement between the parties with respect to the business being reinsured thereunder and that there are no understandings between the parties other than as expressed in the agreement;

(10) includes a provision whereby any change or modification to the agreement be made by amendment to the agreement and signed by the parties, except that facultative certificates

duly executed by a property and casualty reinsurer or its duly appointed agent are excluded from this requirement; and

(11) complies with any other Texas Department of Insurance rules in effect.

**§7.612. Reinsurance Agreements Affected.**

The requirements of this subchapter, as amended, apply to all reinsurance agreements entered into or renewed on or after July 1, 2018, or such earlier date as the parties may agree. Unless the parties have agreed to be covered by the requirements of this subchapter prior to July 1, 2018, the requirements for a reinsurance agreement that was entered into or renewed before July 1, 2018, are governed by §§7.601-7.612, and §7.614 of this title as those sections existed immediately prior to that date and those rules are continued in effect for that purpose.

**§7.614. Posting of Information, Submissions, and Adoption of Forms by Reference.**

(a) Information and filings required under this subchapter must be submitted to the Commissioner or TDI on paper or in an electronic format that is acceptable to TDI. TDI will specify acceptable electronic submission formats and methods on the TDI website or the form.

(b) TDI adopts by reference the following standard forms for use by all insurers that are subject to the provisions of this subchapter and Insurance Code Chapter 493. Bracketed information in the forms, including TDI submission locations, submission formats and methods, and contact information, is subject to change, and persons submitting the forms must confirm that they are using the most recent online version before submitting. These forms are available on the TDI website. These forms are more specifically identified as follows:

(1) Form AR-1, Certificate of Accredited Assuming Insurer;

(2) Form CR-1, Certificate of Certified Reinsurer;

(3) Form CR-F Reinsurance – Property/Casualty Business; and

(4) Form CR-S Reinsurance – Life Insurance, Annuities, Deposit Funds and Other Liabilities, and Accident and Health Insurance.

(c) All submissions to the Commissioner or TDI required in this subchapter must be sent to the appropriate physical, mailing, or electronic address:

- (1) specified on the applicable TDI form being used;
- (2) listed on the TDI website for a particular submission; or
- (3) if the address for the submission is not listed:

(A) electronically, to CLRfilings@tdi.texas.gov;

(B) by hand delivery, to Company Licensing and Registration, Texas Department of Insurance, 333 Guadalupe, Mail Code 103-CL, Austin, Texas 78701; or

(C) by mail, to Company Licensing and Registration, Texas Department of Insurance, P.O. Box 149104, Mail Code 103-CL, Austin, Texas 78714-9104.

**§7.621. Certified Assuming Insurers.**

(a) Except as provided under Insurance Code §493.002(a-1) for certain county mutual insurance companies operating under Insurance Code §912.056, an insurer may take credit for reinsurance ceded to an assuming insurer that has been certified as an assuming insurer in this state pursuant to Insurance Code §493.1033 and this subchapter. The assuming insurer must be certified at all times for which statutory financial statement credit for reinsurance is claimed by the ceding insurer.

(b) The credit allowed will be based on the security held by or on behalf of the ceding insurer in accordance with a rating assigned to the certified assuming insurer by the Commissioner. The security must be in a form consistent with the provisions of Insurance Code §493.1033(a)(2) and §493.1036(d) and this subchapter.

(c) The amount of security required in order for full credit to be allowed must correspond with the following requirements:

(1) The minimum reduced amounts of security that must be withheld for full credit are stated in Figure: 28 TAC §7.621(c)(1):

Figure: 28 TAC §7.621(c)(1)

Assigned Rating	Minimum Amount of Security Required to be Withheld for Full Credit.
Secure – 1	0%
Secure – 2	10%
Secure – 3	20%
Secure – 4	50%
Secure – 5	75%
Vulnerable – 6	100%

(2) Affiliated reinsurance agreements are eligible for the same reduced security requirements as non-affiliated reinsurance agreements.

