

State Corporation Commission, Bureau of Insurance

Rules Governing Insurance Holding Companies

14VAC5-260-30. Definitions.

The following words and terms when used in this chapter shall have the following meanings unless the context clearly indicates otherwise:

"Commission" means the State Corporation Commission.

~~"Commissioner of Insurance" means the administrative or executive officer of the division or bureau of state government established to administer the insurance laws of a state other than Virginia.~~

"Commissioner" means the Commissioner of Insurance of Virginia.

"Executive officer" means chief executive officer, chief operating officer, chief financial officer, president, vice president, treasurer, secretary, controller, and any other individual performing functions corresponding to those performed by the foregoing officers under whatever title.

"Foreign insurer" shall include an alien insurer except where clearly noted otherwise.

"NAIC" means National Association of Insurance Commissioners.

"The Act" means Articles 5 and 6 of Chapter 13 (§ 38.2-1322 et seq. and § 38.2-1335 et seq.) of Title 38.2 of the Code of Virginia.

~~"Ultimate controlling person" means that person which is not controlled by any other person.~~

Other terms found in this chapter are used as defined in § 38.2-1322 of the Code of Virginia, or industry usage if not defined by the Code of Virginia.

14VAC5-260-80. Transactions subject to prior notice filing.

A. An insurer required to give notice of a proposed transaction pursuant to § 38.2-1330 B of the Aet Code of Virginia shall furnish the required information in the format designated on Form D, as specified in the instructions of that form, which is a part of this chapter.

B. Agreements for cost-sharing services and management services ~~shall at a minimum and as applicable~~ must:

1. Identify the person providing services and the nature of such services;
2. Set forth the methods to allocate costs;
3. Require timely settlement, ~~not less frequently than~~ on at least a quarterly basis, and compliance with the requirements in the ~~National Association of Insurance Commissioners~~ NAIC Accounting Practices and Procedures Manual, As of March 2014 2022;
4. Prohibit advancement of funds by the insurer to ~~the~~ an affiliate except to pay for services defined in the agreement;
5. State that the insurer will maintain oversight for functions provided to the insurer by ~~the~~ an affiliate and that the insurer will monitor services annually for quality assurance;
6. Define ~~books and records~~ and data of the insurer to include all ~~books and records~~ and data developed or maintained under or related to the agreement that are otherwise the property of the insurer, in whatever form maintained, including (i) claims and claim files, (ii) policyholder lists, (iii) application files, (iv) litigation files, (v) premium records, (vi) rating manuals and rating algorithms, (vii) underwriting manuals, (viii) personnel records, (ix) financial records, or (x) similar records within the possession, custody, or control of the affiliate;

7. Specify that all ~~books and records~~ and data of the insurer are and remain the property of the insurer and are (i) subject to control of the insurer, (ii) identifiable, and (iii) segregated from all other persons' records and data or readily capable of segregation at no additional cost to the insurer;

8. State that all funds and invested assets of the insurer are the exclusive property of the insurer, held for the benefit of the insurer, and subject to the control of the insurer;

9. Include standards for termination of the agreement with and without cause;

10. Include provisions for indemnification of the insurer in the event of gross negligence or willful misconduct on the part of the affiliate providing the services and for any actions by the affiliate that violate provisions of the agreement required in subdivisions 11 through 15 of this subsection;

11. Specify ~~that~~, if the insurer is placed in supervision, seizure, conservatorship, or receivership or seized by the commission under the Rehabilitation and Liquidation of Insurers statute (Chapter 15 (§ 38.2-1500 et seq.) of Title 38.2 of the Code of Virginia):

a. All ~~of the~~ rights of the insurer under the agreement extend to the receiver or commission pursuant to Title 38.2 of the Code of Virginia; and

b. All ~~books and records will immediately be made available to the receiver or the commission, and shall be turned over to the receiver or commission immediately upon the receiver or the commission's request~~ and data of the insurer must be identifiable and segregated from all other persons' records and data or must be readily capable of segregation at no additional cost to the receiver or the commission;

c. A complete set of records and data of the insurer will be provided to the receiver or the commission immediately in a usable format upon the receiver or the commission's

request, and any cost to transfer data to the receiver or the commission shall be fair and reasonable; and

d. Affiliates will make available all employees essential to the operations of the insurer and the services associated with the operations of the insurer for the immediate continued performance of the essential services ordered or directed by the receiver or commission;

12. Specify that ~~the~~ an affiliate has no automatic right to terminate the agreement if the insurer is placed ~~in~~ into supervision, seizure, conservatorship, or receivership pursuant to Chapter 15 of Title 38.2 of the Code of Virginia; ~~and~~

