

AN ACT

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

To amend the Holding Company System Act of 1993 to authorize the Commissioner to act as a group-wide supervisor for any internationally active insurance group, assess the enterprise risk of such insurers to ensure that the material financial condition and liquidity risks are identified and properly managed and to coordinate with other state, federal and international regulators; to amend the Law on Credit for Reinsurance Act of 1993 to grant the Commissioner rulemaking authority; and to amend the Annual Audited Financial Reports Act of 1993 to provide exemptions from auditing requirements.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the “Insurance Modernization and Accreditation Omnibus Amendment Act of 2018”.

TITLE I. INSURANCE HOLDING COMPANIES.

Sec. 101. The Holding Company System Act of 1993, effective October 21, 1993 (D.C. Law 10-44; D.C. Official Code § 31-701 *et seq.*), is amended as follows:

(a) Section 2 (D.C. Official Code § 31-701) is amended as follows:

(1) Paragraph (3B) is redesignated paragraph (3C).

(2) A new paragraph (3B) is added to read as follows:

“(3B) “Group-wide supervisor” means the regulatory official authorized to engage in conducting and coordinating group-wide supervision activities who is determined and acknowledged by the Commissioner under section 7a to have sufficient significant contacts with the internationally active insurance group.”.

(3) Paragraphs (5A) and (5B) are redesignated as, respectively, paragraphs (5B) and (5D).

(4) A new paragraph (5A) is added to read as follows:

“(5A) “Internationally active insurance group” means an insurance holding company system that includes an insurer registered pursuant to section 5 that:

“(A) Writes premiums in at least 3 countries;

“(B) Has a percentage of gross premiums written outside the United States that is at least 10% of its total gross written premiums; and

“(C) Based on a 3-year rolling average, has total assets that are at least \$50 billion or total gross written premiums of at least \$10 billion.”.

(5) A new paragraph (5C) is added to read as follows:

“(5C) “NAIC” means the National Association of Insurance Commissioners.”.

(b) A new section 7a is added to read as follows:

“Sec. 7a. Group-wide supervision of internationally active insurance groups.

“(a)(1) The Commissioner shall be the group-wide supervisor for any internationally active insurance group in accordance with the provisions of this section; provided, that the Commissioner may acknowledge another regulatory official as the group-wide supervisor where the internationally active insurance group:

“(A) Does not have substantial insurance operations in the United States;

“(B) Has substantial insurance operations in the United States, but not in the District; or

“(C) Has substantial insurance operations in the United States and the District, but the Commissioner has determined pursuant to the factors set forth in subsections (b) and (f) of this section that the other regulatory official is the appropriate group-wide supervisor.

“(2) An insurance holding company system that does not otherwise qualify as an internationally active insurance group may request that the Commissioner make a determination or acknowledgment as to the appropriate group-wide supervisor.

“(b)(1) In cooperation with other state, federal, and international regulatory agencies, the Commissioner shall identify a single group-wide supervisor for an internationally active insurance group.

“(2) The Commissioner may determine that the Commissioner is the appropriate group-wide supervisor for an internationally active insurance group that conducts substantial insurance operations concentrated in the District; provided, that the Commissioner may acknowledge that a regulatory official from another jurisdiction is the appropriate group-wide supervisor for the internationally active insurance group.

“(3) The Commissioner shall consider the following factors when making a determination or acknowledgment of who is appropriate as group-wide supervisor:

“(A) The place of domicile of the insurers within the internationally active insurance group that holds the largest share of the group’s written premiums, assets, or liabilities;

“(B) The place of domicile of the top-tiered insurers in the insurance holding company system of the internationally active insurance group;

“(C) The location of the executive offices or largest operational offices of the internationally active insurance group;

“(D) Whether another regulatory official is acting or seeking to act as the group-wide supervisor under a regulatory system that the Commissioner determines to be:

“(i) Substantially similar to the system of regulation provided under the laws of the District; or

“(ii) Otherwise sufficient in terms of providing for group-wide supervision, enterprise risk analysis, and cooperation with other regulatory officials; and

“(E) Whether another regulatory official acting or seeking to act as the group-wide supervisor provides the Commissioner with reasonably reciprocal recognition and cooperation.

“(c)(1) A regulatory official identified under this section as the group-wide supervisor may determine that it is appropriate to acknowledge another supervisor to serve as the group-wide supervisor.

“(2) The acknowledgment of the group-wide supervisor shall be made after consideration of the factors listed in this subsection (b) of this section and in cooperation with and subject to the acknowledgment of other regulatory officials involved with supervision of members of the internationally active insurance group, and in consultation with the internationally active insurance group.

