

STATE OF CONNECTICUT  
**REGULATION**  
OFNAME OF AGENCY  
INSURANCE DEPARTMENT

## SECTION 1

**Credit For Reinsurance**

Section 1. Subsection (b) of section 38a-88-7 of the Regulations of Connecticut State Agencies is amended to read as follows:

(b) Required conditions for trust agreements qualified under Section 38a-88-6.

(1) The trust agreement shall be entered into between the beneficiary, the grantor and a trustee which shall be a qualified United States financial institution as defined in Section 38a-87(b) of the General Statutes.

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

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

(4) The trust agreement shall provide that:

(A) The beneficiary shall have the right to withdraw assets from the trust account at any time, without notice to the grantor, subject only to written notice from the beneficiary to the trustee;

(B) no other statement or document is required to be represented in order to withdraw assets, except that the beneficiary may be required to acknowledge receipt of withdrawn assets;

(C) it is not subject to any conditions or qualifications outside of the trust agreement; and

(D) it shall not contain references to any other agreements or documents except as provided for under subdivision (11) of this subsection.

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

(6) The trust agreement shall require the trustee to:

(A) receive assets and hold all assets in a safe place;

(B) determine that all assets are in such form that the beneficiary, or the trustee upon direction by the beneficiary, may whenever necessary negotiate any such assets, without consent or 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 no less frequent than the end of each calendar quarter;

(D) notify the grantor and the beneficiary, within ten (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 such assets to such beneficiary; and

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

(7) The trust agreement shall provide that at least thirty (30) days, but not more than forty-five (45) days, prior to termination of the trust account written notification of termination shall be delivered by the trustee to the beneficiary.

(8) The trust agreement shall be made subject to and governed by the laws of the state in which the trust is established.

(9) The trust agreement shall prohibit invasion of the trust corpus for the purpose of paying compensation to, or reimbursing the expenses of, the trustee. 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 Commissioner) 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.

(10) The trust agreement shall provide that the trustee shall be liable for damages caused by its own negligence, willful misconduct or lack of good faith, including the failure

STATE OF CONNECTICUT  
**REGULATION**  
OFNAME OF AGENCY  
INSURANCE DEPARTMENT

## SECTION 1

of the trustee to draw against the letter of credit in circumstances where such draw would be required.

(11) Notwithstanding other provisions of this regulation, 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 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 exceed 102 percent of the actual amount required to fund the assuming insurer's "obligations" under the specific reinsurance agreement; or

(C) where the ceding insurer has received notification of termination of the trust account and where the assuming insurer's entire "obligations" under the specific reinsurance agreement remain unliquidated and undischarged ten (10) days prior to such termination date, to withdraw amounts equal to such obligations and deposit such amounts in a separate account, in the name of the ceding insurer in any qualified United States financial institution as defined in Section 38a-87(b) of the General Statutes apart from its general assets, in trust for such uses and purposes specified in subparagraphs (A) and (B) above, as may remain executory after such withdrawal and for any period after such termination date.

(12) Notwithstanding other provisions of sections 38a-88-1 to 38a-88-12, inclusive, of the Regulations of Connecticut State Agencies, when a trust agreement is established to meet the requirements of Section 38a-88-6 of the Regulations of Connecticut State Agencies 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 the following purposes:

(A) To pay or reimburse the ceding insurer for:

(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; and  
(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 to 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; or

(C) Where the ceding insurer has received notification of termination of the trust and where the assuming insurer's entire obligations under the specific reinsurance agreement remain unliquidated and undischarged ten (10) days prior to 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 subparagraphs (A) and (B) of this subdivision as may remain executory after withdrawal and for any period after the termination date.

(13) The reinsurance agreement may, but need not, contain the provisions required by Subsection (d)(1)(B) of this section, so long as these required conditions are included in the trust agreement.

[(14) Notwithstanding any other provisions in the trust instrument, if the grantor of the trust has been declared insolvent or placed into receivership, rehabilitation, liquidation or similar proceedings under the laws of its state or country of domicile, the trustee shall comply with an order of the commissioner with regulatory oversight over the trust or court of

STATE OF CONNECTICUT  
**REGULATION**  
OFNAME OF AGENCY  
INSURANCE DEPARTMENT**SECTION 1**

competent jurisdiction directing the trustee to transfer to the commissioner with regulatory oversight or other designated receiver all of the assets of the trust fund. The commissioner with regulatory oversight or other designated receiver shall distribute the trust assets to the United States beneficiary of the trust in satisfaction of the obligations of the grantor due, or that may in the future become due, to such beneficiary. If there are trust assets remaining after satisfaction of such obligations to the United States beneficiary of the trust, those assets shall be returned to the trustee for distribution in accordance with the trust agreement.]

