# **02 DEPARTMENT OF PROFESSIONAL AND FINANCIAL REGULATION**

**031 BUREAU OF INSURANCE**

**Chapter 231: CERTIFICATES OF AUTHORITY FOR INSURANCE COMPANIES**

**Section 1. Authority and Purpose**

The Superintendent of Insurance has adopted this Rule, pursuant to 24-A M.R.S.A. §§ 212, 404, 413, 414, 2151‑B, and 2186, in order to set standards and procedures under which an insurance company may apply for a Certificate of Authority to transact the business of insurance in Maine or for amendment of an existing Certificate of Authority.

**Section 2. Scope**

This Rule applies to all insurers for which a Certificate of Authority is required pursuant to 24‑A M.R.S.A. § 404.

**Section 3. General Requirements: Foreign and Alien Insurers**

Any foreign insurer, or alien insurer entered in another United States jurisdiction, that desires to obtain a Certificate of Authority shall submit an application on the most current Uniform Certificate of Authority Expansion Application form, or its successor form, published by the National Association of Insurance Commissioners or its successor organization, and shall provide all information requested therein and such additional information as the Superintendent may request in the course of reviewing the application, sufficient to demonstrate compliance with the following requirements, except to the extent that particular requirements may be waived or modified by the Superintendent upon a finding that they are not applicable to the circumstances of the application.

*A. Domiciliary Licensure*

The Applicant must hold a valid Certificate of Authority from its jurisdiction of domicile which authorizes it to transact those kinds of insurance it proposes to transact in this State. If the Applicant does not write a significant volume of business in its own jurisdiction of domicile, or operates from a home office outside its jurisdiction of domicile, it must explain the reasons to the satisfaction of the Superintendent.

*B. Business Name*

The Applicant shall not use a business name deceptively similar to that of any insurer currently holding a valid Certificate of Authority. No application will be entertained that proposes to use a name that has been reserved by another business entity with the Superintendent or the Maine Secretary of State, until the period of reservation has expired or the reserved name has been withdrawn.

*C. Deposit Requirements*

(1) If the Applicant is domiciled within the United States, it shall provide certification by the insurance regulator or other qualified official of its jurisdiction of domicile that qualifying securities or other asset deposits are held there with a minimum fair market value of $100,000, or such greater amount as that jurisdiction of domicile requires of insurers domiciled in this State, as security for all its policyholders.

(2) If the Applicant is not domiciled within the United States, it shall provide certification by the insurance supervisory official in its United States port of entry jurisdiction, and in any other United State jurisdiction(s) where assets might be held for the purposes of complying with the requirements of this Subsection, that qualifying assets or securities are held there in full compliance with laws substantially similar to the relevant provisions of 24‑A M.R.S.A. § 413‑A and Bureau of Insurance Rule 860 or to comparable model laws of the National Association of Insurance Commissioners. The total amount must be at least the sum of all of the Applicant’s liabilities under insurance contracts in force in the United States, the capital and/or surplus required pursuant to Subsection D, and any additional liabilities that must be secured by the trust(s) and/or deposit(s) used to satisfy this requirement pursuant to the laws of the port of entry jurisdiction or pursuant to the terms of the governing trust or deposit documents. The Applicant must be currently listed on the Quarterly Listing of Alien Insurers published by the National Association of Insurance Commissioners, or its successor publication, or provide documentation satisfactory to the Superintendent explaining why it is not listed and why that does not reflect adversely on the soundness of the insurer. In reviewing the adequacy of the Applicant’s United States trust assets, the Superintendent shall consider any reviews conducted by the National Association of Insurance Commissioners.

(3) If the assets held in the jurisdiction of domicile or United States port of entry are insufficient to meet the requirements of this Subsection, the Applicant may not be issued a Certificate of Authority, until it deposits with the Maine State Treasurer a supplemental deposit sufficient to remedy the deficiency, to be held for the benefit of the Applicant’s policyholders in compliance with the requirements of 24‑A M.R.S.A. Chapter 15 (§§ 1251 *et seq.*).

(4) In determining whether the Applicant is financially qualified to do business in Maine, the Superintendent has the discretion to consider a supplemental security deposit posted by or on behalf of the Applicant with the Treasurer of State as security for all its policyholders.

