DEPARTMENT OF INSURANCE AND FINANCIAL SERVICES

CREDIT FOR REINSURANCE

Filed with the secretary of state on May 18, 2021

These rules take effect immediately upon filing with the secretary of state unless adopted under section 33, 44, or 45a(6) of the administrative procedures act of 1969, 1969 PA 306, MCL 24.233, 24.244, or 24.245a. Rules adopted under these sections become effective 7 days after filing with the secretary of state.

(By authority conferred on the director of the department of insurance and financial services by sections 210, 1103, and 1106 of the insurance code of 1956, 1956 PA 218, MCL 500.210, 500.1103, and 500.1106, and Executive Reorganization Order No. 2013-1, MCL 550.991)

R 500.1122, R 500.1123, R 500.1124, R 500.1125, R 500.1127, R 500.1128, R 500.1130, R 500.1131, R 500.1132, and R 500.1133 of the Michigan Administrative Code are amended, and R 500.1134 is added, as follows:

R 500.1122 Definitions.

Rule 2. (1) As used in these rules:

(a) "Beneficiary" means the entity for whose sole benefit a trust or letter of credit has been established and any successor of the beneficiary by operation of law. If a court of law appoints a successor in interest to the named beneficiary, then the named beneficiary includes and is limited to the court appointed domiciliary receiver (including conservator, rehabilitator, or liquidator).

(b) "Code" means the insurance code of 1956, 1956 PA 218, MCL 500.100 to 500.8302.

(c) "Department" means the Michigan department of insurance and financial services.

(d) "Director" means the director of the department.

(e) "Grantor" means the entity that has established a trust for the sole benefit of the beneficiary. When a trust is established in conjunction with a reinsurance agreement, the grantor is the unlicensed, unaccredited assuming insurer.

(f) "Liabilities" means the assuming insurer's gross liabilities attributable to reinsurance ceded by United States domiciled insurers**,** excluding liabilities that are otherwise secured by acceptable means, and includes all of the following:

(i) For business ceded by domestic insurers authorized to write accident and health, and property and casualty insurance all of the following:

(A) Losses and allocated loss expenses paid by the ceding insurer, recoverable from the assuming insurer.

(B) Reserves for losses reported and outstanding.

(C) Reserves for losses incurred but not reported.

(D) Reserves for allocated loss expenses.

(E) Unearned premiums.

(ii) For business ceded by domestic insurers authorized to write life, health, and annuity insurance all of the following:

(A) Aggregate reserves for life policies and contracts net of policy loans and net due and deferred premiums.

(B) Aggregate reserves for accident and health policies.

(C) Deposit funds and other liabilities without life or disability contingencies.

(D) Liabilities for policy and contract claims.

(g) "NAIC" means the National Association of Insurance Commissioners.

(h) "Obligations" means any of the following:

(i) Reinsured losses and allocated loss expenses paid by the ceding company, but not recovered from the assuming insurer.

(ii) Reserves for reinsured losses reported and outstanding.

(iii) Reserves for reinsured losses incurred but not reported.

(iv) Reserves for allocated reinsured loss expenses and unearned premiums.

(i) "Solvent scheme of arrangement" means a foreign or alien statutory or regulatory compromise procedure that is subject to requisite majority creditor approval and judicial sanction in the assuming insurer's home jurisdiction either to finally commute liabilities of duly noticed classed members or creditors of a solvent debtor or to reorganize or restructure the debts and obligations of a solvent debtor on a final basis and that may be subject to judicial recognition and enforcement of the arrangement by a governing authority outside the ceding insurer's home jurisdiction.

(2) A term defined in the code has the same meaning when used in these rules.

R 500.1123 Conditions applicable to a reinsurance agreement in conjunction with a trust agreement under section 1105 of the code, MCL 500.1105.

Rule 3. (1) A reinsurance agreement that is entered into in conjunction with a trust agreement under section 1105 of the code, MCL 500.1105, may contain any of the following provisions:

(a) A requirement that the assuming insurer enter into a trust agreement, establish a trust account for the benefit of the ceding insurer, and specify what the agreement is to cover.

(b) A stipulation that assets deposited in the trust account must be valued according to their current fair market value and consist only of cash (United States legal tender), certificates of deposit issued by a United States bank and payable in United States legal tender, and investments of the types permitted by chapter 9 of the code, MCL 500.901 to 500.947, or any combination of cash, certificates of deposit, or investments specified in this subrule, if the investments are issued by an entity that is not the parent, subsidiary, or affiliate of either the grantor or the beneficiary. The reinsurance agreement may further specify the types of investments to be deposited. If a trust agreement is entered into in conjunction with a reinsurance agreement covering risks other than life, annuities, and accident and health, then the trust agreement may contain the provisions required by this subdivision instead of including the provisions in the reinsurance agreement.

(c) A requirement that the assuming insurer, before depositing assets with the trustee, execute assignments or endorsements in blank or transfer legal title to the trustee of all shares, obligations, or any other assets requiring assignments, so that the ceding insurer, or the trustee upon the direction of the ceding insurer, may, if necessary, negotiate the assets without the consent or signature from the assuming insurer or any other entity.

(d) A requirement that all settlements of account between the ceding insurer and the assuming insurer be made in cash or its equivalent.

(e) A stipulation 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 used and applied by the ceding insurer or its successors in interest by operation of law, including, without limitation, any liquidator, rehabilitator, receiver, or conservator of the company, without diminution because of insolvency on the part of the ceding insurer or the assuming insurer, only for 1 or more of the following purposes:

(i) To pay or reimburse the ceding insurer for the assuming insurer's share under the specific reinsurance agreement of premiums returned, but not yet recovered from the assuming insurer, to the owners of policies reinsured under the reinsurance agreement because of cancellation of the policies.

(ii) To pay or 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) To pay or reimburse the ceding insurer for any other amounts necessary to secure the credit or reduction from liability for reinsurance taken by the ceding insurer.

(iv) To make payment to the assuming insurer of amounts held in the trust account in excess of the amount necessary to secure the credit or reduction from liability for reinsurance taken by the ceding insurer.

(2) The reinsurance agreement may also do any of the following:

(a) Give the assuming insurer the right to seek approval from the ceding insurer, which must not be unreasonably or arbitrarily withheld, to withdraw from the trust account all or any part of the trust assets and transfer the assets to the assuming insurer, if either of the following provisions is satisfied:

(i) The assuming insurer shall, at the time of withdrawal, replace the withdrawn assets with other qualified assets that have a current fair market value equal to the market value of the assets withdrawn so as to maintain, at all times, the deposit in the required amount.

(ii) After withdrawal and transfer, the current fair market value of the trust account is not less than 102% of the required amount.

(b) Provide for the return of any amount withdrawn in excess of the actual amounts required under subrule (1)(e) of this rule.

(c) Provide for interest payments, at a rate that is not more than the prime rate of interest, on the amounts held pursuant to subrule (1)(e) of this rule.

(d) Permit the award by any arbitration panel or court of competent jurisdiction of any of the following:

(i) Interest at a rate different from that provided in subdivision (c) of this subrule.

(ii) Court or arbitration costs.

(iii) Attorney fees.