**Statement of Purpose:** To delete the provision that relates to disposition of assets of a single beneficiary trust on the insolvency of the reinsurer/grantor.

**(A) The problems, issues or circumstances that the regulation proposes to address.**

Connecticut insurance statutes and regulations contain a statutory accounting procedure permitting a ceding insurer to treat amounts due from reinsurers as an asset or deduction from liabilities in the financial statements filed with the Insurance Department, based on the status of the reinsurer. If the reinsurer is not licensed to do business, or is not otherwise approved by the Connecticut Insurance Department, the reinsurer must meet applicable collateral requirements to secure its obligations and the reinsurance agreements must meet certain specified regulatory requirements.

Under Section 38a-88-7 of the Regulations of Connecticut State Agencies, a ceding insurer may take credit for its reinsurance with a non-U.S. reinsurer that is not licensed or authorized to do business if a trust fund in the requisite amount in a qualified U.S. financial institution is established for the sole benefit of the ceding insurer and the trust agreement meets the criteria specified by this section. Among the required conditions for trust agreements qualified under Section 38a-88-7 is subdivision (14) of subsection (b) which relates to disposition of the assets of a single beneficiary trust on the insolvency of the reinsurer (trust grantor).

The primary intent of this provision which was adopted in 2004 was to address the problems posed by Section 304 of the U.S. Bankruptcy Code to U.S. cedents who make claims against a credit for reinsurance trust. Under former Section 304 of the U.S. Bankruptcy Code, the receiver of a non-U.S. unauthorized reinsurer could file a petition for ancillary bankruptcy proceedings in the U.S. to assist the main proceeding in the foreign country. Under these ancillary proceedings, the U.S. bankruptcy court could issue a nationwide injunction against further actions involving the insolvent reinsurer, preventing U.S. claimants from pursuing assets held by a trustee under a trust agreement. The U.S. bankruptcy court could also be asked by the non-U.S. receiver to refer all claim issues to the non-U.S. receivership court and to order the turnover of the trust to the non-U.S. receivership court.

In 2005, Congress repealed Section 304 of the U.S. Bankruptcy Code and replaced it with a new Chapter 15 to govern cross-border insolvency cases. Among other things, Chapter 15 prohibits a U.S. bankruptcy court from granting relief under that Chapter respecting "any deposit, escrow, trust fund, or other security required or permitted under any applicable State insurance law or regulation for the benefit of claim holders in the United States." Thus, U.S. bankruptcy courts are no longer permitted to enjoin actions by U.S. claimants under reinsurance a credit for reinsurance trust.

With the changes to the U.S. Bankruptcy Code, the National Association of Insurance Commissioners in June 2006 revised its Credit for Reinsurance Model Regulation to delete Section 10B(14). The Insurance Department's proposed regulation deletes subdivision (14) of subsection (b) of Section 38a-88-7(b) of the Regulations of Connecticut State Agencies, to conform with the change to the NAIC Credit for Reinsurance Model Regulation.

**(B) Summary of the main provisions of the regulation.**

The proposed regulation deletes subdivision (14) of subsection (b) of Section 38a-88-7(b) of the Regulations of Connecticut State Agencies which provides that notwithstanding any other provision in the credit for reinsurance trust agreement, if the grantor of the single beneficiary trust (the reinsurer) has been declared insolvent or placed into receivership, the trustee shall comply with an order of the commissioner with regulatory oversight over the trust or court of competent jurisdiction directing the trustee to transfer to the commissioner with regulatory oversight or other designated receiver all of the assets of the trust fund, and to distribute the assets to the U.S. beneficiary in satisfaction of the obligations of the reinsurer (trust grantor) due the beneficiary, and if there are any remaining trust assets after such distribution, those assets shall be returned to the trustee for distribution in accordance with the trust agreement.

**(C) The legal effect of the regulation.**

The terms of the trust agreement established by a reinsurer for the benefit of a single ceding insurer will govern payment of the reinsurer's obligations due the insurer if the reinsurer becomes insolvent as well as the disposition of any reversionary assets remaining after satisfaction of the obligations owed to the insurer by the reinsurer.

# CERTIFICATION

R-39 REV. 1/77

Be it known that the foregoing:

Regulations  Emergency Regulations

Are:

Adopted  Amended as hereinabove stated  Repealed

By the aforesaid agency pursuant to:

Sections 38a-88 of the General Statutes.

