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

031 BUREAU OF INSURANCE

Chapter 860: ALIEN INSURERS; PORT OF ENTRY

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Section 1. Authority

 This Rule is adopted pursuant to the authority of 24-A M.R.S.A. §§212 and 413-A.

Section 2. Definitions

 For purposes of this Rule, the following terms have the following meanings:

A. “Non U.S. Insurer” or “Alien Insurer’ means an insurer organized under the laws of any country other than the United States of America, or its states, districts, territories, commonwealths and possessions.

B. “United States Branch” or “U.S. Branch” means the business unit through which business is transacted within the United States by a non-U.S. insurer and the assets and liabilities of the insurer within the United States pertaining to such business.

Section 3. Scope

 This Rule applies to a U.S. branch using the State of Maine as a port of entry to transact insurance in the United States. The U.S. branch shall also be subject to all state laws applicable to an insurer domiciled in this state unless otherwise provided.

Section 4. Authorization of Entry

A. A non-U.S. insurer may use this state as a port of entry to transact insurance in the United States through a U.S. branch by:

(1) Qualifying as an insurer licensed to do business in this state; and

(2) Establishing a trust account, pursuant to a trust agreement approved by the Superintendent with a U.S. Bank approved by the Superintendent, in an amount at least equal to the greater of the minimum capital and surplus r authorized control level risk based capital required to be maintained by a domestic insurer licensed to do the same kind of insurance.

B. In order to receive authorization to utilize the State of Maine as a port of entry, the non-U.S. insurer, in addition to the requirements of Sections 4, 6 and 8 of this Rule and any other requirement of the Insurance Law, must:

(1) submit a copy of its charter and by-laws, if any, currently in force, and such other documents necessary to show the kinds of business which it is empowered to do in its domiciliary jurisdiction, attested to as accurate and complete by the insurance supervisory official in its home jurisdiction, and a full statement, subscribed and affirmed as true under the penalties of perjury by two officers or equivalent responsible representatives in such manner as the Superintendent shall prescribe, of its financial conditions as of the close of its latest fiscal year, showing its assets, liabilities, income disbursements, business transacted and other facts required to be shown in its annual statement, as reported to the insurance supervisory official in its home jurisdiction; an English language translation, as necessary, of any of the documents required herein; and

(2) submit to an examination of the insurer’s affairs at its principal office within the United States, which must be located in Maine, or, to the extent determined acceptable in the sole discretion of the Superintendent, submit a report of examination of the insurer’s affairs done by the insurance supervisory official of the insurer’s home jurisdiction.

Section 5. Maintenance of Trust Account

 The assets in the trust account shall be known as “trusteed assets” and shall at all times be in an amount equal to the U.S. branch's reserves and other liabilities plus the greater of the minimum capital and surplus or authorized control level risk based capital required to be maintained by a domestic insurer licensed to do the same kind of insurance.

Section 6. Requirements for Trust Agreement

A. The deed of trust and all amendments thereto shall be authenticated in such form and manner as the Superintendent may prescribe and shall not be effective unless approved by the Superintendent upon a finding that:

(1) A deed of trust or its amendments are sufficient in form and in conformity with law;

(2) The trustee or trustees are eligible as such; and

(3) The deed of trust is adequate to protect the interests of the beneficiaries of the trust.

B. If at any time the Superintendent finds, after reasonable notice and hearing, that the requisites for the approval no longer exist, the Superintendent may withdraw approval.

C. A non-U.S. insurer may file modifications of, or variations in any deed of trust with the Superintendent for approval. The modifications may be approved if, they otherwise comply with law, and in the Superintendent’s judgment are not prejudicial to the interests of the people of this state or the United States policyholders and creditors of the U.S. branch.