“(d) Notwithstanding any other provision of law, when another regulatory official is acting as the group-wide supervisor of an internationally active insurance group, the Commissioner shall acknowledge that regulatory official as the group-wide supervisor; provided, that, in the event of a material change in the internationally active insurance group that results in the internationally active insurance group’s insurers domiciled in the District holding the largest share of the group’s premiums, assets, or liabilities or the District being the place of domicile of the top-tiered insurers in the insurance holding company system of the internationally active insurance group, the Commissioner shall make a determination or acknowledgment as to the appropriate group-wide supervisor for such an internationally active insurance group pursuant to subsection (b) of this section.

“(e)(1) Pursuant to section 7, the Commissioner is authorized to collect from any insurer registered pursuant to section 6, all information necessary to determine whether the Commissioner may act as the group-wide supervisor of an internationally active insurance group or if the Commissioner may acknowledge another regulatory official to act as the group-wide supervisor.

“(2) Before issuing a determination that an internationally active insurance group is subject to group-wide supervision by the Commissioner, the Commissioner shall notify the insurer registered pursuant to section 6 and the ultimate controlling person within the internationally active insurance group. The internationally active insurance group shall have, at

a minimum, 30 days to provide the Commissioner with additional information pertinent to the pending determination.

“(3) The Commissioner shall publish in the District of Columbia Register and on the website for the Department of Insurance, Securities and Banking the identity of internationally active insurance groups that the Commissioner has determined are subject to group-wide supervision by the Commissioner.

“(f) If the Commissioner is the group-wide supervisor for an internationally active insurance group, the Commissioner shall be authorized to engage in any of the following group-wide supervision activities:

“(1) Assess the enterprise risks within the internationally active insurance group to ensure that:

“(A) The material financial condition and liquidity risks to the members of the internationally active insurance group that are engaged in the business of insurance are identified by management; and

“(B) Reasonable and effective mitigation measures are in place; and

“(2) Request from any member of an internationally active insurance group subject to the Commissioner’s supervision information necessary and appropriate to assess enterprise risk, including information about the members of the internationally active insurance group regarding:

“(A) Governance, risk assessment, and management;

“(B) Capital adequacy; and

“(C) Material intercompany transactions;

“(3) Coordinate, and, through the authority of the regulatory officials of the jurisdictions where members of the internationally active insurance group are domiciled, compel development and implementation of reasonable measures designed to ensure that the internationally active insurance group is able to timely recognize and mitigate enterprise risks to members of such internationally active insurance group that are engaged in the business of insurance;

“(4) Communicate with other state, federal, and international regulatory agencies for members within the internationally active insurance group and share relevant information, subject to the confidentiality provisions of section 9, through supervisory colleges as set forth in section 8a;

“(5) Enter into agreements with or obtain documentation from any insurer registered under section 6, any member of the internationally active insurance group, and any other state, federal, and international regulatory agencies for members of the internationally active insurance group, providing the basis for or otherwise clarifying the Commissioner's role as group-wide supervisor, including provisions for resolving disputes with other regulatory officials; provided, that such agreements or documentation shall not serve as evidence in any proceeding that any insurer or person within an insurance holding company system not

domiciled or incorporated in the District, doing business in the District, or otherwise subject to jurisdiction in the District; and

“(6) Other group-wide supervision activities, consistent with the authorities and purposes enumerated above, as considered necessary by the Commissioner.

“(g) If the Commissioner acknowledges that another regulatory official from a jurisdiction that is not accredited by the NAIC is the group-wide supervisor, the Commissioner is authorized to reasonably cooperate, through supervisory colleges or otherwise, with group-wide supervision undertaken by the group-wide supervisor; provided, that:

“(1) The Commissioner's cooperation is in compliance with the laws of the District; and

“(2) The regulatory official acknowledged as the group-wide supervisor also recognizes and cooperates with the Commissioner's activities as a group-wide supervisor for other internationally active insurance groups where applicable; provided, that where such recognition and cooperation is not reasonably reciprocal, the Commissioner is authorized to refuse recognition and cooperation.

“(h) The Commissioner is authorized to enter into agreements with or obtain documentation from any insurer registered under section 6, any affiliate of the insurer, and other state, federal, and international regulatory agencies for members of the internationally active insurance group that provide the basis for or otherwise clarify a regulatory official's role as group-wide supervisor.

“(i) A registered insurer subject to this section shall pay the reasonable expenses of the Commissioner's participation in the administration of this section, including the engagement of attorneys, actuaries, and any other professionals and all reasonable travel expenses.

“(j) The Commissioner is authorized to promulgate rules and regulations necessary to implement the provisions of this section.”.

TITLE II. CREDIT FOR REINSURANCE.

