

COMMONWEALTH OF VIRGINIA



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STATE CORPORATION COMMISSION BUREAU OF INSURANCE

September 1, 1992

Administrative Letter 1992-15

Obsolete Letter Replaced By Administrative Letter 2002-10

TO: All Insurance Companies Licensed in Virginia
RE: Licensing of Reinsurance Intermediaries

On July 1, 1992, Chapter 18 of Title 38.2 of the Code of Virginia was amended to include Article 5 (§38.2-1846 et seq.). Effective October 1, 1992 this new law requires the licensing of certain reinsurance intermediaries and the submission of certain broker/agency contracts for approval.

Definitions

A **reinsurance intermediary** means a reinsurance intermediary broker or a reinsurance intermediary manager as those terms are defined in §38.2-1846.

A reinsurance intermediary broker is defined as any person, other than an officer or employee of the ceding insurer, who, without the power to bind the ceding insurer, solicits, negotiates or places reinsurance cessions or retrocessions on behalf of a ceding insurer or otherwise negotiates with a ceding insurer concerning reinsurance cessions or retrocessions.

A **reinsurance intermediary manager** is defined as any person who:

- (i) has authority to bind reinsurance risks; or
- (ii) manages all or part of the assumed reinsurance business of a reinsurer, including the management of a separate division, department or underwriting office, and

acts as an agent for such reinsurer whether known as a reinsurance intermediary manager or other similar term. The following persons shall not be considered a reinsurance intermediary manager:

1. An employee of the reinsurer;

2. A U.S. manager of the United States branch of an alien reinsurer;
3. An underwriting manager which, pursuant to contract, manages all the reinsurance operations of the reinsurer, is under common control with the reinsurer, subject to Article 5 (§38.2-1322 et seq.) of Chapter 13 or Article 2 (§38.2-4230 et seq.) of Chapter 42 of this title, and whose compensation is not based on the volume of premiums written;
4. A manager of a group, association, pool or organization of insurers which engages in joint underwriting or joint reinsurance and which is subject to examination by the supervising insurance official of the state, as defined in §38.2-100, in which the manager's principal business office is located; or
5. A licensed managing general agent which binds facultative reinsurance contracts by placing individual risks pursuant to obligatory facultative agreements and subdivision 10 of §38.2-1860.

An **insurer** means any person duly licensed in Virginia pursuant to Chapters 10, 11, 12, 25, 26, 38 through 46, and 51 of Title 38.2 of the Code of Virginia.

A **reinsurer** means any insurer licensed in Virginia with authority to cede or accept from any insurer reinsurance pursuant to §38.2-136.

License Requirements

The following persons (individuals, partnerships or corporations) are required to be licensed as a **REINSURANCE INTERMEDIARY BROKER**:

1. A person who acts as a reinsurance intermediary broker in Virginia and maintains an office in Virginia either directly or as a member or employee of a firm or association, or an officer, director or employee of a corporation.
2. A person who acts as a reinsurance intermediary broker in Virginia without maintaining an office in Virginia, unless such reinsurance intermediary broker is licensed as a reinsurance intermediary in another state having a law substantially similar to Virginia law.

The following persons are required to be licensed as a **REINSURANCE INTERMEDIARY MANAGER**:

1. A person acting as a reinsurance intermediary manager for a reinsurer domiciled in Virginia.
2. A person acting as reinsurance intermediary manager in Virginia while such person maintains an office in Virginia.
3. A person acting as a reinsurance intermediary manager in another state for an insurer licensed but not domiciled in Virginia, unless such reinsurance intermediary manager is licensed as a reinsurance intermediary in another state having a law substantially similar to Virginia law.

Virginia Code §§ 38.2-1848 through 38.2-1853 pertain to required contract provisions, books and records, and duties of the insurer or reinsurer. An insurer is subject to the provisions set forth in §§ 38.2-1848, 38.2-1849 and 38.2-1850 even if its reinsurance intermediary broker (as defined in §38.2-1846) is not subject to licensing in Virginia. Also a reinsurer is subject to the provisions set forth in §§ 38.2-1851, 38.2-1852 and 38.2-1853 even if its reinsurance intermediary manager (as defined in §38.2-1846) is not subject to licensing in Virginia. As a result of these provisions of law it may be necessary for an insurer or reinsurer to modify an existing contract in order to comply with the requirements of Article 5.