D. (1) The deed of trust shall contain provisions which:

(a) Vest legal title to trusteed assets in the trustees, and their successors lawfully appointed;

(b) Require that all assets deposited in the trust shall be continuously kept within the State of Maine;

(c) Provide for substitution of a new trustee or trustees in case of a vacancy by death, resignation or otherwise, subject to the approval of the Superintendent;

(d) Require that the trustee or trustees shall continuously maintain within the State of Maine a record at all times sufficient to identify the assets of such fund;

(e) Require that the trusteed assets shall consist of cash and/or investments eligible for investment of the funds of domestic insurers and accrued interest thereon if collectable by the trustee;

(f) Require that the trust shall be for the exclusive benefit, security and protection of the policyholders, or policyholders and creditors, of the U.S. branch in the United States and that it shall be maintained as long as there is outstanding any liability of the non-U.S. insurer arising out of its insurance transactions in the United States; and

(g) Provide, in substance that no withdrawals of assets, other than income as specified in Paragraph (2) of this subsection shall be made or permitted by the trustee or trustees without the approval of the Superintendent except to:

(i) Make deposits required by law in any state for the security or benefit of all policyholders, or policyholders and creditors, of the U.S. branch in the United States;

(ii) Substitute other assets permitted by law and in an amount at least equal in value and quality to those withdrawn, upon the specific written direction of the United States manager when duly empowered and acting pursuant to either general or specific written authority previously given or delegated by the board of directors; or

(iii) Transfer such assets to an official liquidator or rehabilitator pursuant to an order of a court of competent jurisdiction.

(2) The deed of trust may provide that income, earnings, dividends or interest accumulations of the assets of the fund may be paid over to the United States manager of the U.S. branch upon request, provided that the total trusteed assets shall not thereby be less than the amount required to be maintained pursuant to Section 5 of this Rule.

E. Upon withdrawal of trusteed assets deposited in another state in which the insurer is authorized to do business, it shall be sufficient if the deed of trust requires similar written approval of the insurance supervising official of that state in lieu of approval of the Superintendent provided that the total trusteed assets shall not thereby be less than the amount required to be maintained pursuant to Section 5 of this Act. In all such cases the U.S. branch shall notify the Superintendent in writing of the nature and extent of the withdrawal.

F. The Superintendent will from time to time:

(1) Make examinations of the trusteed assets of any authorized U.S. branch at the insurer’s expense; and

(2) Require the trustee or trustees to file a statement, in such form as the Superintendent may prescribe, certifying the assets of the trust fund and the amounts thereof.

G. Refusal or neglect of any trustee to comply with the foregoing requirements shall be ground for the revocation of the insurer’s license or the liquidation of its United States branch.

Section 7. Reporting Requirements for U.S. Branches of Non-U.S. Insurers

A. In addition to other requirements of Title 24-A M.R.S.A. and this Rule, every authorized U.S. branch shall, not later than the first day of March in each year and forty-five (45) days after the end of each of the first three (3) calendar-year quarters, file with the Superintendent and with the National Association of Insurance Commissioners (NAIC):

(1) Annual and quarterly statements of the business transacted within the U.S. and the assets held by or for it within the U.S. for the protection of policyholders and creditors within the U.S., and of the liabilities incurred against such assets. The forms shall not contain any statement in regard to its assets and business elsewhere. The statements shall be in the same format required of an insurer domiciled in the U.S. branch’s state of entry state and licensed to write the same kinds of insurance; and

(2) A statement of trusteed surplus, in such form as the Superintendent may prescribe, as of the end of the same period covered by the statement filed pursuant to Paragraph (1) of this subsection. The aggregate value of the insurer’s general state deposits and trusteed assets deposited with a trustee in compliance with Section 6 of this Rule, plus accrued investment income thereon where such interest is collected by the states for trustees, less the aggregate net amount of all of its reserves and other liabilities in the United States as determined in accordance with this section shall be known as its “trusteed surplus” in the United States. In determining the net amount of the U.S. branch’s liabilities in the United States to be reported in the statement of trusteed surplus, the U.S. branch shall make adjustments to total liabilities reported on the accompanying annual or quarterly statements as follows:

(a) Add back liabilities used to offset admitted assets reported in the accompanying quarterly or annual statement; and