Section \_\_\_\_\_ of the General Statutes, as amended by Public Act No. \_\_\_\_\_ of the 2005 Public Acts.

Public Act No. \_\_\_\_ of the Public Acts.

After publication in the Connecticut Law Journal on August 22, 2006 of the notice of the proposal to:

Adopt  Amend  Repeal such regulations

(If applicable):  And the holding of an advertised public hearing on \_\_\_\_\_ day of \_\_\_\_\_ 20 \_\_\_\_\_

WHEREFORE, the foregoing regulations are hereby:

Adopted  Amended as hereinabove stated  Repealed

Effective:

When filed with the Secretary of the State.

(OR)

2007 MAY 30 AM 11:50  
SECRETARY OF THE STATE  
REGULATION & ELECTIONS  
LEGISLATION DIVISION

In Witness Whereof:	DATE Dec. 20, 2006	SIGNED (Head of Board, Agency or Commission) <i>Susan F. Logswell</i>	OFFICIAL TITLE, DULY AUTHORIZED INSURANCE COMMISSIONER
---------------------	-----------------------	--	---

Approved by the Attorney General as to legal sufficiency In accordance with Sec. 4-169, as amended, C. G. S. :	SIGNED <i>Will B. Al</i>	DATE 1/12/07	OFFICIAL TITLE, DULY AUTHORIZED ASSOC. ATTY. GENERAL
---	-----------------------------	-----------------	---

Approved

Disapproved

Disapproved in part, (Indicate Section Numbers disapproved only)

Rejected without prejudice.

By the Legislative Regulation Review Committee in accordance With Sec. 4-170, as amended, of the General Statutes.	DATE 5/22/07	SIGNED (Clerk of the Legislative Regulation Review Committee) <i>Penelope B. Booth</i>
---	-----------------	---

Two certified copies received and filed, and one such copy forwarded to the Commission on Official Legal Publications  
In accordance with Section 4-172, as amended, of the General Statutes.

DATE	SIGNED (Secretary of the State.)	BY
------	----------------------------------	----

### INSTRUCTION

- One copy of all regulations for adoption, amendment or repeal, except emergency regulations, must be presented to the Attorney General for his determination of legal sufficiency. Section 4-169 of the General Statutes.
- Seventeen copies of all regulations for adoption, amendment or repeal, except emergency regulations, must be presented to the standing Legislative Regulation Review Committee for its approval. Section 4-170 of the General Statutes.
- Each regulation must be in the form intended for publication and must include the appropriate regulation section number and section heading. Section 4-172 of the General Statutes.
- Indicate by "(NEW)" in heading if new regulation. Amended regulations must contain new language in capitol letters and deleted language in brackets. Section 4-170 of the General Statutes.



**Office of Secretary of the State**  
 State of Connecticut  
 P.O. Box 150470, Hartford, CT 06115-0470

**Susan Bysiewicz**  
 Secretary of the State

**Lesley D. Mara**  
 Deputy Secretary of the State

June 1, 2007

Hon. Thomas R. Sullivan, Commissioner  
 Department of Insurance  
 153 Market Street  
 Hartford, CT 06103

INSURANCE DEPARTMENT  
 STATE OF CONNECTICUT  
 2007 JUN -6 A 10:51

Re: Agency Regulation Concerning:

**Credit for Reinsurance**

Regulation Review Committee Docket Number: 2007-025  
 Secretary of the State File Number: 5777

Dear Commissioner Sullivan:

This is to acknowledge receipt of two certified copies of the above referenced regulation issued by the Department of Insurance.

**We request that you please forward the original or a copy of this acknowledgement letter to your agency's Legal Services Department for its files.**

Said regulation was received and filed in this office on May 30, 2007. The effective date of this regulation is May 30, 2007.

One of the two copies has been forwarded to the Commission on Official Legal Publications as required by law.

Sincerely,

Barbara Sladek  
 RLS Assistant Coordinator  
 860-509-6147

CC: Commission on Official Legal Publications (Letter and Copy of Regulation)

**File**

Commercial Recording Division	(860) 509-6001	fax (860) 509-6069	State Capitol Office	(860) 509-6200	fax (860) 509-6209
Legislation and Election Administration Division	(860) 509-6100	fax (860) 509-6127	Deputy Secretary of the State	(860) 509-6212	fax (860) 509-6131
General Information	(860) 509-6000		Management & Support Services	(860) 509-6190	fax (860) 509-6175

Internet Home Page [www.sots.ct.gov](http://www.sots.ct.gov)  
 30 Trinity Street, Hartford, CT 06106