Approval of Contracts

A contract between a reinsurer and a reinsurance intermediary manager must be approved by the reinsurer's board of directors. Additionally, the contract is subject to Bureau approval regardless of whether the reinsurance intermediary manager is subject to licensing in Virginia. Pursuant to §38.2-1851, at least thirty (30) days before a reinsurer assumes or cedes business through a reinsurance intermediary manager, a true copy of the contract must be filed with the Bureau for approval. Also any amendment to the contract must be filed with the Bureau for approval at least thirty (30) days prior to its effective date. Within thirty (30) days of termination of a contract with a reinsurance intermediary manager, the reinsurer is required to provide written notification of such termination to the Bureau.

Licensing Procedures

Any insurer or reinsurer that uses the services of a reinsurance intermediary broker or manager that is subject to licensing in Virginia is responsible for notifying each of its reinsurance intermediaries that they must request a license application package from the Bureau and be licensed.

A license issued to a reinsurance intermediary will be good for up to two (2) years and will expire every other June 30. A renewal application and a renewal fee of \$500 will have to be submitted by April 1 of the year in which the license will expire. The following items must be submitted to the Bureau as part of the initial application:

1. A \$500 nonrefundable application fee;
2. A completed application form;
3. A plan of operation;
4. A completed biographical affidavit for all individuals authorized to act as a reinsurance intermediary under the license pursuant to §38.2-1847;
5. Current financial statement certified by a certified public accountant;
6. If the reinsurance intermediary is a reinsurance intermediary manager, a fidelity bond for the protection of each reinsurer it represents in an amount acceptable to the Bureau;
7. If the reinsurance intermediary is a reinsurance intermediary manager, an errors and omissions policy with limits acceptable to the Bureau; and
8. If the reinsurance intermediary is a reinsurance intermediary manager, a copy of any contract in force between it and any reinsurer.

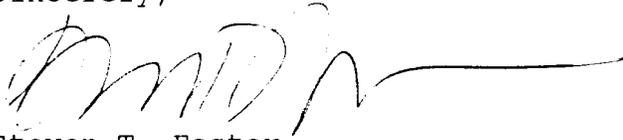
Insurers and reinsurers (as defined in §38.2-1846) will be required to submit information concerning their reinsurance intermediaries as a supplement to the annual statement. The form for providing such information will be mailed in December to each insurer and reinsurer with the license renewal package.

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A copy of Article 5 has been enclosed for your review. Questions regarding the contents of this letter, requests for reinsurance intermediary application packages, and reinsurance intermediary managers' contracts subject to approval by the Bureau should be directed to the attention of:

Gregory D. Walker, CPA, Senior Insurance Auditor
State Corporation Commission/Bureau of Insurance
Financial Analysis Section
P. O. Box 1157
Richmond, VA 23209
(804) 786-4604

Sincerely,

A handwritten signature in black ink, appearing to read 'S. T. Foster', with a long horizontal line extending to the right.

Steven T. Foster
Commissioner of Insurance

ARTICLE 5.

Licensing of Reinsurance Intermediaries.

§ 38.2-1846. Definitions. — As used in this article:

"Actuary" means a person who is a member in good standing of the American Academy of Actuaries.

"Controlling" shall have the same meaning as set forth in § 38.2-1322 of this title.

"Insurer" means any person duly licensed in this Commonwealth pursuant to Chapters 10, 11, 12, 25, 26, 38 through 46, and 51 of this title.

"Licensed reinsurance intermediary" means an agent, broker or reinsurance intermediary licensed to act as a reinsurance intermediary pursuant to the applicable provision of this article.

"Qualified United States financial institution" means an institution that:

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

2. Is regulated, supervised and examined by U.S. federal or state authorities having regulatory authority over banks and trust companies; and

3. Has been determined by either the Commission, or the Securities Valuation Office of the National Association of Insurance Commissioners, to meet such standards of financial condition and standing as are considered necessary and appropriate to regulate the quality of financial institutions whose letters of credit will be acceptable to the Commission.