(b) Deduct:

(i) Unearned premiums on agent’s balances or uncollected premiums not more than ninety (90) days past due;

(ii) Reinsurance or losses with authorized insurers, less unpaid reinsurance premiums;

(iii) Reinsurance recoverables on paid losses from unauthorized insurers that are included as an asset in the annual statement, but only to the extent a liability for such unauthorized recoverables is included in the liabilities report in the trusteed surplus statement;

(iv) Special state deposits held for the exclusive benefit of policyholders, or policyholders and creditors, of any particular state not exceeding net liabilities reports for that state;

(v) Secured accrued retrospective premiums;

(vi) If a life insurer:

\* The amount of its policy loans to policyholders within the United States, not exceeding the amount of legal reserve required on each such policy; and

\* The net amount of uncollected and deferred premiums; and

(vii) any other non-trusteed asset which the Commissioner determines secures liabilities in a substantially similar manner; and

(3) Any additional information that the Superintendent may require relating to the total business or assets, or any portion thereof, of the non-U.S. insurer.

B. The annual statement and trusteed surplus statement shall be signed and verified by the United States manager, attorney-in-fact, or a duly empowered assistant United States manager, of the U.S. branch. The items of securities and other property held under trust deeds shall be certified in the trusteed surplus statement by the United States trustee or trustees.

C. Every report on examination of a U.S. branch shall include a trusteed surplus statement as of the date of examination in addition to the general statement of the financial condition of the U.S. branch.

Section 8. Additional Requirements for U.S. Branch License

A. Before issuing any new or renewal license to any U.S. branch, the Superintendent will require satisfactory proof, either in the non-U.S. insurer’s charter or by an agreement evidenced by a duly certified resolution of its board of directors, or otherwise as the Superintendent may require, that the insurer will not engage in any insurance business in contravention of the provisions of the section or not authorized by its charter.

B. The Superintendent will issue a renewal license to any U.S. branch if satisfied, by such proof as required, that the insurer is not delinquent with respect to any requirement imposed by Title 24-A M.R.S.A. or this Rule and that its continuance in business in this state will not be hazardous or prejudicial to the best interests of the people of this state.

C. No U.S. branch shall be licensed to do in this state any kind of insurance business, or any combination of kinds of insurance business, which are not permitted to be done by domestic insurers licensed under the provisions of title 24-A M.R.S.A..

D. Except as otherwise specifically provided, no U.S. branch, entering through this state or another state, shall be or continue to be authorized to do an insurance business in this state if it fails to comply substantially with any requirement or limitation of Title 24-A M.R.S.A., applicable to similar domestic insurers hereafter organized, which in the judgment of the Superintendent is reasonably necessary to protect the interest of the policyholders.

E. No U.S. branch which does any kind or combination of kinds of insurance business outside of this state not permitted to be done in this state by similar domestic insurers hereafter organized, shall be or continue to be authorized to do an insurance business in this state, unless in the judgment of the Superintendent the doing of such kind or combination of kinds of insurance business will not be prejudicial to the best interests of the people of this state.

F. No U.S. branch shall be or continue to be authorized to do an insurance business in this state if it fails to keep full and correct entries of its transactions, which shall at all times be open to the inspection of persons invested by law with the rights of inspection and be maintained in its principal office within this state.

Section 9. Authority of Superintendent

 Whenever it appears to the Superintendent from any annual or quarterly statement or trusteed surplus statement or any other report that a U.S. branch’s trusteed surplus is reduced below the greater of minimum capital and surplus or the authorized control level risk based capital required to be maintained by a domestic insurer licensed to transact the same kinds of insurance, the Superintendent may proceed against the insurer pursuant to the provisions of Chapters 5 and 57 of Title 24-A M.R.S.A. as an insurer whose condition is such that its further transaction of business in the United States will be hazardous to its policyholders, its creditors or the public in the United States.

Section 10. Effective Date

 This Rule is effective November 5, 1997.

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