(iv) Any other reasonable expenses.

(3) A trust agreement that complies with these rules may be used to reduce any liability for reinsurance ceded to an unauthorized assuming insurer in financial statements required to be filed with the director if established on or before the date of filing of the financial statement of the ceding insurer. Further, the amount of 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 the reduction must not be more than the specific obligations under the reinsurance agreement that the trust account was established to secure.

(4) Notwithstanding the effective date of this rule, any trust agreement or underlying reinsurance agreement in existence before July 1, 1996, is acceptable until June 30, 1997, at which time the agreements must be in full compliance with this rule for the trust agreement to be acceptable.

(5) The failure of any trust agreement to specifically identify the beneficiary must not be construed to affect any actions or rights that the director may take or possess pursuant to the laws of this state.

R 500.1124 Letters of credit under section 1105 of the code, MCL 500.1105.

Rule 4. (1) A letter of credit used to reduce any liability for reinsurance ceded to an unauthorized reinsurer under section 1105 of the code, MCL 500.1105, must be clean, irrevocable, unconditional, and issued or confirmed by a qualified United States financial institution. The letter of credit must contain an issue date and date of expiration and stipulate that the beneficiary need only draw a sight draft under the letter of credit and present it to obtain funds and that no other document needs to 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 R 500.1125(1).

(2) 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 the letter of credit. The boxed section must be clearly marked to indicate that the information is for internal identification purposes only.

(3) 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 not contingent upon reimbursement with respect thereto.

(4) The term of the letter of credit must be for at least 1 year and contain an “evergreen clause” that prevents the expiration of the letter of credit without due notice from the issuer. The “evergreen clause” must provide for a period of not less than 30 days’ notice before the expiration date or nonrenewal of the letter of credit.

(5) The letter of credit must state whether it is subject to and governed by the laws of this state, publication 600 of the International Chamber of Commerce entitled the Uniform Customs and Practice for Documentary Credits (UCP 600), or publication 590 of the International Chamber of Commerce entitled International Standby Practices (ISP 98), or any successor publication, and all drafts drawn thereunder must be presentable at an office in the United States of a qualified United States financial institution.

(6) If the letter of credit is made subject to publication 600 of the International Chamber of Commerce entitled the Uniform Customs and Practice for Documentary Credits (UCP 600), or publication 590 of the International Chamber of Commerce entitled International Standby Practices (ISP 98), or any successor publication, then the letter of credit must specifically address and make provision for an extension of time to draw against the letter of credit if 1 or more of the occurrences specified in article 36 of publication 600, or any successor publication, occur.

(7) If the letter of credit is issued by a financial institution authorized to issue letters of credit, other than a qualified United States financial institution as described in subrule (1) of this rule, then both of the following additional requirements must be met:

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

(b) The "evergreen clause" must provide for 30 days' notice before the expiration date or nonrenewal of the letter of credit.

R 500.1125 Conditions applicable to reinsurance agreement in conjunction with letter of credit under section 1105 of the code, MCL 500.1105.

Rule 5. (1) A reinsurance agreement in conjunction with which a letter of credit is obtained under section 1105 of the code, MCL 500.1105, may contain any of the following provisions:

(a) A requirement that the assuming insurer provide letters of credit to the ceding insurer and specify what they are to cover.

(b) A stipulation 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 upon at any time, notwithstanding any other provisions in the agreement, and must be utilized by the ceding insurer or its successors in interest only for 1 or more of the following reasons:

(i) To pay or reimburse the ceding insurer for the assuming insurer's share under the specific reinsurance agreement, of premiums returned, but not yet recovered from the assuming insurers, to the owners of policies reinsured under the reinsurance agreement on account of cancellations of the policies.

(ii) To pay or reimburse the ceding insurer for the assuming insurer's share, under the specific reinsurance agreement, of surrenders and benefits or losses paid by the ceding insurer, but not yet recovered from the assuming insurers, under the terms and provisions of the policies reinsured under the reinsurance agreement.

(iii) To pay or reimburse the ceding insurer in an amount necessary to secure the credit or reduction from liability for reinsurance taken by the ceding insurer.

(iv) Where the letter of credit will expire without renewal or be reduced or replaced by a letter of credit for a reduced amount and where the assuming insurer's entire obligations under the reinsurance agreement remain unliquidated and undischarged 10 days before the termination date, to withdraw amounts equal to the assuming insurer's share of the liabilities, to the extent that the liabilities have not yet been funded by the assuming insurer and exceed the amount of any reduced or replacement letter of credit, and deposit those amounts in a separate account in the name of the ceding insurer in a qualified United States financial institution apart from its general assets, in trust for those uses and purposes specified in paragraphs (i) to (iii) of this subdivision as may remain after withdrawal and for any period after the termination date.

(c) A requirement that all of the provisions of this subrule must be applied without diminution because of insolvency on the part of the ceding insurer or assuming insurer.

(2) Nothing contained in subrule (1) of this rule precludes the ceding insurer and assuming insurer from providing for either or both of the following:

(a) An interest payment, at a rate not more than the prime rate of interest, on the amounts held pursuant to subrule (1)(b) of this rule.

(b) The return of any amounts drawn down on the letters of credit in excess of the actual amounts required for subrule (1)(b) of this rule, or any amounts that are subsequently determined not to be due.

R 500.1127 Reinsurance contract.

Rule 7. Credit must not be granted, nor an asset or reduction from liability allowed, to a ceding insurer for reinsurance effected with assuming insurers meeting the requirements of section 1103 of the code, MCL 500.1103, not including section 1103(5), or section 1105 of the code, MCL 500.1105, and applicable rules, or otherwise in compliance with section 1103 of the code, MCL 500.1103, after the effective date of these rules, unless the reinsurance agreement includes all of the following:

(a) A proper insolvency clause**,** which stipulates that reinsurance is payable directly to the liquidator or successor without diminution regardless of the status of the ceding company.

(b) A provision pursuant to section 1103 of the code, MCL 500.1103, whereby the assuming insurer, if an unauthorized assuming insurer, has submitted to the jurisdiction of an alternative dispute resolution panel or court of competent jurisdiction within the United States, has agreed to comply with all requirements necessary to give the court or panel jurisdiction, has designated an agent upon whom service of process may be served, and has agreed to abide by the final decision of the court or panel.

R 500.1128 Contracts affected.

Rule 8. All new and renewal reinsurance transactions entered into on or after January 1, 2019 must conform to the requirements of the code and these rules if credit is to be given to the ceding insurer for the reinsurance.

R 500.1130 Credit for reinsurance; reinsurer licensed in this state.

Rule 10. Pursuant to section 1103(1) of the code, MCL 500.1103, the director shall allow credit for reinsurance ceded by a domestic insurer to an assuming insurer that was licensed in this state as of any date on which statutory financial statement credit for reinsurance is claimed.

R 500.1131 Credit for reinsurance; certified reinsurers.