"Reinsurance intermediary" means a reinsurance intermediary broker or a reinsurance intermediary manager as these terms are defined in this article.

"Reinsurance intermediary broker" means any person, other than an officer or employee of the ceding insurer, who, without the power to bind the ceding insurer, solicits, negotiates or places reinsurance cessions or retrocessions on behalf of a ceding insurer or otherwise negotiates with a ceding insurer concerning reinsurance cessions or retrocessions.

"Reinsurance intermediary manager" means any person who has (i) authority to bind reinsurance risks or (ii) manages all or part of the assumed reinsurance business of a reinsurer, including the management of a separate division, department or underwriting office, and acts as an agent for such reinsurer whether known as a reinsurance intermediary manager or other similar term. Notwithstanding the foregoing, the following persons shall not be considered a reinsurance intermediary manager, for the purposes of this article, provided such person is acting in the capacity of employee or agent, as described herein, and properly discharging the duties of such employment or agency:

1. An employee of the reinsurer;

2. A U.S. manager of the United States branch of an alien reinsurer;

3. An underwriting manager which, pursuant to contract, manages all the reinsurance operations of the reinsurer, is under common control with the reinsurer, subject to Article 5 (§ 38.2-1322 et seq.) of Chapter 13 or Article 2 (§ 38.2-4230 et seq.) of Chapter 42 of this title, and whose compensation is not based on the volume of premiums written;

4. The manager of a group, association, pool or organization of insurers which engages in joint underwriting or joint reinsurance and which is subject to examination by the supervising insurance official of the state, as defined in § 38.2-100, in which the manager's principal business office is located; or

5. A licensed managing general agent which binds facultative reinsurance contracts by placing individual risks pursuant to obligatory facultative agreements and subdivision 10 of § 38.2-1860.

"Reinsurer" means any insurer licensed in this Commonwealth with the authority to cede or accept from any insurer reinsurance pursuant to § 38.2-136. (1992, c. 588.)

§ 38.2-1847. **License requirements.** — A. No insurer shall permit a person to act, and no person shall act, as a reinsurance intermediary broker in this Commonwealth if the reinsurance intermediary broker maintains an office either directly or as a member or employee of a firm or association, or an officer, director or employee of a corporation:

1. In this Commonwealth, unless such reinsurance intermediary broker is a licensed reinsurance intermediary in this Commonwealth; or

2. In another state, unless such reinsurance intermediary broker is a licensed reinsurance intermediary in this Commonwealth or in another state having a law substantially similar to this law.

B. No insurer shall permit a person to act, and no person shall act, as a reinsurance intermediary manager:

1. For a reinsurer domiciled in this Commonwealth, unless such reinsurance intermediary manager is a licensed reinsurance intermediary in this Commonwealth;

2. In this Commonwealth, if the reinsurance intermediary manager maintains an office either directly or as a member or employee of a firm or association, or an officer, director or employee of a corporation in this Commonwealth, unless such reinsurance intermediary manager is a licensed reinsurance intermediary in this Commonwealth; or

3. In another state for an insurer not domiciled in this Commonwealth, unless such reinsurance intermediary manager is a licensed reinsurance intermediary in this Commonwealth or in another state having a law substantially similar to this law.

C. The Commission may require a reinsurance intermediary manager to:

1. Be bonded in a manner acceptable to the Commission for the protection of the reinsurer; and

2. Maintain an errors and omissions policy in an amount acceptable to the Commission.

D. 1. The Commission may issue a reinsurance intermediary license to any person who has complied with the requirements of this article. Any such license issued to a partnership or corporation will authorize all the members of such partnership or corporation and any designated officers, directors or employees to act as reinsurance intermediaries under the license, and all such persons shall be named in the application and any supplements thereto.