*D. Capital and Surplus*

The Applicant must demonstrate that it possesses capital and/or surplus funds, determined in accordance with statutory accounting principles pursuant to 24‑A M.R.S.A. § 901-A, in an amount at least equal to the greater of the applicable authorized control level risk-based capital or the minimum amount prescribed in 24‑A M.R.S.A. § 410(1) for all lines of insurance the Applicant is authorized to transact or seeks authorization to transact in Maine or elsewhere. For purposes of this Subsection, an insurer’s free surplus means unencumbered assets which are part of the insurer’s statutory surplus in excess of the amount necessary to comply with minimum paid-in capital or basic surplus requirements in this State or any other jurisdiction, after any adjustment for non-qualifying assets or understated reserves. Special deposits not held in an account for the benefit of all policyholders are not considered unencumbered assets.

*E. Historic Business Experience*

(1) Except as otherwise provided in Paragraphs (2) through (4) of this Subsection, the Applicant must satisfy the following criteria in order to qualify for a Maine Certificate of Authority:

(a) Licensure as an insurer in its jurisdiction of domicile for the three years immediately preceding the application.

(b) Maintenance of surplus in excess of the risk-based capital company action level for each of the three years immediately preceding the application.

(c) Demonstration that during three of the five years immediately preceding the application, including the two most recent years, a net profit has been realized without regard to any extraordinary, non-recurring items that have the effect of increasing net income.

(d) Demonstration that the Applicant has written the requested lines of business in sufficient volume as to demonstrate an expertise in marketing and servicing those lines. The Superintendent may consider business written both on a direct and an assumed basis. The Superintendent may consider the expertise of affiliated entities that have entered into service agreements with the Applicant covering lines of business for which the Applicant has not yet fully developed its own expertise or that have guaranteed the performance of the Applicant’s obligations.

(e) Demonstration of a history of responsible market conduct, including the full and timely settlement of claims, of an orderly pattern of growth in the Applicant’s marketing territories, and of the availability of equity resources adequate to support the company’s business expansion, all sufficient to indicate that the Applicant will successfully perform its policy obligations contracted within this State. To facilitate the Superintendent’s evaluation, the Applicant shall provide, when requested by the Superintendent, information itemizing premiums and associated business costs between first-year and renewal business. The Superintendent shall assess the Applicant’s rate of growth, business persistency ratios, supporting surplus resources, business acquisition costs, claims experience, reinsurance program, and investment policies, together with a review of policyholder service arrangements relating to Maine residents.

(f) No material change in operations, management, or ownership that may reduce or inhibit the Superintendent’s ability to rely on the historical information supplied in evaluating the Applicant’s qualification for a Certificate of Authority.

(2) If the Applicant is the successor to another insurer or insurers as the result of a merger, redomestication, asset sale with bulk reinsurance, or other restructuring, the Superintendent has the discretion to treat the experience of the predecessor or predecessors as experience of the Applicant.

(3) If the Applicant has been licensed in its state of domicile for less than three years, has undergone a material change of control within three years prior to the application, or other special circumstances exist which warrant the review of historical experience on a consolidated basis, the Superintendent has the discretion to consider relevant experience of the parent insurer and other affiliates, in determining whether the Applicant meets the requirements of this Subsection E, provided that the Applicant obtains a written unconditional financial guaranty in accordance with Subsection F.

(4) The Superintendent may waive the provisions of this Subsection E if the Applicant is a highly capitalized company seeking to commence startup operations on a multi-state basis and provides satisfactory alternative proof that it will be able to fulfill its obligations in this State in a sound and responsible manner. Factors to be considered by the Superintendent shall include, without limitation:

(a) The soundness of the Applicant’s business plan.

(b) The adequacy of the resources that have been committed for both expected and stress scenarios, including capital, reinsurance, personnel, and infrastructure.

(c) The existence of any financial guaranties or other mechanisms for access to additional capital in the event that it is needed.

(d) The experience and fitness of the Applicant’s managers and owners.

(e) The Applicant’s compliance with any criteria that may be developed by the National Association of Insurance Commissioners for evaluating such ventures.

*F. Financial Guaranty*

In determining whether the Applicant is financially qualified to do business in Maine, the Superintendent has the discretion to consider an unconditional guaranty issued by the Applicant’s highly capitalized Maine licensed parent company or affiliate pursuant to corporate resolution, on a form acceptable to the Superintendent, ensuring that minimum capital and/or surplus funds in at least the greater of the amount required by 24-A M.R.S.A. § 410 or regulatory action level risk-based capital are at all times maintained by the Applicant once licensed. If the Applicant does not have a highly capitalized parent or affiliate that is licensed in Maine, the Superintendent may consider accepting an unconditional financial guaranty from a non-Maine licensed, highly capitalized parent insurer or a very closely related affiliate, but only after completing a thorough financial review of the potential guarantor and after receiving evidence that the domiciliary regulator of the potential guarantor has approved the guaranty for execution.