Rule 11. (1) Pursuant to section 1103(6) of the code, MCL 500.1103, the director shall allow credit for reinsurance ceded by a domestic insurer to an assuming insurer that has been certified as a reinsurer in this state at all times for which statutory financial statement credit for reinsurance is claimed under this rule. The credit allowed must be based upon the security held by or on behalf of the ceding insurer in accordance with a rating assigned to the certified reinsurer by the director. The security must be in a form consistent with sections 1103(6) and 1105 of the code, MCL 500.1103 and MCL 500.1105, and the requirements, as applicable, under R 500.1123, R 500.1124, R 500.1125, R 500.1126, and R 500.1133. The amount of security required in order for full credit to be allowed must correspond with the following requirements:

Ratings	Security Required
Secure—1	0%
Secure—2	10%

Secure—3	20%
Secure—4	50%
Secure—5	75%
Vulnerable—6	100%

(2) Affiliated reinsurance transactions must receive the same opportunity for reduced security requirements as all other reinsurance transactions.

(3) The director shall require the certified reinsurer to post 100% security, for the benefit of the ceding insurer or its estate, upon the entry of an order of rehabilitation, liquidation, or conservation against the ceding insurer.

(4) In order to facilitate the prompt payment of claims, a certified reinsurer must not be required to post security for catastrophe recoverables for a period of 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 as recognized by the director. The one-year deferral period is contingent upon the certified reinsurer continuing to pay claims in a timely manner. Reinsurance recoverables for only the following lines of business as reported on the NAIC annual financial statement related specifically to the catastrophic occurrence will be included in the deferral:

(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.

(h) Line 21: Auto physical damage.

(5) Credit for reinsurance under this rule only applies to reinsurance contracts entered into or renewed on or after the effective date of the certification of the assuming insurer. Any reinsurance contract entered into before the effective date of the certification of the assuming insurer that is subsequently amended after the effective date of the certification of the assuming insurer, or a new reinsurance contract, covering any risk for which collateral was provided previously, is only subject to this rule with respect to the losses incurred and reserves reported from and after the effective date of the amendment or new contract.

(6) Nothing in this rule prohibits the parties to a reinsurance agreement from agreeing to provisions establishing security requirements that exceed the minimum security requirements established for certified reinsurers under this rule.

(7) The director shall post notice on the department’s website promptly upon receipt of any application for certification, including instructions on how members of the public may respond to the application. The director may not take final action on the application until at least 30 days after posting the notice required by this subrule.

(8) The director shall issue written notice to an assuming insurer that has applied and been approved as a certified reinsurer. The notice must include the rating assigned the certified reinsurer pursuant to subrules (1) to (6) of this rule. The director shall publish a list of all certified reinsurers and their ratings.

(9) In order to be eligible for certification, the assuming insurer shall meet all of the following requirements:

(a) The assuming insurer must be domiciled and licensed to transact insurance or reinsurance in a qualified jurisdiction, as determined by the director pursuant to subrule (15) of this rule.

(b) The assuming insurer must maintain capital and surplus, or its equivalent, of no less than $250,000,000.00 calculated pursuant to subrule (10)(h) of this rule. This requirement may also be satisfied by an association including incorporated and individual unincorporated underwriters having minimum capital and surplus equivalents (net of liabilities) of at least $250,000,000.00 and a central fund containing a balance of at least $250,000,000.00.

(c) The assuming insurer must maintain financial strength ratings from 2 or more rating agencies considered acceptable by the director. These ratings must be based on interactive communication between the rating agency and the assuming insurer and must not be based solely on publicly available information. These financial strength ratings will be one factor used by the director in determining the rating that is assigned to the assuming insurer. Acceptable rating agencies include all of the following:

(i) Standard & Poor's.

(ii) Moody's Investors Service.

(iii) Fitch Ratings.

(iv) A.M. Best Company.

(v) Any other nationally recognized statistical rating organization.

(d) The certified reinsurer must comply with any other requirements reasonably imposed by the director.

(10) Each certified reinsurer must be rated 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 reinsurer may be evaluated on the basis of its group rating. Factors that may be considered as part of the evaluation process include, but are not limited to, all of the following:

(a) The certified reinsurer's financial strength rating from an acceptable rating agency. The maximum rating that a certified reinsurer may be assigned will correspond to its financial strength rating as outlined in the table below. The director shall use the lowest financial strength rating received from an approved rating agency in establishing the maximum rating of a certified reinsurer. A failure to obtain or maintain at least 2 financial strength ratings from acceptable rating agencies will result in loss of eligibility for certification.

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

(b) The business practices of the certified reinsurer in dealing with its ceding insurers, including its record of compliance with reinsurance contractual terms and obligations.

(c) For certified reinsurers domiciled in the United States, a review of the most recent applicable NAIC Annual Statement Blank, either Schedule F (for property/casualty reinsurers) or Schedule S (for life and health reinsurers).

(d) For certified reinsurers not domiciled in the United States, a review annually of a form approved by the director.

(e) The reputation of the certified reinsurer 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 administrative supervision or receivership.

(f) Regulatory actions against the certified reinsurer.

(g) The report of the independent auditor on the financial statements of the insurance enterprise, on the basis described in subdivision (h) of this subrule.

(h) For certified reinsurers not domiciled in the United States, audited financial statements, regulatory filings, and actuarial opinion (as filed with the non-United States jurisdiction supervisor, with a translation into English). Upon the initial application for certification, the director will consider audited financial statements for the last 2 years filed with its non-United States jurisdiction supervisor.

(i) The liquidation priority of obligations to a ceding insurer in the certified reinsurer's domiciliary jurisdiction in the context of an insolvency proceeding.

(j) A certified reinsurer's participation in any solvent scheme of arrangement, or similar procedure, that involves United States ceding insurers. The director shall receive prior notice from a certified reinsurer that proposes participation by the certified reinsurer in a solvent scheme of arrangement.

(k) Any other information considered relevant by the director.

(11) Based on the analysis conducted under subrule (10)(e) of this rule of a certified reinsurer's reputation for prompt payment of claims, the director may make appropriate adjustments in the security the certified reinsurer is required to post to protect its liabilities to United States ceding insurers as long as the director, at a minimum, increases the security the certified reinsurer is required to post by 1 rating level under subrule (10)(a) of this rule if the director finds either of the following:

(a) More than 15% of the certified reinsurer's ceding insurance clients have overdue reinsurance recoverables on paid losses of 90 days or more that are not in dispute and exceed $100,000.00 for each cedent.

(b) The aggregate amount of reinsurance recoverables on paid losses that are not in dispute that are overdue by 90 days or more exceeds $50,000,000.00.

(12) The assuming insurer must submit a properly executed form approved by the director as evidence of its submission to the jurisdiction of this state, appointment of the director as an agent for service of process in this state, and agreement to provide security for 100% of the assuming insurer's liabilities attributable to reinsurance ceded by United States ceding insurers if it resists enforcement of a final United States judgment. The director shall not certify any assuming insurer that is domiciled in a jurisdiction that the director has

determined does not adequately and promptly enforce final United States judgments or arbitration awards.

(13) The certified reinsurer must agree to meet applicable information filing requirements as determined by the director, both with respect to an initial application for certification and on an ongoing basis. All information submitted by certified reinsurers that are not otherwise public information subject to disclosure are exempted from disclosure under the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246, and must be withheld from public disclosure. The applicable information filing requirements include all of the following:

(a) Notification within 10 days of any regulatory actions taken against the certified reinsurer, any change in the provisions of its domiciliary license or any change in rating by an approved rating agency, including a statement describing the changes and the reasons for the changes.