(3) A certified assuming insurer may defer posting security for catastrophe recoverables for a period up to one year from the date of the first instance of a liability reserve entry by the ceding company as a result of a loss from a catastrophic occurrence that is recognized by the Commissioner. The one-year deferral period is contingent on the certified assuming insurer continuing to pay claims in a timely manner. Deferral of posting collateral for reinsurance recoverables related to a catastrophic occurrence under this subsection are permitted for only the following lines of business as reported on the NAIC annual financial statement:

- (A) Line 1: Fire;
- (B) Line 2: Allied lines;
- (C) Line 3: Farmowners multiple peril;
- (D) Line 4: Homeowners multiple peril;
- (E) Line 5: Commercial multiple peril;
- (F) Line 9: Inland marine;
- (G) Line 12: Earthquake; and
- (H) Line 21: Auto physical damage.

(4) A ceding insurer may take credit for reinsurance under this section only with respect to a reinsurance agreement entered into or renewed on or after the effective date that the

assuming insurer is certified under this subchapter. Any reinsurance agreement entered into prior to the effective date of the assuming insurer's certification that is subsequently amended after the effective date of the certification of the assuming insurer, or a new reinsurance agreement, covering any risk for which collateral was provided previously, will only be subject to this section with respect to losses incurred and reserves reported from and after the effective date of the amendment or new agreement.

(5) Nothing in this section prohibits the parties to a reinsurance agreement from agreeing to provisions establishing security requirements that exceed the minimum security requirements established for certified assuming insurers under this section.

**§7.622. Certification and Rating.**

(a) Certification.

(1) A certification issued under this section is valid for the following calendar year. To continue the certification, the certified assuming insurer must reapply on or before July 1 of the year that the certification expires.

(2) Following receipt of a certification application, TDI will post on the TDI website notice of the application and instructions on how the public may respond to or comment on the application. The notice will remain posted on the website for at least 30 days before the Commissioner will take final action on the application.

(3) TDI will provide written notice to an assuming insurer stating whether the assuming insurer's application to be a certified assuming insurer has been approved. If the application is approved, the notice will include the certified insurer's assigned rating. TDI will publish on the TDI website a list of all certified assuming insurers and their assigned ratings.

(4) To be eligible for certification, the assuming insurer must:

(A) be domiciled and authorized to transact the business of insurance or reinsurance in a qualified jurisdiction, as determined under Insurance Code §493.1035 and §7.624 of this subchapter;

(B) maintain capital and surplus, or its equivalent, of no less than \$250 million calculated in accordance with subsection (b) of this section. An association including

incorporated and individual unincorporated underwriters may satisfy the requirement by having minimum capital and surplus equivalents, net of liabilities, of at least \$250 million and a joint central fund containing a balance of at least \$250 million;

(C) maintain financial strength ratings from two or more NRSROs that the Commissioner has determined to be acceptable. The NRSRO must base its financial strength rating on interactive communication between the NRSRO and the assuming insurer and must not be based solely on publicly available information. The financial strength ratings will be a factor used by the Commissioner in determining the rating that the Commissioner assigns to the assuming insurer. Acceptable NRSROs include the following:

- (i) A.M. Best Rating Services, Inc. (Best);
- (ii) Fitch Ratings, Inc. (Fitch);
- (iii) Kroll Bond Rating Agency, Inc. (Kroll);
- (iv) Moody's Investors Service, Inc. (Moody's);
- (v) S&P Global Ratings; (S&P) and
- (vi) any other NRSRO that the Commissioner determines to be

acceptable under §7.627 of this title;

(D) agree to post 100 percent security for the benefit of the ceding insurer, or its estate, on the entry of an order of rehabilitation, liquidation, or conservation, against the ceding insurer;

(E) meet, or agree to, the requirements in Insurance Code §493.1033 and Form CR-1; and

(F) provide additional information necessary to demonstrate the creditworthiness of the assuming insurer.

(b) Rating.