Sec. 201. The Law on Credit for Reinsurance Act of 1993, effective October 15, 1993 (D.C. Law 10-36; D.C. Official Code § 31-501 *et seq.*), is amended as follows:

(a) Section 2(a)(1) (D.C. Official Code § 31-501(a)(1)) is amended by striking the period and inserting the following in its place:

“; provided, that the Commissioner may adopt by regulation specific additional requirements relating to or setting forth the:

“(A) Valuation of assets or reserve credits;

“(B) Amount and forms of security supporting reinsurance arrangements;

and

“(C) Circumstances pursuant to which credit will be reduced or eliminated.”.

(b) Section 3 (D.C. Official Code § 31-502) is amended to read as follows:

“Sec. 3. Asset or reduction from liability for reinsurance ceded by a domestic insurer to an assuming insurer not meeting the requirements of section 2.

“(a) An asset or a reduction from liability for the reinsurance ceded by a domestic insurer to an assuming insurer not meeting the requirements of section 2 shall be allowed in an amount not exceeding the liabilities carried by the ceding insurer; provided, that the Commissioner may adopt by regulation pursuant to 5(b) specific additional requirements relating to or setting forth the:

“(1) Valuation of assets or reserve credits;

“(2) Amount and forms of security supporting reinsurance arrangements described section 5(b); and

“(3) Circumstances pursuant to which credit will be reduced or eliminated.

“(b) The reduction shall be in the amount of funds held by or on behalf of the ceding insurer, including funds held in trust for the ceding insurer, under a reinsurance contract with the assuming insurer as security for the payment of obligations thereunder, if the security is held in the United States subject to withdrawal solely by, and under the exclusive control of, the ceding insurer, or, in the case of a trust, held in a qualified U.S. financial institution, as defined in section 4(a). This security may be in the form of:

“(1) Cash;

“(2) Securities listed by the Securities Valuation Office of the National Association of Insurance Commissioners, including those deemed exempt from filing as defined by the Purposes and Procedures Manual of the Securities Valuation Office, and qualifying as admitted assets;

“(3) Clean, irrevocable, unconditional letters of credit, issued or confirmed by a qualified U.S. financial institution effective no later than December 31 of the year for which the filing is being made, and in the possession of, or in trust for, the ceding insurer on or before the filing date of its annual statement; provided, that letters of credit meeting applicable standards of issuer acceptability as of the dates of their issuance (or confirmation) shall, notwithstanding the issuing (or confirming) institution’s subsequent failure to meet applicable standards of issuer acceptability, continue to be acceptable as security until their expiration, extension, renewal, modification, or amendment, whichever first occurs; or

“(4) Any other form of security acceptable to the Commissioner.”.

(c) Section 4 (D.C. Official Code § 31-503) is amended to read as follows:

“Sec. 4. Qualified U.S. financial institutions.

“(a) For purposes of section 3(3), a qualified U.S. financial institution means an institution that:

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

“(2) Is regulated, supervised, and examined by United States federal or state authorities having regulatory authority over banks and trust companies;

“(3) Has been determined by either the Commissioner or the Securities Valuation Office of the National Association of Insurance Commissioners to meet the standards of financial condition and standing considered necessary and appropriate to regulate the quality of financial institutions whose letters of credit will be acceptable to the Commissioner; and

“(4) When eligible to act as a fiduciary of a trust under this act:

“(A) Is organized, or, in the case of a United States branch or agency office of a foreign banking organization, licensed, under the laws of the United States or any state thereof and has been granted authority to operate with fiduciary powers; and

“(B) Is regulated, supervised, and examined by federal or state authorities having regulatory authority over banks and trust companies.”.

(c) Section 5 (40 DCR 5812) is amended to read as follows:

“Sec. 5. Rulemaking.

“(a) The Commissioner may adopt rules and regulations necessary to implement the provisions of this act.

“(b) The Commissioner is further authorized to adopt rules and regulations applicable to reinsurance arrangements; provided, that regulations adopted pursuant to this subsection:

“(1) May apply only to reinsurance relating to:

“(A) Life insurance policies with guaranteed nonlevel gross premiums or guaranteed nonlevel benefits;

“(B) Universal life insurance policies with provisions resulting in the ability of a policyholder to keep a policy in force over a secondary guarantee period;

“(C) Variable annuities with guaranteed death or living benefits;

“(D) Long-term care insurance policies; and

“(E) Such other life and health insurance and annuity products as to which the National Association of Insurance Commissioners (“NAIC”) adopts model regulatory requirements with respect to credit for reinsurance.

“(2) Pursuant paragraph (1)(A) or (B) of this subsection may apply to any treaty containing:

“(A) Policies issued on or after January 1, 2015; or

“(B) Policies issued prior to January 1, 2015, if risk pertaining to such pre-2015 policies is ceded in connection with the treaty, in whole or in part, on or after January 1, 2015;

“(3) May require the ceding insurer, in calculating the amounts or forms of security required to be held under regulations promulgated under this authority, to use the Valuation Manual adopted by the NAIC, as amended.