2. If the applicant for a reinsurance intermediary license is a nonresident, such applicant, as a condition precedent to receiving or holding a license, shall designate the clerk of the Commission as agent for service of process in the manner, and with the same legal effect, provided for by this title for designation of service of process upon unauthorized insurers; and also shall furnish the clerk of the Commission with the name and address of a resident of this Commonwealth upon whom notices or orders of the Commission or process affecting such nonresident reinsurance intermediary may be served. Such licensee shall promptly notify the clerk of the Commission in writing of every change in its designated agent for service of process, and such change shall not become effective until acknowledged by the Commission.

E. The Commission may refuse to issue a reinsurance intermediary license, subject to the right of the applicant to demand a hearing on the application, if the Commission believes the applicant, any person named on the application, or any member, principal, officer or director of the applicant, is not trustworthy; that any controlling person of such applicant is not trustworthy to act as a reinsurance intermediary; or that any of the foregoing has given

cause for revocation or suspension of such license or has failed to comply with any prerequisite for the issuance of such license.

F. Residents of Virginia who are members of the Virginia State Bar when acting in their professional capacity as such shall be exempt from the requirements of this section.

G. Any person seeking to be licensed as a reinsurance intermediary in this Commonwealth shall apply for such license in a form acceptable to the Commission, and shall pay to the Commission a nonrefundable application fee in an amount prescribed by the Commission. Such fee shall be not less than \$500 and not more than \$1,000. Every licensed reinsurance intermediary shall pay to the Commission a nonrefundable biennial renewal fee in an amount prescribed by the Commission. Such fee shall be not less than \$500 and not more than \$1,000. Each license shall expire on June 30 of the appropriate year. Prior to April 1 of the renewal year, each licensed reinsurance intermediary shall submit to the Commission a renewal application form and fee in the manner and form prescribed by the Commission.

H. Any person seeking to be licensed as a reinsurance intermediary in this Commonwealth shall observe and abide by the laws of this Commonwealth and submit with its license application the following:

1. A statement identifying its principal place of business, organizational structure, and other such information as the Commission may require to verify that the reinsurance intermediary is qualified under the definition of this article;

2. A copy of its plan of operations;

3. A statement of registration which designates the clerk of the Commission as its agent for the purpose of receiving service of legal documents or process;

4. A copy of its current financial statement, which shall be certified by an independent public accountant and in a form acceptable to the Commission; and

5. Such information or reports as may be required to verify its continuing qualification as a reinsurance intermediary. (1992, c. 588.)

§ 38.2-1848. Required contract provisions; reinsurance intermediary brokers. — Transactions between a reinsurance intermediary broker and the insurer it represents in such capacity shall only be entered into pursuant to a written authorization, specifying the responsibilities of each party. The authorization shall, at a minimum, provide that:

1. The insurer may terminate the reinsurance intermediary broker's authority at any time;

2. The reinsurance intermediary broker will render accounts to the insurer accurately detailing all material transactions, including information necessary to support all commissions, charges and other fees received by, or owing, to the reinsurance intermediary broker, and remit all funds due to the insurer within thirty days of receipt;

3. All funds collected for the insurer's account will be held by the reinsurance intermediary broker in a fiduciary capacity in a bank which is a qualified United States financial institution as defined in this article;

4. The reinsurance intermediary broker will comply with § 38.2-1849;

5. The reinsurance intermediary broker will comply with the written standards established by the insurer for the cession or retrocession of all risks; and

6. The reinsurance intermediary broker will disclose to the insurer any relationship with any reinsurer to which business will be ceded or retroceded. (1992, c. 588.)

§ 38.2-1849. **Books and records; reinsurance intermediary brokers.** — A. For at least ten years after expiration of each contract of reinsurance transacted by the reinsurance intermediary broker, the reinsurance intermediary broker will keep a complete record for each transaction showing:

1. The type of contract, limits, underwriting restrictions, classes or risks and territory;
2. Period of coverage, including effective and expiration dates, cancellation provisions and notice required of cancellation;
3. Reporting and settlement requirements of balances;
4. Rate used to compute the reinsurance premium;
5. Names and addresses of assuming reinsurers;
6. Rates of all reinsurance commissions, including the commissions on any retrocessions handled by the reinsurance intermediary broker;
7. Related correspondence and memoranda;
8. Proof of placement;
9. Details regarding retrocessions handled by the reinsurance intermediary broker including the identity of retrocessionaires and percentage of each contract assumed or ceded;
10. Financial records, including but not limited to, premium and loss accounts; and
11. When the reinsurance intermediary broker procures a reinsurance contract on behalf of a licensed ceding insurer:
 - a. Directly from any assuming reinsurer, written evidence that the assuming reinsurer has agreed to assume the risk; or
 - b. If placed through a representative of the assuming reinsurer, other than an employee, written evidence that such reinsurer has delegated binding authority to the representative.