(1) The Commissioner will rate each certified assuming insurer on a legal entity basis with due consideration being given to the group rating where appropriate, except that an association including incorporated and individual unincorporated underwriters that has been approved to do business as a single certified assuming insurer may be evaluated on the basis of its

group rating. In determining the rating, the Commissioner will consider relevant factors and review appropriate materials, including:

(A) the certified assuming insurer's financial strength rating from an acceptable NRSRO. The maximum rating that a certified assuming insurer may be assigned will correspond to its financial strength rating level in the security table in Figure: 28 TAC §7.622(b)(1)(A) of this section and as the security table is amended for additional NRSROs determined to be acceptable in accordance with §7.627 of this title. The Commissioner must use the lowest financial strength rating received from an acceptable NRSRO in establishing the maximum rating of a certified assuming insurer. The financial strength rating must be dated within 15 months of the certified assuming insurer's submission. An insurer that fails to obtain or maintain at least two financial strength ratings from acceptable NRSROs will lose the insurer's eligibility for certification.

Figure: 28 TAC §7.622(b)(1)(A)

Rating	Best	Fitch	Kroll	Moody's	S&P
Secure - 1	A++	AAA	AAA	Aaa	AAA
Secure - 2	A+	AA+, AA-, AA-	AA+, AA-	Aa1, Aa2, Aa3	A++, AA-, AA-
Secure - 3	A	A+, A	A+, A	A1, A2	A+, A
Secure - 4	A-	A-	A-	A3	A-
Secure - 5	B++, B+	BBB+, BBB-, BBB-	BBB+, BBB-, BBB-	Baa1, Baa2, Baa3	BBB+, BBB-, BBB-
Vulnerable - 6	B, B-, C++, C+, C, C-, D, E, F	BB+, BB-, B+, B-, CCC+, CCC-, C, D, DD	BB+, BB-, B+, B-, CCC, CC, C, D	Ba1, Ba2, Ba3, B1, B2, B3, Caa, Ca, C	BB+, BB-, B+, B-, CCC, CC, C, D, R

(B) the business practices of the certified assuming insurer in dealing with its ceding insurers, including its record of compliance with reinsurance agreement terms and obligations;

(C) for certified assuming insurers domiciled in the United States, the most recent applicable reinsurance schedule filed with the certified assuming insurer's state of domicile;

(D) for certified assuming insurers not domiciled in the United States, the most recent Form CR-F, for property and casualty assuming insurers, or Form CR-S, for life and health assuming insurers, which are adopted by reference;

(E) the reputation of the certified assuming insurer for prompt payment of claims under reinsurance agreements, based on an analysis of ceding insurers' Schedule F reporting of overdue reinsurance recoverables, including the proportion of obligations that are more than 90 days past due or are in dispute, with specific attention given to obligations payable to companies that are in supervision, conservation, receivership or similar proceeding;

(F) regulatory actions against the certified assuming insurer;

(G) the report of the independent auditor on the financial statements of the certified assuming insurer;

(H) for a certified assuming insurer not domiciled in the United States:

(i) its audited financial statements consisting of audited United States GAAP basis statements, if available; audited International Financial Reporting Standards (IFRS) basis statements with an audited footnote reconciling equity and net income to a United States GAAP basis; or with the written permission of the Commissioner, audited IFRS statements with reconciliation to United States GAAP certified by an officer of the company;

(ii) its actuarial opinion and other regulatory filings as filed with the non-United States jurisdiction supervisor; and

(iii) with the initial application for certification, its three prior years' audited financial statements filed with its non-United States jurisdiction supervisor;

(I) the liquidation priority of obligations to a ceding insurer in the certified assuming insurer's domiciliary jurisdiction in the context of an insolvency proceeding;

(J) a certified assuming insurer's participation in any solvent scheme of arrangement, or similar procedure, which involves United States ceding insurers. A certified assuming insurer that proposes participation in a solvent scheme of arrangement must provide the Commissioner with prior written notice, not less than 30 days prior to such participation; and

(K) any other information the Commissioner deems relevant.