The guaranty may be released only at the request of the Applicant and upon a demonstration by the Applicant that it would qualify for unconditional licensure on a free-standing basis for all lines of insurance it is then licensed to transact or has been licensed to transact in this State. The guarantor shall be subject to ongoing financial review by the Superintendent to determine if it is able to fulfill its obligations as guarantor.

*G. Guaranty Associations and Residual Markets*

To the extent required for the lines of business for which the Applicant has been approved, the Applicant shall acknowledge its membership in the Maine Insurance Guaranty Association, the Maine Life and Health Insurance Guaranty Association, or both of them, and in any applicable residual markets, assigned risk pools, joint underwriting associations, or other mandatory risk-sharing mechanisms. The Applicant shall agree in writing to comply with the requirements of those guaranty associations and risk-sharing mechanisms in which it will participate.

**Section 4. Newly Formed Domestic Insurers**

Any business entity domiciled in Maine that desires to commence business as an insurer shall submit an application for a Certificate of Authority on the most current Uniform Certificate of Authority Primary Application form, or its successor form, published by the National Association of Insurance Commissioners or its successor organization, and shall provide all information requested therein and such additional information as the Superintendent may request in the course of reviewing the application, sufficient to demonstrate compliance with the following requirements, except to the extent that particular requirements may be waived or modified by the Superintendent upon a finding that they are not applicable to the circumstances of the application.

*A. Corporate Organization*

The Applicant must comply, as applicable, with the organizational requirements of Chapter 47, 51, 53, or 83 of the Maine Insurance Code, Title 24‑A M.R.S.A. If a mutual or reciprocal insurer, the Applicant must demonstrate that it has an adequate initial membership base.

*B. Business Name*

The Applicant shall not use a business name deceptively similar to that of any insurer currently holding a valid Certificate of Authority. No application will be entertained that proposes to use a name that has been reserved by another business entity with the Superintendent or the Maine Secretary of State, until the period of the other business's reservation has expired or the reserved name has been withdrawn.

*C. Deposit Requirements*

The Applicant must deposit qualifying assets with the Treasurer of State with a minimum fair market value of $100,000 as security for all its policyholders, in compliance with the requirements of 24‑A M.R.S.A. Chapter 15 (§§ 1251 *et seq.*).

*D. Capital and Surplus*

(1) The Applicant must possess initial capital and/or surplus in an amount at least equal to the minimum amount prescribed in 24-A M.R.S.A. § 410(1) for all lines of insurance the Applicant transacts or seeks authorization to transact in Maine or elsewhere. Initial capital and/or surplus shall be calculated in the same manner as provided in Subsection 3(D). The initial free surplus requirement may not be satisfied through surplus notes or other encumbered assets.

(2) The Applicant’s initial surplus must also be sufficient to demonstrate to the satisfaction of the Superintendent that the Applicant will be reasonably assured of maintaining adequate risk-based capital to support the business the Applicant plans to write, at a level consistent with sound management and no less than the company action level.

*E. Business Plan*

The Applicant must provide proof that it will be able to fulfill its obligations in a sound and responsible manner, in this State and in all other jurisdictions in which the Applicant plans to operate. Factors to be considered by the Superintendent shall include, without limitation:

(1) The soundness of the Applicant’s business plan;

(2) The adequacy of the resources that have been committed for both expected and stress scenarios, including capital, reinsurance, personnel, and infrastructure;

(3) The existence of any financial guaranties or other mechanisms for access to additional capital in the event that it is needed;

(4) The experience and fitness of the Applicant’s managers and owners; and

(5) The Applicant’s compliance with any additional criteria that may be developed by the National Association of Insurance Commissioners for evaluating insurance start-ups.

