

Rhode Island

§ 27-14.5-1. Definitions.

As used in this chapter:

- (1) "Applicant" means a commercial run-off insurer applying under § 27-14.5-4.
- (2) "Assessment deficit" means the amount that the assessment for the previous year under § 27-14.5-5 is less than, and "assessment surplus" is the amount that the assessment for the previous year exceeds:
 - (i) The run-off insurer's proportionate share of regulatory expenditure for the previous year, if the run-off insurer was domiciled in Rhode Island on March 15 of the previous year; or
 - (ii) The redomestication expenditure for the previous year attributable to the run-off insurer, if the run-off insurer was not domiciled in Rhode Island on March 15 of the previous year.
- (3) "Assumption policyholder" means a policyholder whose policy is reinsured under an assumption reinsurance agreement between the applicant and a reinsurer.
- (4) "Assumption reinsurance agreement" has the meaning given in § 27-53.1-3(b), subject to the following:
 - (i) The agreement may be conditioned upon the court's entry of an implementation order.
 - (ii) If any policy subject to the agreement is protected through a guarantee association, then the assuming insurer must have been and be licensed, and must have been and be a member of the guarantee association, in all states known to the applicant in which either: (A) Any property covered under the policy has a permanent situs; or (B) The policyholder resided while the policy was in force.
- (5) "Class of creditors" means:
 - (i) All voting policyholders, including those without known claims;
 - (ii) Voting creditors, other than policyholders; or
 - (iii) Any separate class of creditors as the court may in its discretion determine should approve the commutation plan.
- (6) "Commercial run-off insurer" means:
 - (i) A run-off insurer domiciled in Rhode Island, or the protected cell of the insurer, whose business, excluding all business subject to an assumption reinsurance agreement, includes only

the reinsuring of any line(s) of business other than life and/or the insuring of any line(s) of business other than life, workers' compensation, and personal lines insurance; or

(ii) A Rhode Island domestic insurance company, or the protected cell of that insurer, meeting the requirements of subsection (i) whose liabilities consist of commercial liabilities transferred to said company with the approval of the commissioner and pursuant to the regulations issued by the department under this chapter. The amount of the commercial liabilities transferred must be less than or equal to the amount of assets transferred to the newly formed or re-activated company.

(7) "Commissioner" means the director of the department.

(8) "Commutation plan" means a plan for extinguishing the outstanding liabilities of a commercial run-off insurer.

(9) "Creditor" means:

(i) Any person who has a claim against the applicant; or

(ii) A policyholder other than an assumption policyholder.

(10) "Department" means the department of business regulation.

(11) "Guarantee association" means a guarantee association or foreign guarantee association, as those terms are defined in § 27-14.3-3(10), that is potentially obligated with respect to the applicant's policies.

(12) "Implementation order" means an order under § 27-14.5-4(c).

(13) "Insurer" has the meaning given in § 27-14.3-3(12).

(14) "Person" means an individual, corporation, partnership, association, joint stock company, trust, unincorporated organization, or any similar entity or any combination of the foregoing acting in concert.

(15) "Personal lines insurance" means insurance issued for personal, family, or household purposes.

(16) "Policy" means a contract of insurance or a contract of reinsurance.

(17) "Policyholder" means an insured or a reinsured of the insurer.

(18) "Proportionate share" means, for a particular run-off insurer as of December 31 of the previous year, the ratio of:

(i) The gross assets of that run-off insurer; to

(ii) The gross assets of all run-off insurers, other than those that were not domiciled in Rhode Island on March 15 of that calendar year.

(19) "Redomestication expenditure" means, for any calendar year:

(i) The amount that the department's expenditures attributable to the regulation of run-off insurers increases as a result of any run-off insurer redomiciling to Rhode Island on or after March 15 of that year; less

(ii) Filing fees, examination costs, and any other fees in relation to insurance regulation in this state paid to this state by run-off insurers that redomiciled to Rhode Island on or after March 15 of that year, but excluding any premium taxes.

(20) "Regulatory expenditure" means, for any calendar year:

(i) The amount of the department's expenditures attributable to the regulation of run-off insurers domiciled in Rhode Island on March 15 of that year; less

(ii) Filing fees, examination costs, and any other fees in relation to insurance regulation in this state paid to this state by run-off insurers domiciled in Rhode Island on March 15 of that year, but excluding any premium taxes.

(21) "Run-off insurer" means an insurer that:

(i) Is domiciled in Rhode Island;

(ii) Has liabilities under policies for property and casualty lines of business;

(iii) Has ceased underwriting new business; and

(iv) Is only renewing ongoing business to the extent required by law or by contract.