(2) As directed by the Commissioner, a certified assuming insurer must adjust the security posted to protect its liabilities to United States ceding insurers as the Commissioner deems appropriate based on TDI's analysis of a certified assuming insurer's reputation for prompt payment of claims under subsection (b)(1)(E) of this section. Subject to any additional adjustments that the Commissioner may deem under this paragraph, the certified assuming insurer must, at a minimum, increase the security posted by one rating level under subsection (b)(1) of this section if:

(A) more than 15 percent of the certified assuming insurer's ceding insurance clients have overdue reinsurance recoverables on paid losses of 90 days or more that are not in dispute and which exceed \$100,000 for each ceding insurer; or

(B) the aggregate amount of reinsurance recoverables on paid losses that are not in dispute and are overdue by 90 days or more exceeds \$50 million.

(c) Form CR-1 Submission Requirement. The certified assuming insurer applicant must submit with each certification application, a properly executed Form CR-1 as evidence of its:

(1) submission to the jurisdiction of any court of competent jurisdiction in any state of the United States;

(2) appointment of the Commissioner as an agent for service of process in this state;

(3) agreement to provide security for 100 percent of the assuming insurer's liabilities attributable to reinsurance ceded by United States ceding insurers if the assuming insurer resists enforcement of a final United States judgment. The Commissioner may not certify any assuming insurer that is domiciled in a jurisdiction that the Commissioner has determined does not adequately and promptly enforce final United States judgments or arbitration awards;

(4) agreement to notify the Commissioner within 10 days of any regulatory actions taken against it, any change in the provisions of its domiciliary license, or any change in its rating

by an approved rating agency, including a statement describing such changes and the reasons for the changes;

(5) agreement to annually file:

(A) information comparable to relevant provisions of the NAIC financial statement for use by insurance markets in accordance with §7.622(d)(3) of this title;

(B) the report of the independent auditor on the financial statements of the insurance enterprise in accordance with §7.622(d)(4) of this title;

(C) audited financial statements, regulatory filings, and actuarial opinion in accordance with §7.622(d)(4) and (5) of this title;

(D) an updated list of all disputed and overdue reinsurance claims regarding reinsurance assumed from United States domestic ceding insurers in accordance with §7.622(d)(6) of this title; and

(E) a statement of its good standing as an insurer or reinsurer with the supervisor of its domiciliary jurisdiction in accordance with §7.622(d)(7) of this title.

(d) Submissions. The certified assuming insurer applicant must comply with the applicable information filing requirements in this subsection and submit the information it agreed to submit under subsection (c) of this section, with any certification application and in a manner consistent with the agreements included in Form CR-1. All information submitted by certified assuming insurers and applicants that is not otherwise public information subject to disclosure will be exempt from disclosure if provided by the Public Information Act, Government Code Chapter 552 and will be withheld from public disclosure. The certified assuming insurer applicant must submit with each certification application:

(1) a statement of any regulatory actions taken against the applicant within three years prior to the application including:

(A) fines and penalties; and

(B) changes in the provisions of the applicant's domiciliary license.

(2) a statement of changes in the applicant's financial strength rating by an acceptable NRSRO including any reports or supporting documentation provided by the NRSRO;

(3) for United States domiciled applicants, the most recent applicable reinsurance schedule filed with the applicant's domestic jurisdiction, or for applicants not domiciled in the United States, the most recent Form CR-F or CR-S, as applicable;

(4) for applicants not domiciled in the United States, the report of the independent auditor on the financial statements of the insurance enterprise. The basis for the auditor's report must be:

(A) audited United States GAAP basis statements, if available;

(B) audited IFRS basis statements with an audited footnote reconciling equity and net income to a United States GAAP basis; or

(C) with the permission of the Commissioner, audited IFRS statements with reconciliation to United States GAAP certified by an officer of the company;

(5) for applicants not domiciled in the United States, the following filings made with the applicant's domestic supervisor:

(A) the actuarial opinion and other regulatory filings; and

(B) audited financial statements for the prior three years;

(6) an updated list of all disputed and overdue reinsurance claims regarding reinsurance assumed from United States domestic ceding insurers. If the applicant's reinsurance obligations:

(A) to United States ceding insurers that are in dispute or more than 90 days past due exceed five percent of its total reinsurance obligations to United States cedents as of the end of its prior financial reporting year; or