13. Specify that an affiliate will provide essential services for a specific period of time after termination of the agreement if the insurer is placed into supervision, seizure, conservatorship, or receivership pursuant to Chapter 15 of Title 38.2 of the Code of Virginia as ordered or directed by the receiver or commission. Performance of the essential services will continue to be provided without regard to pre-receivership unpaid fees, as long as an affiliate continues to receive timely payment for post-receivership services rendered unless such affiliate is released by the receiver, commission, or supervising court;

14. Specify that ~~the~~ an affiliate will continue to maintain any systems, programs, or other infrastructure notwithstanding a ~~seizure by the commission~~ supervision, seizure, conservatorship, or receivership under Chapter 15 of Title 38.2 of the Code of Virginia, and will make them available ~~to the receiver for so~~ as ordered or directed by the receiver or commission as long as ~~the~~ such affiliate continues to receive timely payment for post-receivership services rendered unless such affiliate is released by the receiver, commission, or supervising court; and

15. Specify that, in furtherance of the cooperation between the receiver and the affected guaranty association and subject to the receiver's authority over the insurer, if the insurer is placed into supervision, seizure, conservatorship, or receivership pursuant to Chapter 15 of Title 38.2 of the Code of Virginia and portions of the insurer's policies or contracts are eligible for coverage by one or more guaranty associations, the affiliate's commitments under subdivisions 11 through 14 of this subsection will extend to such guaranty association.

C. The approval of any material transactions pursuant to § 38.2-1330 B of the Aet Code of Virginia shall be deemed an amendment to an insurer's registration statement under § 38.2-1329 C 6 of the Aet Code of Virginia without further filing other than written confirmation under oath or affirmation by the registrant that the transaction as approved by the commission has been consummated. The confirmation shall be filed within two business days following consummation of the approved transaction.

14VAC5-260-87. Group capital calculation.

A. Where an insurance holding company system has previously filed the annual group capital calculation at least once, the commissioner, if the lead state commissioner, has the discretion to exempt the ultimate controlling person from filing the annual group capital calculation if the commissioner makes a determination based upon that filing that the insurance holding company system meets all of the following criteria:

1. Has annual direct written and unaffiliated assumed premium (including international direct and assumed premium), but excluding premiums reinsured with the Federal Crop Insurance Corporation and Federal Flood Program, of less than \$1 billion;
2. Has no insurers within its holding company structure that are domiciled outside of the United States or one of its territories;

3. Has no banking, depository, or other financial entity that is subject to an identified regulatory capital framework within its holding company structure;

4. The holding company system attests that there are no material changes in the transactions between insurers and non-insurers in the group that have occurred since the last filing of the annual group capital; and

5. The non-insurers within the holding company system do not pose a material financial risk to the insurer's ability to honor policyholder obligations.

B. Where an insurance holding company system has previously filed the annual group capital calculation at least once, the commissioner, if the lead state commissioner, has the discretion to accept in lieu of the group capital calculation a limited group capital filing if the insurance holding company system has annual direct written and unaffiliated assumed premium (including international direct and assumed premium), but excluding premiums reinsured with the Federal Crop Insurance Corporation and Federal Flood Program, of less than \$1 billion, and all of the following additional criteria are met:

1. Has no insurers within its holding company structure that are domiciled outside of the United States or one of its territories;

2. Does not include a banking, depository, or other financial entity that is subject to an identified regulatory capital framework; and

3. The holding company system attests that there are no material changes in transactions between insurers and non-insurers in the group that have occurred since the last filing of the report to the commissioner, and the non-insurers within the holding company system do not pose a material financial risk to the insurers' ability to honor policyholder obligations.

C. For an insurance holding company that has previously met an exemption with respect to the group capital calculation pursuant to subsection A or B of this section, the commissioner, if

the lead state commissioner, may require at any time the ultimate controlling person to file an annual group capital calculation, completed in accordance with the NAIC Group Capital Calculation Instructions, if any of the following criteria are met:

1. Any insurer within the insurance holding company system is in a Risk-Based Capital action level event as set forth in § 38.2-5503 of the Code of Virginia or a similar standard for a non-U.S. insurer;
2. Any insurer within the insurance holding company system meets one or more of the standards of an insurer deemed to be in hazardous financial condition as defined in 14VAC5-290-30; or
3. Any insurer within the insurance holding company system otherwise exhibits qualities of a troubled insurer as determined by the commissioner based on unique circumstances including the type and volume of business written, ownership and organizational structure, federal agency requests, and international supervisor requests.

D. A non-U.S. jurisdiction is considered to recognize and accept the group capital calculation if the jurisdiction satisfies the following criteria.