**Section 5. Alien Insurers Seeking Initial Entry in Maine**

An insurer domiciled outside the United States that desires to establish a United States Branch with the State of Maine as its port of entry pursuant to 24-A M.R.S.A. § 413-A must submit an application for a Certificate of Authority on the most current Uniform Certificate of Authority Primary Application form, or its successor form, published by the National Association of Insurance Commissioners, or its successor organization, with such modifications as the Superintendent may specify. The Applicant shall provide all information requested therein or explain in writing to the Superintendent why a particular request is inapplicable to a port of entry application. The Applicant shall provide such additional information as the Superintendent may request in the course of reviewing the application, sufficient to demonstrate compliance with the following requirements, except to the extent that particular requirements may be waived or modified by the Superintendent upon a finding that they are not applicable to the circumstances of the application:

*A. Domiciliary Licensure*

The Applicant must hold a valid Certificate of Authority from its jurisdiction of domicile which authorizes it to transact those kinds of insurance it proposes to transact in this State. If the Applicant does not write a significant volume of business in its own jurisdiction of domicile, or operates from a home office outside its jurisdiction of domicile, it must explain the reasons to the satisfaction of the Superintendent.

*B. Establishment of United States Trust*

The Applicant must comply with the requirements of Bureau of Insurance Rule 860, including the establishment of a United States trust account and proof that the account will be adequately funded consistent with the Applicant’s business plan for its United States branch.

*C. Business Name*

The Applicant shall not use a business name deceptively similar to that of any insurer currently holding a valid Certificate of Authority. No application will be entertained that proposes to use a name that has been reserved by another business entity with the Superintendent or the Maine Secretary of State, until the period of reservation has expired or the reserved name has been withdrawn.

*D. Historic Business Experience*

The Superintendent shall evaluate the Applicant’s historic business experience in light of the factors set forth in Subsection 3(E), modified to the extent necessary to give appropriate consideration to the differences between operational practices and financial standards within and outside the United States.

*E. Business Plan*

The Applicant must provide proof that it will be able to fulfill its obligations in a sound and responsible manner, in this State and in all other jurisdictions in which the Applicant plans to operate. Factors to be considered by the Superintendent shall include, without limitation:

(1) The soundness of the Applicant’s business plan;

(2) The adequacy of the resources that have been committed for both expected and stress scenarios, including capital, reinsurance, personnel, and infrastructure;

(3) The existence of any financial guaranties or other mechanisms for access to additional capital in the event that it is needed;

(4) The experience and fitness of the Applicant’s managers and owners; and

(5) The Applicant’s compliance with any additional criteria that may be developed by the National Association of Insurance Commissioners for evaluating the establishment of United States branch operations.

**Section 6. Amendment of Certificate of Authority**

An Applicant seeking amendment of an existing Certificate of Authority shall submit an application on the most current Uniform Certificate of Authority Corporate Amendment form, or its successor form, published by the National Association of Insurance Commissioners, or its successor organization, and shall provide all information requested therein and such additional information as the Superintendent may request in the course of reviewing the application, sufficient to demonstrate, to the extent applicable to the nature of the proposed amendment, that the Applicant is qualified. When the amendment involves new lines of business or other substantial change in operations, the required showing shall include, without limitation, a demonstration that the insurer has demonstrated a sound business plan and adequate capital and/or surplus to support the new operations consistent with Subsection 3(D). If the Applicant is requesting to add new lines of business to its Certificate of Authority, the Applicant must demonstrate experience consistent with the requirements of Subparagraph 3(E)(1)(d) and all other applicable requirements of Subsection 3(E).

**Section 7. Reinstatement of Certificate of Authority**

An Applicant whose Certificate of Authority has been suspended and seeks reinstatement must demonstrate to the satisfaction of the Superintendent that it has complied with any conditions of reinstatement prescribed in the order of suspension and that the reasons for the suspension should no longer act as a bar to the Applicant’s doing business in Maine. If the Applicant has undergone a substantial change in operations, management, or capital structure, the Superintendent may require compliance with such provisions of Section 3 as the Superintendent determines to be appropriate in the circumstances.

**Section 8. Issuance of Certificate of Authority**

*A. Grant of Application*

If the Applicant satisfies the applicable requirements of this Rule and the Superintendent finds no ground for denying the application pursuant to Section 9, the Superintendent shall promptly issue the Applicant a Certificate of Authority.

*B. Conditional Licensure*

If the Superintendent determines upon reviewing the application that the Applicant is qualified to transact insurance in this State only for a specialized or limited purpose, or that conditional licensure is otherwise necessary in order to provide adequate assurance that the Applicant is qualified to transact insurance in this State, the Superintendent shall issue, concurrently with the decision to grant licensure, a written order specifying the conditions of licensure and, if applicable, the procedures and criteria by which the Applicant may obtain an unconditional Certificate of Authority.