(B) to any of the applicant's top 10 United States ceding insurers (based on the amount of outstanding reinsurance obligations as of the end of its prior financial reporting year) that are in dispute or more than 90 days past due exceed 10 percent of its reinsurance obligations to that United States ceding insurers; and

(C) in either situation, the applicant must:

(i) submit notice to the Commissioner of the fact and a detailed explanation regarding the reasons for the amount of disputed or overdue claims exceeding either or both of the levels listed in subparagraphs (A) and (B) of this paragraph;

(ii) a description of the applicant's business practices in dealing with United States ceding insurers;

(iii) a statement that the applicant commits to comply with all contractual requirements applicable to reinsurance contracts with United States ceding insurers; and

(iv) any such additional information concerning the applicant's claims practices with regard to any or all United States ceding insurers that the Commissioner may request following receipt of the notice;

(7) a certification from the certified assuming insurer's domestic regulator that the certified assuming insurer is in good standing and maintains capital in excess of the jurisdiction's highest regulatory action level;

(8) evidence of the applicant's financial strength by:

(A) confirming all interactive financial strength ratings currently maintained by the applicant;

(B) specifying the type of financial strength rating; and if the financial strength rating is not on a stand-alone basis, provide the rationale for the group rating;

(C) submitting copies of full NRSRO reports dated within 15 months of the application date all financial strength ratings currently maintained by the applicant, except if a full report is not available, the applicant must provide a letter from the applicable NRSRO affirming its current financial strength rating; and

(D) providing an explanation of any changes in the financial strength rating during the last three years;

(9) the mechanisms the applicant will use to secure obligations incurred as a certified assuming insurer in accordance with Insurance Code §§493.1033-493.1038 and this subchapter. If the applicant intends to utilize a multibeneficiary trust for this purpose, the applicant must submit:

(A) a copy of the approval from the domiciliary regulator with regulatory oversight of the 100 percent collateral and reduced collateral multibeneficiary trusts or its intention to secure the approval of the domiciliary regulator of the trust before either trust can be used;

(B) the form of the trust that will be used to secure obligations incurred as a certified assuming insurer; and

(C) the form of the trust that will be used to secure obligations incurred outside of the applicant's certified assuming insurer status; and

(10) a description of the applicant's past, present or proposed future participation in any solvent scheme of arrangement, or similar procedure, involving United States ceding insurers and a statement that the applicant will notify the Commissioner in writing of any future proposed participation by the certified assuming insurer in a solvent scheme of arrangement, or similar procedure, not less than 30 days prior to such participation;

(11) applicant information, including the applicant's:

(A) full name;

(B) physical address for its principal place of business;

(C) mailing address;

(D) NAIC number, United States federal tax identification number, and ISI number; and

(E) contact individual's name, phone number, and email; and

(12) other information that the Commissioner may reasonably require.

**§7.623. Change in Rating and Suspension or Revocation of Certification.**

(a) In the case of a downgrade by an NRSRO or other negative change to rating criteria, the Commissioner will assign a new rating to the certified assuming insurer in accordance with the requirements of this subchapter and notify the certified assuming insurer in writing.

(b) If the Commissioner upgrades the assigned rating of a certified assuming insurer, the certified assuming insurer may meet the security requirements applicable to its new rating on a prospective basis, provided that the certified assuming insurer posts security under the previously applicable security requirements as to all contracts in force on or before the effective date of the upgraded rating. If the Commissioner downgrades the assigned rating of a certified assuming insurer, the certified assuming insurer is subject to and must meet the security requirements applicable to its new rating for all business it has assumed as a certified assuming insurer.

(c) The Commissioner may, after notice and opportunity for hearing as required under Insurance Code §493.1038(b), suspend or revoke a certified assuming insurer's certification at any time if the certified assuming insurer fails to meet its obligations or security requirements under Insurance Code Chapter 493 or this subchapter, including the certified assuming insurer's financial or operating results, or documented delays in payment by the certified assuming insurer that lead the Commissioner to reconsider the certified assuming insurer's ability or willingness to meet its contractual obligations.