B. The insurer will have reasonable access to and the right to copy and audit all accounts and records maintained by the reinsurance intermediary broker related to its business in a form usable by the Commission. (1992, c. 588.)

§ 38.2-1850. **Duties of insurers utilizing the services of a reinsurance intermediary broker.** — A. An insurer shall not engage the services of any person, firm, association or corporation to act as a reinsurance intermediary broker on its behalf unless such person is licensed as required by § 38.2-1847.

B. An insurer may not employ an individual who is employed by a reinsurance intermediary broker with which it transacts business, unless such reinsurance intermediary broker is under common control with the insurer and subject to Article 5 (§ 38.2-1322 et seq.) of Chapter 13 or Article 2 (§ 38.2-4230 et seq.) of Chapter 42 of this title.

C. The insurer shall annually obtain a copy of the current financial statement of each reinsurance intermediary broker with which it transacts business. Such statement shall be certified by an independent public accountant and in a form acceptable to the Commission. (1992, c. 588.)

§ 38.2-1851. **Required contract provisions; reinsurance intermediary managers.** — Transactions between a reinsurance intermediary manager and the reinsurer it represents in such capacity shall only be entered into pursuant to a written contract, specifying the responsibilities of each party, which shall be approved by the reinsurer's Board of Directors. At least thirty days before such reinsurer assumes or cedes business through such reinsurance intermediary manager, a true copy of the approved contract shall be filed with the Commission for approval. The contract shall, at a minimum, provide that:

1. The reinsurer may terminate the contract for cause upon written notice to the reinsurance intermediary manager. The reinsurer may immediately suspend the authority of the reinsurance intermediary manager to assume or cede business during the pendency of any dispute regarding the cause for termination.

2. The reinsurance intermediary manager will render timely accounts to the reinsurer accurately detailing all material transactions, including information necessary to support all commissions, charges and other fees received by, or owing to the reinsurance intermediary manager, and remit all funds due under the contract to the reinsurer on not less than a monthly basis.

3. All funds collected for the reinsurer's account will be held by the reinsurance intermediary manager in a fiduciary capacity in a bank which is a qualified United States financial institution as defined in § 38.2-1846. The reinsurance intermediary manager may retain no more than three months' estimated claims payments and allocated loss adjustment expenses. The reinsurance intermediary manager shall maintain a separate bank account for each reinsurer that it represents.

4. For at least ten years after expiration of each contract of reinsurance transacted by the reinsurance intermediary manager, the reinsurance intermediary manager will keep a complete record for each transaction showing:

- a. The type of contract, limits, underwriting restrictions, classes or risks and territory;
- b. Period of coverage, including effective and expiration dates, cancellation provisions and notice required of cancellation, and disposition of outstanding reserves on covered risks;
- c. Reporting and settlement requirements of balances;
- d. Rate used to compute the reinsurance premium;
- e. Names and addresses of assuming reinsurers;
- f. Rates of all reinsurance commissions, including the commissions on any retrocessions handled by the reinsurance manager;
- g. Related correspondence and memoranda;
- h. Proof of placement;
- i. Details regarding retrocessions handled by the reinsurance intermediary manager, as permitted by subsection D of § 38.2-1853, including the identity of retrocessionaires and percentage of each contract assumed or ceded;
- j. Financial records, including but not limited to, premium and loss accounts; and
- k. When the reinsurance intermediary manager places a reinsurance contract on behalf of a ceding insurer:

(1) Directly from any assuming reinsurer, written evidence that the assuming reinsurer has agreed to assume the risk; or

(2) If placed through a representative of the assuming reinsurer, other than an employee, written evidence that such reinsurer has delegated binding authority to the representative.

