**Section 1104.40 Credit for Reinsurance – Reinsurers Maintaining Trust Funds**

a) Pursuant to Section 173.1(1)(C) of the Code, the Director shall allow credit for reinsurance ceded by a domestic insurer to an assuming insurer that, as of the date of the ceding insurer's most recent statutory financial statement, maintains a trust fund in an amount prescribed in subsection (b) in a qualified U.S. financial institution as defined in Section 173.1(3)(B) of the Code, for the payment of the valid claims of its U.S. policyholders and ceding insurers, their assigns and successors in interest. The assuming insurer shall report annually to the Director substantially the same information as that required to be reported on the NAIC annual statement form by licensed insurers, to enable the Director to determine the sufficiency of the trust fund.

b) The following requirements apply to the following categories of assuming insurer:

1) The trust fund for a single assuming insurer shall consist of funds in trust in an amount not less than the assuming insurer's gross liabilities attributable to business written in the U.S., and in addition, a trusteed surplus of not less than $20 million, except as provided in Section 173.1(1)(C)(3)(a-5) of the Code. The assuming insurer shall file a properly executed Form AR-1 Certificate of Assuming Insurer found in Appendix A as evidence of the submission to this State's authority to examine its books and records and shall certify that it will bear the expense of any such examination.

2) Certain Group Trust Fund Requirements

A) The trust fund for a group including incorporated and unincorporated individual underwriters shall consist of:

i) For reinsurance ceded under reinsurance agreements with an inception, amendment, or renewal date on or after January 1, 1993, funds in trust in an amount not less than the respective underwriters' several liabilities attributable to business ceded by U.S. domiciled ceding insurers to any underwriter of the group; and

ii) For reinsurance ceded under reinsurance agreements with an inception date on or before December 31, 1992, and not amended or renewed after that date, notwithstanding the other provisions of this Part, funds in trust in an amount not less than the respective underwriters' several insurance and reinsurance liabilities attributable to business written in the U.S.

B) In addition, the group shall maintain a trusteed surplus of which $100 million shall be held jointly for the benefit of the U.S. ceding insurers of any member of the group for all the years of account. The group shall file a properly executed Form AR-1 Certificate of Assuming Insurer found in Appendix A as evidence of the submission to this State's authority to examine the books and records of any of its members and shall certify that any member examined will bear the expense of any such examination. The group shall make available to the Director annual certifications by the group's domiciliary regulator and its independent public accountants of the solvency of each underwriter member of the group.

C) The incorporated members of the group shall not be engaged in any business, other than underwriting as a member of the group, and shall be subject to the same level of regulation and solvency control by the group's domiciliary regulator as are the unincorporated members.

3) Insurers Conducting Business Outside the United States

A) The trust fund for a group of incorporated insurers under common administration, whose members possess aggregate policyholders surplus of $10 billion (calculated and reported in substantially the same manner as prescribed by the annual statement instructions and NAIC Accounting Practices and Procedures Manual) and that has continuously transacted an insurance business outside the U.S. for at least 3 years immediately prior to making application for accreditation:

i) shall consist of funds in trust in an amount not less than the assuming insurers' gross liabilities attributable to business ceded by U.S. ceding insurers to any members of the group pursuant to reinsurance contracts issued in the name of the group; and,

ii) shall maintain a joint trusteed surplus of which $100 million shall be held jointly for the benefit of U.S. ceding insurers of any member of the group.

B) The group shall file a properly executed Form AR-1 Certificate of Assuming Insurer found in Appendix A as evidence of the submission to this State's authority to examine the books and records of any of its members and shall certify that any member examined will bear the expense of any such examination.

C) The group shall make available to the Director annual certifications by the members' domiciliary regulators and their independent public accountants of the solvency of each member of the group.

c) The trust shall be established in a form approved by the Director and complying with Section 173.1(1) of the Code and this Part. The trust instrument shall provide that:

1) Contested claims shall be valid and enforceable out of funds in trust to the extent remaining unsatisfied 30 days after entry of the final order of any court of competent jurisdiction in the U.S.

2) Legal title to the assets of the trust shall be vested in the trustee for the benefit of the grantor's U.S. policyholders and ceding insurers, their assigns and successors in interest.

3) The trust shall be subject to examination as determined by the Director.

4) The trust shall remain in effect for as long as the assuming insurer, or any member or former member of a group of insurers, shall have outstanding obligations under reinsurance agreements subject to the trust.

5) No later than February 28 of each year the trustees of the trust shall report to the Director in writing setting forth the balance in the trust and listing the trust's investments at the preceding year end, and shall certify the date of termination of the trust, if so planned, or certify that the trust shall not expire prior to the next following December 31.

6) No amendment to the trust shall be effective unless reviewed and approved in advance by the Director.

(Source: Amended at 43 Ill. Reg. 14133, effective November 19, 2019)