(d) If the Commissioner suspends or revokes the certification of a certified assuming insurer, the ceding insurer may not continue to take credit for reinsurance ceded to the assuming insurer unless the assuming insurer posts security in accordance with Insurance Code §493.1038. The Commissioner may allow up to 90 days for an order suspending or revoking an assuming insurer's certification to become effective.

**§7.624. Qualified Jurisdictions.**

(a) If the Commissioner determines that the jurisdiction qualifies to be recognized as a qualified jurisdiction under Insurance Code §493.1035 and this section, the Commissioner will publish notice of such recognition on the TDI website. The Commissioner may suspend recognition of a jurisdiction that is no longer qualified and will provide notice of the suspension on the TDI website.

(b) The Commissioner will evaluate the reinsurance supervisory system of the non-United States jurisdiction and determine whether the jurisdiction is eligible to be recognized as a qualified jurisdiction, both initially and on an ongoing basis. The Commissioner must consider the rights, benefits, and the extent of reciprocal recognition afforded by the non-United States jurisdiction to assuming insurers licensed and domiciled in the United States. A qualified jurisdiction must agree to share information and cooperate with the Commissioner with respect to all certified assuming insurers domiciled within that jurisdiction. A jurisdiction may not be considered to be a qualified jurisdiction if the Commissioner has determined that it does not adequately and promptly enforce final United States judgments or arbitration awards. The Commissioner may, in the

Commissioner's discretion, consider additional factors in determining whether to recognize a qualified jurisdiction, including:

- (1) the framework under which the assuming insurer is regulated;
- (2) the structure and authority of the domiciliary regulator with regard to solvency regulation requirements and financial surveillance;
- (3) the substance of financial and operating standards for assuming insurers in the domiciliary jurisdiction;
- (4) the form and substance of financial reports required to be filed or made publicly available by assuming insurers in the domiciliary jurisdiction and the accounting principles used;
- (5) the domiciliary regulator's willingness to cooperate with United States regulators in general and the Commissioner in particular;
- (6) the history of performance by assuming insurers in the domiciliary jurisdiction;
- (7) any relevant international standards or guidance with respect to mutual recognition of reinsurance supervision adopted by the International Association of Insurance Supervisors or successor organization; and
- (8) any other matters deemed relevant by the Commissioner.

(c) The Commissioner will consider the list of qualified jurisdictions published through the NAIC Committee Process in developing a list of qualified jurisdictions. If the Commissioner includes a jurisdiction as qualified that does not appear on the NAIC list of qualified jurisdictions, the Commissioner will provide documented justification for the approval with respect to the criteria provided under subsection (b) of this section.

(d) A United States jurisdiction that meets the requirements for accreditation under the NAIC financial standards and accreditation program will be deemed to be a qualified jurisdiction in accordance with Insurance Code §493.1035(f) and included on the list.

**§7.625. Recognition of Certification Issued by an NAIC Accredited Jurisdiction.**

(a) An assuming insurer that has been certified as an assuming insurer in an NAIC-accredited jurisdiction may apply for certification in Texas under this section. A certification issued under this section is valid for the following calendar year. To continue the certification, the

certified assuming insurer must reapply to TDI on or before July 1 of the year that the certification expires. The certified assuming insurer applicant must submit:

(1) Form CR-1 as required under §7.622(c) of this title;

(2) all information required under §7.622(d) of this title that is not available to TDI from the certifying jurisdiction; and

(3) when prepared a copy of the approval letter or other documentation provided to the applicant by an accredited jurisdiction, confirming the following information:

(A) the name of all states in which applicant is currently certified;

(B) the rating and collateral percentage assigned by the accredited jurisdiction with respect to the applicant;

(C) the effective and expiration dates with respect to the certification;

(D) the lines of business to which the certification is applicable; and

(E) the applicant's commitment to comply with all requirements necessary to maintain certification;

(b) Following receipt of a certification application, TDI will post on the TDI website notice of the application and instructions on how the public may respond to or comment on the application. The notice will remain posted on the website for at least 30 days before the Commissioner takes final action on the application.