5. The reinsurer will have reasonable access to and the right to copy all accounts and records maintained by the reinsurance intermediary manager related to its business in a form usable by the reinsurer.

6. The contract cannot be assigned in whole or in part by the reinsurance intermediary manager.

7. The reinsurance intermediary manager will comply with the written underwriting and rating standards established by the insurer for the acceptance, rejection or cession of all risks.

8. Sets forth the rates, terms and purposes of commissions, charges and other fees which the reinsurance intermediary manager may levy against the reinsurer.

9. If the contract permits the reinsurance intermediary manager to settle claims on behalf of the reinsurer:

a. All claims will be reported to the reinsurer in a timely manner;

b. A copy of the claim file will be sent to the reinsurer at its request or as soon as it becomes known that the claim:

(1) Has the potential to exceed one percent of the insurer's surplus to policyholders as of December 31 of the last completed calendar year, an amount set by the reinsurer, or any other amount deemed appropriate by the Commission, whichever is less;

(2) Involves a coverage dispute;

(3) May exceed the reinsurance intermediary manager's claims settlement authority;

(4) Is open for more than six months; or

(5) Is closed by payment of an amount exceeding one percent of the insurer's surplus to policyholders as of December 31 of the last completed calendar year, an amount set by the reinsurer, or any other amount deemed appropriate by the the Commission, whichever is less;

c. All claim files will be the joint property of the reinsurer and reinsurance intermediary manager. However, upon entry of order of liquidation or the appointment of a receiver for the liquidation of the reinsurer, such files shall become the sole property of the reinsurer or its estate; the reinsurance intermediary manager shall have reasonable access to and the right to copy the files on a timely basis;

d. Any settlement authority granted to the reinsurance intermediary manager may be terminated for cause upon the reinsurer's written notice to the reinsurance intermediary manager or upon the termination of the contract. The reinsurer may suspend the settlement authority during the pendency of the dispute regarding the cause of termination.

10. Where electronic claims files are in existence, the contract must address the timely transmission of the data.

11. If the contract provides for a sharing of interim profits by the reinsurance intermediary manager, such interim profits will not be paid until one year after the end of each underwriting period for property business and five years after the end of each underwriting period for casualty business, or a later period set by the Commission for specified lines of insurance, and not until the adequacy of reserves on remaining claims has been verified pursuant to subsection C of § 38.2-1853.

12. The reinsurance intermediary manager will annually provide the reinsurer with a current financial statement prepared by an independent certified accountant in a form acceptable to the Commission.

13. The reinsurer shall, at least semi-annually, conduct an on-site review of the underwriting and claims processing operations of the reinsurance intermediary manager.

14. The reinsurance intermediary manager will disclose to the reinsurer any relationship it has with any insurer prior to negotiating any business with such insurer pursuant to this contract.

15. Within the scope of its actual or apparent authority, the acts of the reinsurance intermediary manager shall be deemed to be the acts of the reinsurer on whose behalf it is acting. (1992, c. 588.)

§ 38.2-1852. Prohibited acts. — No insurer shall authorize its reinsurance intermediary manager to, and no reinsurance intermediary manager shall:

1. Cede retrocessions on behalf of the reinsurer, except that the reinsurance intermediary manager may cede facultative retrocessions pursuant to obligatory facultative agreements if the contract between the reinsurance interme-

diary manager and the reinsurer contains reinsurance underwriting guidelines for such retrocessions. Such guidelines shall include a list of reinsurers with which such automatic agreements are in effect, and for each such reinsurer, the coverages and amounts or percentages that may be reinsured, and commission schedules.

2. Commit the reinsurer to participate in reinsurance syndicates.

3. Permit any agent or reinsurance intermediary to represent the reinsurer without assuring that the agent or reinsurance intermediary is lawfully licensed.

4. Without prior approval of the reinsurer, pay or commit the reinsurer to pay a claim, net of retrocessions, that exceeds the lesser of an amount specified by the reinsurer or one percent of the reinsurer's surplus to policyholders as of December 31 of the last completed calendar year.