(b) Annually, the filing of a form approved by the director.

(c) Annually, the report of the independent auditor on the financial statements of the insurance enterprise, on the basis described in subdivision (d) of this subrule.

(d) Annually, the most recent audited financial statements, regulatory filings, and actuarial opinion (as filed with the certified reinsurer's supervisor, with a translation into English). Upon the initial certification, audited financial statements for the last 2 years filed with the certified reinsurer's supervisor.

(e) At least annually, an updated list of all disputed and overdue reinsurance claims regarding reinsurance assumed from United States domestic ceding insurers.

(f) A certification from the certified reinsurer's domestic regulator that the certified reinsurer is in good standing and maintains capital in excess of the jurisdiction's highest regulatory action level.

(g) Any other information that the director may reasonably require.

(14) All of the following apply to a change in rating or revocation of certification, as applicable:

(a) In the case of a downgrade by a rating agency or other disqualifying circumstance, the director shall upon written notice assign a new rating to the certified reinsurer pursuant to the requirements of subrule (10)(a) of this rule.

(b) The director has the authority to suspend, revoke, or otherwise modify a certified reinsurer's certification at any time if the certified reinsurer fails to meet its obligations or security requirements under this rule, or if other financial or operating results of the certified reinsurer, or documented significant delays in payment by the certified reinsurer, lead the director to reconsider the certified reinsurer's ability or willingness to meet its contractual obligations.

(c) If the rating of a certified reinsurer is upgraded by the director, the certified reinsurer may meet the security requirements applicable to its new rating on a prospective basis, but the director shall require the certified reinsurer to post 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 rating of a certified reinsurer is downgraded by the director, the director shall require the certified reinsurer to meet the security requirements applicable to its new rating for all business it has assumed as a certified reinsurer.

(d) Upon revocation of the certification of a certified reinsurer by the director, the assuming insurer shall post security pursuant to section 1105 of the code, MCL 500.1105, in

order for the ceding insurer to continue to take credit for reinsurance ceded to the assuming insurer. If funds continue to be held in trust pursuant to section 1103(4) of the code, MCL 500.1103, and R 500.1132, the director may allow additional credit equal to the ceding insurer's pro rata share of such funds, discounted to reflect the risk of uncollectibility and anticipated expenses of trust administration. Notwithstanding the change of a certified reinsurer's rating or revocation of its certification, a domestic insurer that has ceded reinsurance to that certified reinsurer may not be denied credit for reinsurance for a period of 3 months for all reinsurance ceded to that certified reinsurer, unless the reinsurance is found by the director to be at high risk of uncollectibility.

(15) All of the following apply to the recognition of a jurisdiction as a qualified jurisdiction:

(a) If, upon conducting an evaluation under this rule with respect to the reinsurance supervisory system of any non-United States assuming insurer, the director determines that the jurisdiction qualifies to be recognized as a qualified jurisdiction, the director shall publish notice and evidence of such recognition in an appropriate manner. The director may establish a procedure to withdraw recognition of those jurisdictions that are no longer qualified.

(b) In order to determine whether the domiciliary jurisdiction of a non-United States assuming insurer is eligible to be recognized as a qualified jurisdiction, the director shall evaluate the reinsurance supervisory system of the non-United States jurisdiction, both initially and on an ongoing basis, and consider the rights, benefits and the extent of reciprocal recognition afforded by the non-United States jurisdiction to reinsurers licensed and domiciled in the United States. The director shall determine the appropriate approach for evaluating the qualifications of those jurisdictions and create and publish a list of jurisdictions for which reinsurers may be approved by the director as eligible for certification. A qualified jurisdiction must agree to share information and cooperate with the director with respect to all certified reinsurers domiciled within that jurisdiction. Additional factors to be considered in determining whether to recognize a qualified jurisdiction, in the discretion of the director, include, but are not limited to, all of the following:

(i) The framework under which the assuming insurer is regulated.

(ii) The structure and authority of the domiciliary regulator with regard to solvency regulation requirements and financial surveillance.

(iii) The substance of financial and operating standards for assuming insurers in the domiciliary jurisdiction.

(iv) The form and substance of financial reports required to be filed or made publicly available by reinsurers in the domiciliary jurisdiction and the accounting principles used.

(v) The domiciliary regulator's willingness to cooperate with United States regulators in general and the director in particular.

(vi) The history of performance by assuming insurers in the domiciliary jurisdiction.

(vii) Any documented evidence of substantial problems with the enforcement of final United States judgments in the domiciliary jurisdiction. A jurisdiction is not considered to be a qualified jurisdiction if the director has determined that it does not adequately and promptly enforce final United States judgments or arbitration awards.

(viii) 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.

(ix) Any other matters considered relevant by the director.

(c) A list of qualified jurisdictions is published through the NAIC committee process. The director shall consider this list in determining qualified jurisdictions. If the director approves a jurisdiction as qualified that does not appear on the list of qualified jurisdictions, the director shall provide thoroughly documented justification with respect to the criteria provided under subdivision (b)(i) to (ix) of this subrule.

(d) United States jurisdictions that meet the requirements for accreditation under the NAIC financial standards and accreditation program must be recognized as qualified jurisdictions.

(16) All of the following apply to the recognition of certification issued by an NAIC accredited jurisdiction:

(a) If an applicant for certification has been certified as a reinsurer in an NAIC accredited jurisdiction, the director has the discretion to defer to that jurisdiction's certification, and to defer to the rating assigned by that jurisdiction, if the assuming insurer submits a properly executed form approved by the director and additional information as the director requires. The assuming insurer must be considered to be a certified reinsurer in this state.

(b) Any change in the certified reinsurer's status or rating in the other jurisdiction applies automatically in this state as of the date it takes effect in the other jurisdiction. The certified reinsurer shall notify the director of any change in its status or rating within 10 days after receiving notice of the change.

(c) The director may withdraw recognition of the other jurisdiction's rating at any time and assign a new rating pursuant to subrule (14)(a) of this rule.

(d) The director may withdraw recognition of the other jurisdiction's certification at any time, with written notice to the certified reinsurer. Unless the director suspends or revokes the certified reinsurer's certification under subrule (14)(a) of this rule, the certified reinsurer's certification remains in good standing in this state for a period of 3 months, which must be extended if additional time is necessary to consider the assuming insurer's application for certification in this state.

(17) In addition to the clauses required under R 500.1127, reinsurance contracts entered into or renewed under this rule must include a proper funding clause requiring the certified reinsurer to provide and maintain security in an amount sufficient to avoid the imposition of any financial statement penalty on the ceding insurer under this rule for reinsurance ceded to the certified reinsurer.

(18) The director shall comply with all reporting and notification requirements that may be established by the NAIC with respect to certified reinsurers and qualified jurisdictions.

R 500.1132 Requirements for assets deposited in trusts established under section 1103 of the code, MCL 500.1103; specific security provided under section 1105 of the code, MCL 500.1105.