“(4) Shall not apply to cessions to an assuming insurer that:

“(A) Is certified in the District or, at a minimum, in 5 other states; or

“(B) Maintains at least \$250 million in capital and surplus when determined in accordance with the NAIC Accounting Practices and Procedures Manual,

including all amendments thereto adopted by the NAIC, excluding the impact of any permitted or prescribed practices, and is:

- “(i) Licensed in at least 26 states; or
- “(ii) Licensed in at least 10 states, and licensed or accredited in a total of at least 35 states.”.

TITLE III. ANNUAL FINANCIAL REPORTING

Sec. 301. The Annual Audited Financial Reports Act of 1993, effective October 21, 1993 (D.C. Law 10-48; D.C. Official Code § 31-301 *et seq.*), is amended as follows:

(a) Section 2 (D.C. Official Code § 31-301) is amended as follows:

(1) Paragraph (1B) is amended by striking the phrase “insurers and the audits of financial statements of the insurer or group of insurers.” and inserting the phrase “insurers, the internal audit function of an insurer or group of insurers if applicable, and external audits of financial statements of the insurer or group of insurers.” in its place.

(2) Paragraph (3B) is redesignated as paragraph (3C).

(3) A new paragraph (3B) is added to read as follows:

“(3B) “Internal audit function” means a person or persons that provide independent, objective, and reasonable assurance designed to add value and improve an organization’s operations and accomplish its objectives by bringing a systematic, disciplined approach to evaluate and improve the effectiveness of risk management, control, and governance processes.”.

(b) Section 12a (D.C. Official Code § 31-311.01) is amended by adding a new subsection (b-1) to read as follows:

“(b-1) The audit committee of an insurer or group of insurers shall be responsible for overseeing the insurer’s internal audit function and granting the person or persons performing the function suitable authority and resources to fulfill their responsibilities if required by section 12a-1.”.

(c) A new section 12a-1 is added to read as follows:

“Sec. 12a-1. Internal audit function requirements.

“(a) An insurer shall be exempt from the requirements of this section if:

“(1) The insurer has annual direct written and unaffiliated assumed premium, including international direct and assumed premium but excluding premium reinsured with the Federal Crop Insurance Corporation and Federal Flood Program, less than \$500 million; and

“(2) If the insurer is a member of a group of insurers, the group has annual direct written and unaffiliated assumed premium including international direct and assumed premium, but excluding premium reinsured with the Federal Crop Insurance Corporation and Federal Flood Program, less than \$1 billion.

“(b) The insurer or group of insurers shall establish an internal audit function providing independent, objective, and reasonable assurance to the audit committee and insurer management

regarding the insurer's governance, risk management, and internal controls. This assurance shall be provided by performing general and specific audits, reviews, and tests and by employing other techniques considered necessary to protect assets, evaluate control effectiveness and efficiency, and evaluate compliance with policies and regulations.

“(c)(1) To ensure that internal auditors remain objective, the internal audit function shall be organizationally independent. The internal audit function will not defer ultimate judgment on audit matters to others and shall appoint an individual to head the Internal audit function who will have direct and unrestricted access to the board of directors.

“(2) Organizational independence shall not preclude dual-reporting relationships.

“(d) The head of the internal audit function shall report to the audit committee regularly, but no less than annually, on the periodic audit plan, factors that may adversely impact the Internal audit function's independence or effectiveness, material findings from completed audits, and the appropriateness of corrective actions implemented by management as a result of audit findings.

“(e) If an insurer is a member of an insurance holding company system or included in a group of insurers, the insurer may satisfy the Internal audit function requirements set forth in this section at the ultimate controlling parent level, an intermediate holding company level, or the individual legal entity level.”.

(d) Section 13 (D.C. Official Code § 31-312) is amended by adding a new subsection (g) to read as follows:

“(g) An insurer or group of insurers that was exempt from section 12a-1 but no longer qualifies for the exemption shall have one year from the reporting year the threshold is exceeded to comply with this act.”.

TITLE IV. APPLICABILITY.

Sec. 401. Applicability.

This act shall apply to all insurance policies issued or renewed in the District 90 days after the effective date of this act.

TITLE V. GENERAL PROVISIONS.

Sec. 501. Fiscal impact statement.

The Council adopts the fiscal impact statement in the committee report as the fiscal impact statement required by section 4a of the General Legislative Procedures Act of 1975, approved October 16, 2006 (120 Stat. 2038; D.C. Official Code § 1-301.47a).

Sec. 502. Effective date.

This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), a 30-day period of Congressional review as provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December

ENROLLED ORIGINAL

24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(1)), and publication in the District of Columbia Register.

Chairman
Council of the District of Columbia

Mayor
District of Columbia