5. Collect any payment from a retrocessionaire or commit the reinsurer to any claim settlement with a retrocessionaire, without prior approval of the reinsurer. If prior approval is given, a report must be promptly forwarded to the reinsurer.

6. Jointly employ an individual who is employed by the reinsurer unless such reinsurance manager is under common control with the reinsurer subject to Article 5 (§ 38.2-1322 et seq.) of Chapter 13 or Article 2 (§ 38.2-4230 et seq.) of Chapter 42 of this title.

7. Appoint a sub-reinsurance intermediary manager. (1992, c. 588.)

§ 38.2-1853. Duties of reinsurers utilizing the services of a reinsurance intermediary manager. — A. A reinsurer shall not engage the services of any person to act as a reinsurance intermediary manager on its behalf unless such person is licensed as required by § 38.2-1847.

B. The reinsurer shall annually obtain a copy of the current financial statement of each reinsurance intermediary manager which such reinsurer has engaged. Such statements shall be prepared by an independent certified accountant in a form acceptable to the Commission.

C. If a reinsurance intermediary manager establishes loss reserves, the reinsurer shall annually obtain the opinion of an actuary attesting to the adequacy of loss reserves established for losses incurred and outstanding on business produced by the reinsurance intermediary manager. This opinion shall be in addition to any other required loss reserve certification.

D. Binding authority for all retrocessional contracts or participation in reinsurance syndicates shall rest with an officer of the reinsurer who shall not be affiliated with the reinsurance intermediary manager.

E. Within thirty days of termination of a contract with a reinsurance intermediary manager, the reinsurer shall provide written notification of such termination in a form acceptable to the Commission.

F. A reinsurer shall not appoint to its board of directors, any officer, director, employee, controlling shareholder or subproducer of its reinsurance intermediary manager. This subsection shall not apply to relationships governed by Article 5 (§ 38.2-1322 et seq.) of Chapter 13 or Article 2 (§ 38.2-4230 et seq.) of Chapter 42 of this title.

G. An insurer shall not delegate to any person, other than one of its officers, the authority to enter into or bind any reinsurance agreement by which the insurer agrees to cede or retrocede any risk to a reinsurer, except that an insurer may delegate the specific authority to bind facultative reinsurance contracts by placing individual risks pursuant to the provisions of subdivision 1 of § 38.2-1852 or subdivision 10 of § 38.2-1860.

1. The officer shall be a regular salaried employee of such insurer and shall not be affiliated with the reinsurance intermediary.

2. The insurer is not prohibited by the provisions of this subsection from delegating the authority to enter into or bind an agreement to assume a risk to a licensed reinsurance intermediary manager pursuant to the provisions of this article, provided the authority to cede and assume a given risk is not simultaneously vested in the same intermediary. (1992, c. 588.)

§ 38.2-1854. Examination authority. — A. A reinsurance intermediary shall be subject to examination by the Commission. The Commission shall have reasonable access to all books, bank accounts and records of the reinsurance intermediary in a form usable to the Commission.

B. In addition to examination pursuant to § 38.2-1809, a reinsurance intermediary manager may be examined, pursuant to Article 4 (§ 38.2-1317 et seq.) of Chapter 13 (§ 38.2-1300 et seq.) of this title, as if it were the reinsurer. (1992, c. 588.)

§ 38.2-1855. Penalties and liabilities; refusal or revocation of license. — A. If the Commission finds, after providing an opportunity to be heard that any person has violated any provisions of this article, the Commission may in addition to any other remedies authorized by this title, order the reinsurance intermediary to make restitution to the insurer, reinsurer, rehabilitator or liquidator or receiver of the insurer or reinsurer for the net losses incurred by the insurer or reinsurer attributable to such violation.

B. The Commission may refuse to issue a reinsurance intermediary's license and, in addition to or in lieu of a penalty under § 38.2-218 of this title, may suspend or revoke the license of any licensed reinsurance intermediary whenever it finds such applicant or licensed reinsurance intermediary:

1. Has violated any provisions of any law of this Commonwealth applicable to insurance or reinsurance;
2. Has misappropriated any funds held in a fiduciary capacity;
3. Has misrepresented the provisions of any insurance or reinsurance contract;
4. Has engaged in fraudulent or dishonest practices;
5. Is not trustworthy or is not competent to transact business for which a license is applied for or held; or
6. Has been convicted of a felony.