Rule 12. (1) Assets deposited in trusts established pursuant to section 1103 of the code, MCL 500.1103, and this rule must be valued according to their current fair market value and consist only of 1 or more of the following:

(a) Cash in United States dollars.

(b) Certificates of deposit issued by a qualified United States financial institution.

(c) Clean, irrevocable, unconditional, and "evergreen" letters of credit issued or confirmed by a qualified United States financial institution.

(d) Investments of the type specified in this rule if the investments meet all of the following criteria:

(i) Investments in or issued by an entity controlling, controlled by or under common control with either the grantor or beneficiary of the trust does not exceed 5% of total investments.

(ii) No more than 20% of the total of the investments in the trust are foreign investments authorized under subrule (2)(a)(v), (c), (d)(ii), or (e) of this rule, and no more than 10% of the total of the investments in the trust are securities denominated in foreign currencies. For purposes of applying the preceding sentence, a depository receipt denominated in United States dollars and representing rights conferred by a foreign security must be classified as a foreign investment denominated in a foreign currency.

(2) The assets of a trust established to satisfy the requirements of section 1103 of the code, MCL 500.1103, must be invested only in 1 or more of the following investments:

(a) Government obligations that are not in default as to principal or interest, that are valid and legally authorized, and that are issued, assumed, or guaranteed by any of the following:

(i) The United States or any agency or instrumentality of the United States.

(ii) A state of the United States.

(iii) A territory, possession**,** or other governmental unit of the United States.

(iv) An agency or instrumentality of a governmental unit referred to in paragraphs (ii) and (iii) of this subdivision if the obligations are by law (statutory or otherwise) payable, as to both principal and interest, from taxes levied**,** or by law required to be levied, or from adequate special revenues pledged or otherwise appropriated or by law required to be provided for making these payments, but must not be obligations eligible for investment under this paragraph if payable solely out of special assessments on properties benefited by local improvements.

(v) The government of any other country that is a member of the Organization for Economic Cooperation and Development and whose government obligations are rated A or higher, or the equivalent, by a rating agency recognized by the Securities Valuation Office of the NAIC.

(b) Obligations that are issued in the United States, or that are dollar denominated and issued in a non-United States market by a solvent United States institution (other than an insurance company) or that are assumed or guaranteed by a solvent United States institution (other than an insurance company) and that are not in default as to principal or interest if the obligations meet 1 of the following requirements:

(i) Are rated A or higher (or the equivalent) by a securities rating agency recognized by the Securities Valuation Office of the NAIC, or if not so rated~~.~~**,** are similar in structure and other material respects to other obligations of the same institution that are so rated.

(ii) Are insured by at least one authorized insurer (other than the investing insurer or a parent~~.~~ subsidiary or affiliate of the investing insurer) licensed to insure obligations in this state and, after considering the insurance~~.~~**,** are rated AAA (or the equivalent) by a securities rating agency recognized by the Securities Valuation Office of the NAIC.

(iii) Have been designated as Class One or Class Two by the Securities Valuation Office of the NAIC.

(c) Obligations issued, assumed, or guaranteed by a solvent non-United States institution chartered in a country that is a member of the Organization for Economic Cooperation and Development or obligations of United States corporations issued in a non-United States currency if in either case the obligations are rated A or higher, or the equivalent, by a rating agency recognized by the Securities Valuation Office of the NAIC.

(d) Equity interests to which the following apply, as applicable:

(i) Investments in common shares or partnership interests of a solvent United States institution are permissible if both of the following requirements are met:

(A) Its obligations and preferred shares, if any, are eligible as investments under this rule.

(B) The equity interests of the institution (except an insurance company) are registered on a national securities exchange as provided in the securities exchange act of 1934, 15 USC 78a to 78qq, or otherwise registered pursuant to that act, and if otherwise registered, price quotations for them are furnished through a nationwide automated quotations system approved by the Financial Industry Regulatory Authority, or successor organization. A trust must not invest in equity interests under this subparagraph in an amount exceeding 1% of the assets of the trust even though the equity interests are not so registered and are not issued by an insurance company.

(ii) Investments in common shares of a solvent institution organized under the laws of a country that is a member of the Organization for Economic Cooperation and Development are permissible if both of the following requirements are met:

(A) All its obligations are rated A or higher, or the equivalent, by a rating agency recognized by the Securities Valuation Office of the NAIC.

(B) The equity interests of the institution are registered on a securities exchange regulated by the government of a country that is a member of the Organization for Economic Cooperation and Development.

(iii) An investment in or loan upon any one institution's outstanding equity interests must not exceed 1% of the assets of the trust. The cost of an investment in equity interests made pursuant to this paragraph, when added to the aggregate cost of other investments in equity interests then held pursuant to this paragraph, must not exceed 10% of the assets in the trust.

(e) Obligations issued, assumed, or guaranteed by a multinational development bank, if the obligations are rated A or higher, or the equivalent, by a rating agency recognized by the Securities Valuation Office of the NAIC.

(f) Investment companies to which the following apply, as applicable:

(i) Securities of an investment company registered pursuant to the investment company act of 1940, 15 USC 80a-1 to 80a-64, are permissible investments if the investment company meets either of the following:

(A) Invests at least 90% of its assets in the types of securities that qualify as an investment under subdivision (a), (b), or (c) of this subrule or invests in securities that are determined by the director to be substantively similar to the types of securities set forth in subdivision (a), (b), or (c) of this subrule.

(B) Invests at least 90% of its assets in the types of equity interests that qualify as an investment under subdivision (d)(i) of this subrule.

(ii) Investments made by a trust in investment companies under this subdivision must not exceed either of the following limitations:

(A) An investment in an investment company qualifying under paragraph (i)(A) of this subdivision must not exceed 10% of the assets in the trust**,** and the aggregate amount of investment in qualifying investment companies must not exceed 25% of the assets in the trust.

(B) Investments in an investment company qualifying under paragraph (i)(B) of this subdivision must not exceed 5% of the assets in the trust, and the aggregate amount of investment in qualifying investment companies must be included when calculating the permissible aggregate value of equity interests pursuant to subdivision (d)(i) of this subrule.

(g) Letters of credit to which all of the following apply:

(i) In order for a letter of credit to qualify as an asset of the trust, the trustee shall have the right and the obligation pursuant to the deed of trust or some other binding agreement (as duly approved by the director) to immediately draw down the full amount of the letter of credit and hold the proceeds in trust for the beneficiaries of the trust if the letter of credit will otherwise expire without being renewed or replaced.

(ii) The trust agreement must provide that the trustee is liable for its negligence, willful misconduct, or lack of good faith. The failure of the trustee to draw against the letter of credit in circumstances where the draw would be required must be considered to be negligence, willful misconduct, or both.

(3) A specific security provided to a ceding insurer by an assuming insurer pursuant to section 1105 of the code, MCL 500.1105, must be applied, until exhausted, to the payment of liabilities of the assuming insurer to the ceding insurer holding the specific security before, and as a condition precedent for, presentation of a claim by the ceding insurer for payment by a trustee of a trust established by the assuming insurer pursuant to this rule.