1. The non-U.S. jurisdiction provides confirmation by a competent regulatory authority in such jurisdiction that information regarding insurers and their parent, subsidiary, or affiliated entities, if applicable, shall be provided to the commissioner, if the lead state commissioner, in accordance with a memorandum of understanding or similar document between the commission and such jurisdiction. Such memorandum of understanding or similar document may include the International Association of Insurance Supervisors Multilateral Memorandum of Understanding or other multilateral memoranda of understanding coordinated by the NAIC. The commission shall determine, in consultation with the NAIC, if the requirements of the information sharing agreements are in force.

2. In addition to the requirements in subdivision 1 of this subsection, one of the following provisions applies:

a. The non-U.S. jurisdiction recognizes the U.S. state regulatory approach to group supervision and group capital by providing confirmation by a competent regulatory authority in such jurisdiction that insurers and insurance groups whose lead state is accredited by the NAIC shall be subject only to worldwide prudential insurance group supervision, including worldwide group governance, solvency and capital, and reporting, as applicable, by the lead state and will not be subject to group supervision, including worldwide group governance, solvency and capital, and reporting, at the level of the worldwide parent undertaking of the insurance or reinsurance group by the non-U.S. jurisdiction; or

b. Where no U.S. insurance groups operate in the non-U.S. jurisdiction, that non-U.S. jurisdiction indicates formally in writing to the lead state, with a copy to the International Association of Insurance Supervisors, that the group capital calculation is an acceptable international capital standard. This will serve as the documentation otherwise required in subdivision 2 a of this subsection.

E. 1. A list of jurisdictions that recognize and accept the group capital calculation is published by the NAIC to assist the lead state commissioner in determining which insurers shall file an annual group capital calculation. The list will clarify those situations in which an insurance company holding system may be exempted from filing a group capital calculation. The list will also identify whether a jurisdiction for an insurance company holding system that is exempted requires a group capital calculation filing for any U.S. based insurance group's operations in that non-U.S. jurisdiction.

2. For a non-U.S. jurisdiction where no U.S. insurance groups operate, the confirmation provided to meet the requirement of subdivisions D 2 b of this section will serve as support

for recommendation to be published by the NAIC as a jurisdiction that recognizes and accepts the group capital calculation.

3. If the commissioner, if the lead state commissioner, makes a determination that differs from the NAIC list, the commissioner shall provide thoroughly documented justification to the NAIC and other states.

4. Upon determination by the commissioner, if the lead state commissioner, that a non-U.S. jurisdiction no longer meets one or more of the requirements to recognize and accept the group capital calculation, the commissioner may provide a recommendation to the NAIC that the non-U.S. jurisdiction be removed from the list of jurisdictions that recognize and accepts the group capital calculation.

FORMS (14VAC5-260)

~~Form A, Instructions for Application for Approval of Acquisition of Control of or Merger with a Domestic Insurer Pursuant to § 38.2-1323 of the Code of Virginia, and Application (rev. 1/15)~~

Form A, Instructions for Application for Approval of Acquisition of Control of or Merger with a Domestic Insurer Pursuant to § 38.2-1323 of the Code of Virginia, and Application (rev. 7/2022)

Form B, Instructions for Insurance Holding Company System Annual Registration Statement Pursuant to § 38.2-1329 of the Code of Virginia, and Statement (rev. 1/2015)

Form C, Instructions for Summary of Changes to Registration Statement Pursuant to § 38.2-1329 of the Code of Virginia, and Summary (rev. 1/2015)

Form D, Instructions for Prior Notice and Application for Approval of Certain Transactions Pursuant to § 38.2-1330 B of the Code of Virginia, and Notice and Application (rev. 1/2015)

Form E, Instructions for Pre-Acquisition Notification Form Regarding the Potential Competitive Impact of a Proposed Merger or Acquisition by a Non-Domiciliary Insurer Doing Business in this

Commonwealth or by a Domestic Insurer Pursuant to § 38.2-1323 of the Code of Virginia, and Notification (rev. 1/2015)

Form F, Instructions for Enterprise Risk Report Pursuant to § 38.2-1329 L of the Code of Virginia, and Report (eff. 1/2015)

Form G, Instructions for Notice of Dividends and Distributions to Shareholders Pursuant to §§ 38.2-1329 F and 38.2-1330.1 of the Code of Virginia, and Notice (rev. 1/2015)

Documents Incorporated by Reference (14VAC5-260)

~~Accounting Practices & Procedures Manual, As of March 2014,~~

NAIC Accounting Practices & Procedures Manual March 2022, National Association of Insurance Commissioners, 1100 Walnut Street, Suite 1500, Kansas City, MO 64106, www.naic.org