(c) If the Commissioner makes a determination to accept another jurisdiction's certification and rating under this subsection, the assuming insurer will be considered to be a certified assuming insurer in this state. The Commissioner may also certify the assuming insurer and assign a rating in accordance with Insurance Code §493.1036 and §7.622 of this title.

(d) Any change in the certified assuming insurer's rating in another jurisdiction will apply in this state as of the date it takes effect in the other jurisdiction without the necessity for further action of the Commissioner. The change will be effective as described in §7.623 of this title. The certified assuming insurer must notify the Commissioner of any change in its status or rating within 10 days after receiving notice of the change.

(e) The Commissioner may withdraw recognition of another jurisdiction's rating at any time and assign a new rating in accordance with Insurance Code §493.1036 and §7.622 of this title.

(f) The Commissioner may withdraw recognition of another jurisdiction's certification at any time in accordance with Insurance Code §493.1038(b) and §7.623 of this title. Unless the Commissioner suspends or revokes the certified assuming insurer's certification in accordance with Insurance Code §493.1038 and §7.623 of this title, the certified assuming insurer's certification will remain in good standing in this state for a period of 90 days. This period may be extended if additional time is necessary to consider the assuming insurer's application for certification in this state, as provided under Insurance Code §493.1036(h).

**§7.626. Section Mandatory Funding Clause.**

In addition to the clauses required under Insurance Code Chapter 493 and this subchapter, a ceding insurer may not enter into or renew a reinsurance agreement with a certified assuming insurer under this subchapter, unless the reinsurance agreement includes a funding clause that requires the certified assuming insurer to provide and maintain security in an amount sufficient to avoid the imposition of any financial statement penalty on the ceding insurer for reinsurance ceded to the certified assuming insurer.

**§7.627. Additional NRSRO.**

(a) In addition to those NRSROs listed in §7.622(a)(4)(C) of this title, the Commissioner may determine that additional NRSROs are acceptable. An applicant must be an NRSRO and demonstrate to the satisfaction of the Commissioner that the applicant's:

(1) rating structure is reliable and suitable for rating the solvency of assuming insurers, including not less than five years' experience in rating insurers engaged primarily in assuming insurance from United States domiciled ceding insurers;

(2) financial strength ratings are based on interactive communication between the NRSRO and the assuming insurer and must not be based solely on publicly available information;  
and

(3) ratings correlate to the rating structure and security levels shown in Figure: 28 TAC §7.622(b)(1)(A) of this title.

(b) The applicant must submit an application with TDI demonstrating that the applicant meets the requirements listed in subsection (a) of this section. On receipt of the application, TDI will post notice of the application, the application, and instructions on how the public may respond to or comment on the application. The notice will remain posted on the website for at least 30 days before the Commissioner will take final action on the application.

(c) If the Commissioner determines that the applicant qualifies to be an acceptable NRSRO, TDI will, on its website:

(1) list the applicant with other acceptable NRSROs; and

(2) add applicant's rating structures and security table to those shown in Figure: 28 TAC §7.622(b)(1)(A).

(d) The Commissioner may withdraw recognition of an NRSRO that has been determined to be acceptable under this section if the Commissioner determines that the NRSRO no longer meets the requirements of this section.

**CERTIFICATION.** This agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Issued at Austin, Texas, on May 29, 2018.

*/s/ Norma Garcia*

---

Norma Garcia  
General Counsel  
Texas Department of Insurance

The Commissioner adopts amendments to 28 Texas Administrative Code §§7.601-7.612 and 7.614, and new §§7.621-7.627.

**2018-5527**

TITLE 28. INSURANCE

Part 1. Texas Department of Insurance

Chapter 7. Corporate and Financial Regulation

Adopted Sections

Page 66 of 66

*/s/ Kent C. Sullivan*

\_\_\_\_\_

Kent C. Sullivan

Commissioner of Insurance

COMMISSIONER'S ORDER NO. **2018-5527**