**Section 9. Denial of Application**

*A. Grounds for Denial*

The Superintendent may deny the Applicant a Certificate of Authority, upon finding that any of the following conditions exists:

(1) Failure to comply with the requirements of this Rule or other applicable law.

(2) Evidence of misconduct or unfitness in the management of the Applicant or in the management of any of its affiliates.

(3) The termination of the Applicant’s Certificate of Authority or denial of its application for licensure in another jurisdiction, unless the Applicant proves to the satisfaction of the Superintendent that the circumstances of the termination or denial do not justify denial of the Maine application.

(4) Two or more of the following unfavorable financial trends:

(a) A year-to-year decrease of the Applicant’s risk-based capital ratio by more than 100 percentage points in each of the two most recent years.

(b) A cumulative decrease of surplus in excess of 25% over the three most recent years.

(c) A ratings downgrade of two or more levels over the past two years by any one of the nationally recognized ratings service organizations.

(d) Adjustments to reserves due to under-reserving in excess of 10% of surplus in either of the two most recent years.

(e) Decrease of profitability in each of the three most recent years.

(f) Negative cash flow from operations in each of the last three years.

(g) Reliance on contributions to surplus from a parent or an affiliate, in order to maintain an adequate level of surplus.

(h) Any other financial trend identified by the Superintendent that indicates a deterioration in the Applicant’s financial condition over the most recent preceding three-year period.

When assessing financial trends, the analyst shall consider the change in the Applicant’s premium volume and asset size as well as any other material changes to the operations of the Applicant.

(5)Failure of the Applicant to update its application or to provide additional information requested by the Superintendent within a reasonable timeframe, not to exceed 30 days.

(6)Any other compelling evidence demonstrating that the Applicant is not qualified to transact insurance in this State.

*B. Opportunity for Reconsideration*

The Applicant may seek reconsideration of any finding made by the Superintendent under this Section, by filing a formal request with all supporting materials within 30 days after issuance of the finding.

*C. Repetitive Applications*

Once the denial of an application has become final, the Applicant may not reapply within one year.

**Section 10. Miscellaneous Provisions**

*A. Review Procedures*

The review process for applications for a Certificate of Authority shall be conducted in accordance with the following procedures.

(1) Application reviews will be conducted continuously throughout the year. The Superintendent may withhold final determination on applications filed after October 1 of each year until 30 days after receipt of the annual financial statements which are due March 1 of the following year.

(2) The Financial Analysis Division shall make a recommendation to the Superintendent concerning applications which have been reviewed and findings reached thereon. The Superintendent shall consider the recommendation and make a decision on the application. Written notice of the decision shall be mailed to the Applicant within 30 days after the date of decision.

(3) Unless there is good cause for expediting or postponing review, applications will be considered in the order in which they are filed. An Applicant is not entitled to priority treatment on the ground that affiliated insurers are licensed in this State.

(4) The Applicant may expect a period of at least two months before final review of the application, in order, *inter alia,* to allow for background investigations, inquiry regarding claims settlement practices, and the gathering of any necessary information not filed with the initial application. Additional time will be required, if it is necessary to wait for the Applicant to provide additional information or a response to an inquiry.

(5) If an Applicant has any tax liability owing to this State, the Application will be withdrawn from consideration and will not be accepted for filing until the tax liability is fully discharged.

(6) Any person aggrieved by a decision on an application for a Certificate of Authority may seek an administrative hearing before the Superintendent under 24‑A M.R.S.A. § 229, by filing a written request with the Bureau within 90 days after the complainant learned or reasonably should have learned of the decision.

*B. Continuing Duties of Applicant*

The Applicant must keep filings current. Any document on file must be updated promptly, if there is any change to it, either while the application is pending or after the Certificate of Authority is granted.

**Section 11. Effective date**

This Rule is effective *August 9, 2005* andapplies to all applications pending on that date or filed after that date, except that the Applicant may elect to have its application reviewed pursuant to former Rule 230, if a final application was pending on the effective date of this Rule, or if a preliminary application was pending or approved on the effective date of this Rule and a final application is submitted on or before September 1, 2005.

STATUTORY AUTHORITY: 24-A M.R.S.A. §§ 212, 404, 413, 414, 2151-b, and 2186

EFFECTIVE DATE (filing 2005-315):

 Ch. 231, August 9, 2005

 Repeal of Ch. 230, September 1, 2005

APAO WORD VERSION CONVERSION (IF NEEDED) AND ACCESSIBILITY CHECK: July 18, 2025