C. If the Commission is of the opinion that any applicant for licensing pursuant to this article is not of good character or does not have a good reputation for honesty, it may refuse to issue the license, subject to the right of the applicant to demand a hearing on the application. The Commission shall not revoke or suspend an existing license until the licensee is given an opportunity to be heard before the Commission. If the Commission refuses to issue a new license or proposes to revoke or suspend an existing license, it shall give the applicant or licensee at least ten days' notice in writing of the time and place of the hearing, if a hearing is requested. The notice shall contain a statement of the objections to the issuance of the license, or the reason for its proposed revocation or suspension as the case may be. The notice may be given to the applicant or licensee by registered or certified mail, sent to the last known address of record pursuant to § 38.2-1857, or the last known business address if the address of record is incorrect, or in any other lawful manner the Commission prescribes. The Commission may summon witnesses to testify with respect to the applicant or licensee, and the applicant or licensee may introduce evidence in his or its behalf. No applicant to whom a license is refused after a hearing, nor any licensee whose license is revoked, shall again apply for a license until after the time, not exceeding two years, the Commission prescribes in its order.

D. Nothing contained in this article is intended to or shall in any manner limit or restrict the rights of policyholders, claimants, creditors or other third parties or confer any rights to such persons. (1992, c. 588.)

§ 38.2-1856. **Change of address, name.** — Each licensed reinsurance intermediary shall report any change in business or residence address or name within thirty days to the Commission and to any contracted insurer. (1992, c. 588.)

§ 38.2-1857. **Effective date.** — This article shall take effect on July 1, 1992. No insurer or reinsurer may continue to utilize the services of a reinsurance intermediary on and after October 1, 1992, unless utilization is in compliance with this article. (1992, c. 588.)

ARTICLE 6.

Licensing of Managing General Agents.

§ 38.2-1858. **Definitions.** — As used in this article:

"Actuary" means a person who is a member in good standing of the American Academy of Actuaries.

"Insurer" means any person, duly licensed in the Commonwealth pursuant to Chapters 10, 11, 12, 25, 26, and 38 through 46, and 51 of this title.

"Managing general agent" means any person who (1) manages all or part of the insurance business of an insurer, including the management of a separate division, department or underwriting office; and (2) acts as an agent for such insurer whether known as a managing general agent, manager or other similar term, who, with or without the authority, either separately or together with affiliates, produces, directly or indirectly, and underwrites an amount of gross direct written premium equal to or exceeding five percent of the surplus to policyholders of the insurer as reported in the last annual statement of the insurer in any one quarter or year together with one or more of the following: (i) adjusts or pays claims in excess of an amount determined by the Commission or (ii) negotiates reinsurance on behalf of the insurer.

Notwithstanding the above, the following persons shall not be considered as managing general agents for the purposes of this article:

1. An employee of the insurer;
2. A U.S. manager of the United States branch of an alien insurer;
3. An underwriting manager which, pursuant to contract, manages all the insurance operations of the insurer, is under common control with the insurer, subject to Article 5 (§ 38.2-1322 et seq.) of Chapter 13 or Article 2 (§ 38.2-4230 et seq.) of Chapter 42 of this title, and whose compensation is not based on the volume of premiums written;
4. The attorney-in-fact authorized by and acting for the subscribers of a reciprocal insurer.

"Qualified United States financial institutions" means an institution that:

1. Is organized or, in the case of a United States office of a foreign banking organization, licensed, under the laws of the United States or any state thereof;
2. Is regulated, supervised and examined by United States federal or state authorities having regulatory authority over banks and trust companies; and
3. Has been determined by either the Commission, or the Securities Valuation Office of the National Association of Insurance Commissioners, to meet such standards of financial condition and standing as are considered necessary and appropriate to regulate the quality of financial institutions whose letters of credit will be acceptable to the Commission.