(4) An investment made pursuant to the provisions of subrule (2)(a), (b), or (c) of this rule is subject to all of the following additional limitations:

(a) An investment in or loan upon the obligations of an institution other than an institution that issues mortgage-related securities must not exceed 5% of the assets of the trust.

(b) An investment in any one mortgage-related security must not exceed 5% of the assets of the trust.

(c) The aggregate total investment in mortgage-related securities must not exceed 25% of the assets of the trust.

(d) Preferred or guaranteed shares issued or guaranteed by a solvent United States institution are permissible investments if all of the institution's obligations are eligible as investments under subrule (2)(b)(i) and (iii) of this rule, but must not exceed 2% of the assets of the trust.

(5) As used in this rule:

(a) "Mortgage-related security" means an obligation that is rated AA or higher (or the equivalent) by a securities rating agency recognized by the Securities Valuation Office of the NAIC and that meets either of the following provisions:

(i) Represents ownership of 1 or more promissory notes or certificates of interest or participation in the notes (including any rights designed to assure servicing of, or the receipt or timeliness of receipt by the holders of the notes, certificates, or participation of amounts payable under the notes, certificates**,** or participation), that meet both of the following requirements:

(A) Are directly secured by a first lien on a single parcel of real estate, including stock allocated to a dwelling unit in a residential cooperative housing corporation, upon which is located a dwelling or mixed residential and commercial structure, or on a residential manufactured home as defined in 42 USC 5402(6), whether the manufactured home is considered real or personal property under the laws of the state in which it is located.

(B) Were originated by a savings and loan association, savings bank, commercial bank, credit union, insurance company, or similar institution that is supervised and examined by a federal or state housing authority, or by a mortgagee approved by the Secretary of Housing and Urban Development pursuant to 12 USC 1709 and 1715b, or, where the notes involve a lien on the manufactured home by an institution or by a financial institution approved for insurance by the Secretary of Housing and Urban Development pursuant to 12 USC 1703.

(ii) Is secured by 1 or more promissory notes or certificates of deposit or participations in the notes (with or without recourse to the insurer of the notes) and, by its terms, provides for payments of principal in relation to payments, or reasonable projections of payments, or notes meeting the requirements of paragraph (i)(A) and (B) of this subdivision.

(b) "Promissory note" when used in connection with a manufactured home, also includes a loan, advance**,** or credit sale as evidenced by a retail installment sales contract or other instrument.

R 500.1133 Trust agreements under section 1105 of the code, MCL 500.1105.

Rule 13. (1) Reinsurance trusts established under section 1105 of the code, MCL 500.1105, must comply with the requirements of R 500.1123 and this rule.

(2) The trust agreement must be entered into between the beneficiary, the grantor, and a trustee. The trustee must be a qualified United States financial institution.

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

(4) All assets in the trust account must be held by the trustee at the trustee's office in the United States.

(5) The trust agreement must provide for all of the following:

(a) The beneficiary has 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.

(b) No other statement or document is required to be presented to withdraw assets, except that the beneficiary may be required to acknowledge receipt of withdrawn assets.

(c) The trust agreement must not be subject to any conditions or qualifications outside of the trust agreement.

(d) The trust agreement must not contain references to any other agreements or documents, except as provided for under subrules (12) and (13) of this rule.

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

(7) The trust agreement must require the trustee to do all of the following:

(a) Receive assets and hold all assets in a safe place.

(b) Determine that all assets are in a form that the beneficiary, or the trustee upon the direction of the beneficiary, may, when necessary, negotiate the assets without the consent of, or a signature from, the grantor or any other person or entity.

(c) Furnish to the grantor and the beneficiary a statement of all assets in the trust account upon its inception and at intervals not less frequent than the end of each calendar quarter.

(d) Notify the grantor and the beneficiary within 10 days of any deposits to, or withdrawals from, the trust account.

(e) Upon 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 the assets to the beneficiary.

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

(8) The trust agreement must provide that written notice of termination must be delivered by the trustee to the beneficiary not less than 30 days, but not more than 45 days, before termination of the trust account.

(9) The trust agreement must be made subject to and governed by the laws of the state in which the trust is domiciled.

(10) The trust agreement must prohibit invasion of the trust corpus for the purpose of paying compensation to, or reimbursing the expenses of, the trustee. For a letter of credit to qualify as an asset of the trust, the trustee shall have the right and the obligation pursuant to the deed of trust or some other binding agreement, as duly approved by the director, to immediately draw down the full amount of the letter of credit and hold the proceeds in trust for the beneficiaries of the trust if the letter of credit will otherwise expire without being renewed or replaced.

(11) The trust agreement must provide that the trustee is liable for its negligence, willful misconduct, or lack of good faith. The failure of the trustee to draw against the letter of credit in circumstances where the draw would be required is considered to be negligence, willful misconduct, or both.

(12) Notwithstanding other provisions of these rules, when a trust agreement is established in conjunction with a reinsurance agreement covering risks other than life, annuities, and accident and health, where it is customary practice to provide a trust agreement for a specific purpose, the trust agreement may provide that the ceding insurer shall undertake to use and apply amounts drawn upon the trust account, without diminution because of the insolvency of the ceding insurer or the assuming insurer, for any of the following purposes:

(a) To pay or reimburse the 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 are more than 102% of the actual amount required to fund the assuming insurer's obligations under the specific reinsurance agreement.

(c) Where the ceding insurer has received notification of termination of the trust account and the assuming insurer's entire obligations under the specific reinsurance agreement remain unliquidated and undischarged 10 days before the termination date, to

withdraw amounts equal to the obligations and deposit the amounts in a separate account apart from its general assets in the name of the ceding insurer in any qualified United States financial institution in trust for the uses and purposes specified in subdivisions (a) and (b) of this subrule as may remain executory after the withdrawal and for any period after the termination date.

(13) Notwithstanding other provisions of these rules, when a trust agreement is established in conjunction with a reinsurance agreement covering life, annuities, or accident and health risks, where it is customary to provide a trust agreement for a specific purpose, the trust agreement may provide that the ceding insurer shall undertake to use and apply amounts drawn upon the trust account, without diminution because of the insolvency of the ceding insurer or the assuming insurer, only for 1 or more of the following purposes:

(a) To pay or reimburse the ceding insurer for either or both of the following:

(i) The assuming insurer's share under the specific reinsurance agreement of premiums returned, but not yet recovered from the assuming insurer, to the owners of policies reinsured under the reinsurance agreement on account of cancellations of the policies.

(ii) The assuming insurer's share under the specific reinsurance agreement of surrenders and benefits or losses paid by the ceding insurer, but not yet recovered from the assuming insurer, under the terms and provisions of the policies reinsured under the reinsurance agreement.

(b) To pay the assuming insurer amounts held in the trust account in excess of the amount necessary to secure the credit or reduction from liability for reinsurance taken by the ceding insurer.

(c) Where the ceding insurer has received notification of termination of the trust and the assuming insurer's entire obligations under the specific reinsurance agreement remain unliquidated and undischarged 10 days before the termination date, to withdraw amounts equal to the assuming insurer's share of liabilities, to the extent that the liabilities have not yet been funded by the assuming insurer, and deposit those amounts in a separate account, in the name of the ceding insurer in any qualified United States financial institution apart from its general assets, in trust for the uses and purposes specified in subdivisions (a) and (b) of this subrule as may remain executory after withdrawal and for any period after the termination date.

(14) Either the reinsurance agreement or the trust agreement must stipulate that assets deposited in the trust account must be valued according to their current fair market value and consist only of cash (United States legal tender), certificates of deposit issued by a United States bank and payable in United States legal tender, and investments permitted by chapter 9 of the code, MCL 500.901 to 500.947, or any combination of cash, certificates of deposit, or investments, as long as investments in or issued by an entity controlling, controlled by or under common control with either the grantor or the beneficiary of the trust must not exceed 5% of total investments. The agreement may further specify the types of investments to be deposited. If the reinsurance agreement covers life, annuities, or accident and health risks, then the provisions required by this subrule must be included in the reinsurance agreement.

(15) The trust agreement may provide that the trustee may resign upon the delivery of a written notice of resignation that is 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 the delivery, to the trustee and the beneficiary, of a written notice of removal that is effective not less than 90 days after receipt by the trustee and the beneficiary of the notice. However, a

resignation or removal is not 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.

(16) The grantor may have the full and unqualified right to vote any shares of stock in the trust account and to receive payments of any dividends or interest upon any shares of stock or obligations included in the trust account. The interest or dividends must be either forwarded promptly upon receipt to the grantor or deposited in a separate account established in the grantor's name.

(17) The trustee may be given authority to invest and accept substitutions of any funds in the account only if the investment or substitution is made with the prior approval of the beneficiary, unless the trust agreement specifies categories of investments acceptable to the beneficiary and authorizes the trustee to invest funds and to accept substitutions that the trustee determines are at least equal in current fair market value to the assets withdrawn and are consistent with the restrictions in R 500.1123(1)(c).

(18) The trust agreement may provide that the beneficiary may at any time designate a party to which all or part of the trust assets are to be transferred. The transfer may be conditioned upon the trustee's receipt, either before the transfer or simultaneous with the transfer, of other specified assets.

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

R 500.1134 Credit for reinsurance; reciprocal jurisdictions.

Rule 14. (1) Pursuant to section 1103(7) to (18) of the code, MCL 500.1103, the director shall allow credit for reinsurance ceded by a domestic insurer to an assuming insurer that is licensed to write reinsurance by, and has its head office or is domiciled in, a reciprocal jurisdiction, and that meets the other applicable requirements of these rules.

(2) Credit is allowed pursuant to this rule if the reinsurance is ceded from an insurer domiciled in this state to an assuming insurer meeting all of the following conditions:

(a) The assuming insurer is licensed to transact reinsurance by, and has its head office or is domiciled in, a reciprocal jurisdiction.

(b) The assuming insurer has and maintains on an ongoing basis minimum capital and surplus, or its equivalent, calculated on at least an annual basis as of the preceding December 31 or at the annual date otherwise statutorily reported to the reciprocal jurisdiction, and confirmed as set forth in subdivision (g) of this subrule according to the methodology of its domiciliary jurisdiction, in the following amounts, as applicable:

(i) No less than $250,000,000.

(ii) For an assuming insurer that is an association, including incorporated and individual unincorporated underwriters, both of the following amounts:

(A) Minimum capital and surplus equivalents (net of liabilities) or own funds of the equivalent of at least $250,000,000.

(B) A central fund containing a balance of the equivalent of at least $250,000,000.

(c) The assuming insurer has and maintains on an ongoing basis a minimum solvency or capital ratio, as applicable, as follows:

(i) For an assuming insurer that has its head office or is domiciled in a reciprocal jurisdiction described in subrule (9)(b)(i) of this rule, the ratio specified in the applicable covered agreement.

(ii) For an assuming insurer that is domiciled in a reciprocal jurisdiction described in subrule (9)(b)(ii) of this rule, a risk-based capital (RBC) ratio of 300% of the authorized control level, calculated pursuant to the formula developed by the NAIC.

(iii) For an assuming insurer that is domiciled in a reciprocal jurisdiction described in subrule (9)(b)(iii) of this rule, after consultation with the reciprocal jurisdiction and considering any recommendations published through the NAIC committee process, including, but not limited to, solvency or capital ratio as the director determines to be an effective measure of solvency.

(d) The assuming insurer agrees to and provides adequate assurance of its agreement to all the following by submitting a properly executed form approved by the director:

(i) The assuming insurer must agree to provide prompt written notice and explanation to the director if it falls below the minimum requirements set forth in subdivisions (b) or (c) of this subrule, or if any regulatory action is taken against it for serious noncompliance with applicable law.

(ii) The assuming insurer must consent in writing to the jurisdiction of the courts of this state and to the appointment of the director as agent for service of process. The director may also require that the consent be provided and included in each reinsurance agreement under the director's jurisdiction. This paragraph does not limit or in any way alter the capacity of parties to a reinsurance agreement to agree to alternative dispute resolution mechanisms, except to the extent the reinsurance agreement is unenforceable under applicable insolvency or delinquency laws.

(iii) The assuming insurer must consent in writing to pay all final judgments, wherever enforcement is sought, obtained by a ceding insurer, that have been declared enforceable in the territory where the judgment was obtained.

(iv) Each reinsurance agreement must include a provision requiring the assuming insurer to provide security in an amount equal to 100% of the assuming insurer's liabilities attributable to reinsurance ceded pursuant to that agreement if the assuming insurer resists enforcement of a final judgment that is enforceable under the law of the jurisdiction in which it was obtained or a properly enforceable arbitration award, whether obtained by the ceding insurer or by its legal successor on behalf of its estate, if applicable.

(v) The assuming insurer must confirm that it is not presently participating in any solvent scheme of arrangement that involves this state's ceding insurers and agree to notify the ceding insurer and the director and to provide 100% security to the ceding insurer consistent with the terms of the scheme if the assuming insurer enters into a solvent scheme of arrangement. That security must be in a form consistent with the provisions of sections 1103(6) and 1105 of the code, MCL 500.1103 and 500.1105, and the requirements, as applicable, under R 500.1123, R 500.1124, R 500.1125, R 500.1126, and R 500.1133.

(vi) The assuming insurer must agree in writing to meet the applicable information filing requirements as set forth in subdivision (e) of this subrule.

(e) The assuming insurer or its legal successor must provide, if requested by the director, on behalf of itself and any legal predecessors, the following documentation to the director:

(i) For the 2 years preceding entry into the reinsurance agreement and on an annual basis after those years, the assuming insurer's annual audited financial statements, in accordance with the applicable law of the jurisdiction of its head office or domiciliary jurisdiction, as applicable, including the external audit report.

(ii) For the 2 years preceding entry into the reinsurance agreement, the solvency and financial condition report or actuarial opinion if filed with the assuming insurer's supervisor.

(iii) Before entry into the reinsurance agreement and not more than semi-annually afterward, an updated list of all disputed and overdue reinsurance claims outstanding for 90 days or more, regarding reinsurance assumed from ceding insurers domiciled in the United States.

(iv) Before entry into the reinsurance agreement and not more than semi-annually afterward, information regarding the assuming insurer's assumed reinsurance by ceding insurer, ceded reinsurance by the assuming insurer, and reinsurance recoverable on paid and unpaid losses by the assuming insurer to allow for the evaluation of the criteria set forth in subdivision (f) of this subrule.

(f) The assuming insurer must maintain a practice of prompt payment of claims under reinsurance agreements. There is evidence of a lack of prompt payment if any of the following criteria is met:

(i) More than 15% of the reinsurance recoverables from the assuming insurer are overdue and in dispute as reported to the director.

(ii) More than 15% of the assuming insurer's ceding insurers or reinsurers have overdue reinsurance recoverables on paid losses of 90 days or more that are not in dispute and that exceed for each ceding insurer $100,000, or as otherwise specified in a covered agreement.

(iii) The aggregate amount of reinsurance recoverables on paid losses that are not in dispute, but are overdue by 90 days or more, exceeds $50,000,000, or as otherwise specified in a covered agreement.

(g) The assuming insurer's supervisory authority must confirm to the director on an annual basis that the assuming insurer complies with the requirements set forth in subdivisions (b) and (c) of this subrule.

(3) Subrule (2) of this rule does not preclude an assuming insurer from providing the director with information on a voluntary basis.

(4) The director shall timely create and publish a list of reciprocal jurisdictions. The list must include any reciprocal jurisdiction described in subrule (9)(b)(i) and (ii) of this rule and consider any other reciprocal jurisdiction included on the list published through the NAIC committee process. The director may approve a jurisdiction that does not appear the NAIC list, as provided by applicable law or regulation or pursuant to criteria published through the NAIC committee process. The director may remove a jurisdiction from the list of reciprocal jurisdictions upon a determination that the jurisdiction no longer meets 1 or more of the requirements of a reciprocal jurisdiction, as provided by applicable law or regulation or pursuant to a process published through the NAIC committee process, except that the director shall not remove from the list a reciprocal jurisdiction as described under subrule (9)(b)(i) or (ii). Upon removal of a reciprocal jurisdiction from the list, credit for reinsurance ceded to an assuming insurer domiciled in that jurisdiction must be allowed if otherwise allowed pursuant to sections 1103, 1105, and 1106 of the code, MCL 500.1103, 500.1105, and 500.1106, and these rules.

(5) The director shall timely create and publish a list of assuming insurers that have satisfied the conditions set forth in this rule and to which cessions must be granted credit under this rule. Both of the following apply to the list of assuming insurers:

(a) If an NAIC accredited jurisdiction has determined that the conditions set forth in subrule (2) of this rule have been met, the director has the discretion to defer to that jurisdiction's determination and add that assuming insurer to the list of assuming insurers to which cessions must granted credit under this subrule. The director may accept financial documentation filed with another NAIC accredited jurisdiction or with the NAIC in satisfaction of the requirements of subrule (2) of this rule.

(b) When requesting that the director defer to another NAIC accredited jurisdiction's determination, an assuming insurer must submit a properly executed form approved by the director and additional information as the director may require. If the director receives a request under this subdivision, the director shall notify other states through the NAIC committee process and provide relevant information with respect to the determination of eligibility.

(6) If the director determines that an assuming insurer no longer meets 1 or more of the requirements under this rule, the director may revoke or suspend the eligibility of the assuming insurer for recognition under this rule. While an assuming insurer's eligibility is suspended, no reinsurance agreement issued, amended, or renewed after the effective date of the suspension qualifies for credit except to the extent that the assuming insurer's obligations under the contract are secured pursuant to section 1105 of the code, MCL 500.1105. If an assuming insurer's eligibility is revoked, no credit for reinsurance may be granted after the effective date of the revocation with respect to any reinsurance agreements entered into by the assuming insurer, including reinsurance agreements entered into before the date of revocation, except to the extent that the assuming insurer's obligations under the contract are secured in a form acceptable to the director and are consistent with the provisions of section 1105 of the code, MCL 500.1105.

(7) Before denying statement credit or imposing a requirement to post security under subrule (6) of this rule or adopting any similar requirement that has substantially the same regulatory impact as security, the director shall do all of the following:

(a) Communicate with the ceding insurer, the assuming insurer, and the assuming insurer's supervisory authority that the assuming insurer no longer satisfies 1 of the conditions listed in subrule (2) of this rule.

(b) Provide the assuming insurer with 30 days from the initial communication to submit a plan to remedy the defect and 90 days from the initial communication to remedy the defect, except in exceptional circumstances in which a shorter period is necessary for policyholder and other consumer protection. After the expiration of 90 days or less, as set out in this subdivision, if the director determines that no or insufficient action was taken by the assuming insurer, the director may impose any of the requirements as set out in this subrule.

(c) Provide a written explanation to the assuming insurer of any of the requirements set out in this subrule.

(8) If subject to a legal process of rehabilitation, liquidation, or conservation, as applicable, the ceding insurer, or its representative, may seek and, if determined appropriate by the court in which the proceedings are pending, may obtain an order requiring that the assuming insurer post security for all outstanding liabilities.

(9) As used in this rule:

(a) "Covered agreement" means that term as defined in section 1103(27)(b)(*i*) of the code, MCL 500.1103.

(b) "Reciprocal jurisdiction" means a jurisdiction, as designated by the director pursuant to subrule (4) of this rule, that meets 1 of the following:

(i) A jurisdiction that meets the conditions under section 1103(27)(b)(*i*) of the code, MCL 500.1103.

(ii) A jurisdiction that meets the conditions under section 1103(27)(b)(*ii*) of the code, MCL 500.1103.

(iii) A qualified jurisdiction, as determined by the director pursuant to section 1103(6)(c) of the code, MCL 500.1103, and R 500.1131(15), that is not otherwise described in paragraphs (i) or (ii) of this subdivision, and that the director determines meets all of the following additional requirements:

(A) Provides that an insurer that has its head office or is domiciled in the qualified jurisdiction shall receive credit for reinsurance ceded to a United States-domiciled assuming insurer in the same manner as credit for reinsurance is received for reinsurance assumed by insurers domiciled in the qualified jurisdiction.

(B) Does not require a United States-domiciled assuming insurer to establish or maintain a local presence as a condition for entering into a reinsurance agreement with any ceding insurer subject to regulation by the non-United States jurisdiction or as a condition to allow the ceding insurer to recognize credit for such reinsurance.

(C) Recognizes the United States state regulatory approach to group supervision and group capital, by providing written confirmation by a competent regulatory authority, in the qualified jurisdiction, that insurers and insurance groups that are domiciled or maintain their headquarters in this state or another jurisdiction 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 director or the commissioner of the domiciliary state and will not be subject to group supervision at the level of the worldwide parent undertaking of the insurance or reinsurance group by the qualified jurisdiction.

(D) Provides written confirmation by a competent regulatory authority in the qualified jurisdiction that information regarding insurers and their parent, subsidiary, or affiliated entities, if applicable, must be provided to the director pursuant to a memorandum of understanding or similar document between the director and the qualified jurisdiction, including, but not limited to, the International Association of Insurance Supervisors Multilateral Memorandum of Understanding or other multilateral memoranda of understanding coordinated by the NAIC.