(22) "Voluntary restructuring" means the act of reorganizing the legal ownership, operational, governance, or other structures of a solvent insurer, for the purpose of enhancing organization and maximizing efficiencies, and shall include the transfer of assets and liabilities to or from an insurer, or the protected cell of an insurer pursuant to an insurance business transfer plan. A voluntary restructuring under this chapter may be approved by the commissioner only if, in the commissioner's opinion, it would have no material adverse impact on the insurer's policyholders, reinsureds, or claimants of policies subject to the restructuring.

§ 27-14.5-2. Jurisdiction, venue, and court orders.

(a) The court considering applications brought under this chapter shall have the same jurisdiction as a court under chapter 14.3 of this title.

(b) Venue for all court proceedings under this chapter shall lie in the superior court for the county of Providence.

(c) The court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this chapter. No provision of this chapter providing for the raising of an issue by a party in interest shall be construed to preclude the court from, on its own motion, taking any action or making any determination necessary or appropriate to enforce or implement court orders or rules, or to prevent an abuse of process.

§ 27-14.5-3. Notice.

(a) Wherever in this chapter notice is required, the applicant shall, within ten (10) days of the event triggering the requirement, cause transmittal of the notice:

(1) To the insurance regulator in each jurisdiction in which the applicant is doing business;

(2) To the national conference of insurance guaranty funds and all guaranty associations for the states in which the applicant is doing business;

(3) To all reinsurers of the applicant pursuant to the notice provisions of reinsurance agreements or, where an agreement has no provision for notice, in a manner reasonably designed to provide actual notice to all reinsurers of the applicant;

(4) To all insurance agents or insurance producers of the applicant;

(5) To all persons known or reasonably expected to have claims against the applicant including all policyholders, at their last known address as indicated by the records of the applicant;

(6) To federal, state, and local government agencies and instrumentalities as their interests may arise; and

(7) By publication in a newspaper of general circulation in the state in which the applicant has its principal place of business and in any other locations that the court overseeing the proceeding deems appropriate.

(b) Notice under this section shall be given in a manner designed to provide actual notice to the intended recipient. Depending upon the circumstances, that notice may take the form of first-class mail, facsimile, or electronic notice.

(c) If notice is given in accordance with this section, any orders under this chapter shall be conclusive with respect to all claimants and policyholders, whether or not they received notice.

(d) Where this chapter requires that the applicant provide notice but the commissioner has been named receiver of the applicant, the commissioner shall provide the required notice.

§ 27-14.5-4. Commutation plans.

(a) *Application.* Any commercial run-off insurer may apply to the court for an order implementing a commutation plan.

(b) *Procedure.*

(1) The applicant shall give notice of the application and proposed commutation plan.

(2) All creditors shall be given the opportunity to vote on the plan.

(3) All creditors, assumption policyholders, reinsurers, and guaranty associations shall be provided with access to the same information relating to the proposed plan and shall be given the opportunity to file comments or objections with the court.

(4) Approval of a commutation plan requires consent of: (i) Fifty percent (50%) of each class of creditors; and (ii) The holders of seventy-five percent (75%) in value of the liabilities owed to each class of creditors.

(c) *Implementation order.*

(1) The court shall enter an implementation order if: (i) The plan is approved under subsection (b)(4); and (ii) The court determines that implementation of the commutation plan would not materially adversely affect either the interests of objecting creditors or the interests of assumption policyholders.

(2) The implementation order shall:

(i) Order implementation of the commutation plan;

(ii) Subject to any limitations in the commutation plan, enjoin all litigation in all jurisdictions between the applicant and creditors other than with the leave of the court;

(iii) Require all creditors to submit information requested by the bar date specified in the plan;

(iv) Require that upon a noticed application, the applicant obtain court approval before making any payments to creditors other than, to the extent permitted under the commutation plan, payments in the ordinary course of business, this approval to be based upon a showing that the applicant's assets exceed the payments required under the terms of the commutation plan as determined based upon the information submitted by creditors under subsection (c)(2)(iii);

(v) Release the applicant of all obligations to its creditors upon payment of the amounts specified in the commutation plan;

(vi) Require quarterly reports from the applicant to the court and commissioner regarding progress in implementing the plan; and

(vii) Be binding upon the applicant and upon all creditors and owners of the applicant, whether or not a particular creditor or owner is affected by the commutation plan or has accepted it or has filed any information on or before the bar date, and whether or not a creditor or owner ultimately receives any payments under the plan.

(3) The applicant shall give notice of entry of the order.

(d) *Applicable law and procedure with respect to dispute resolution procedures.*

(1) Any dispute resolution procedure in any commutation plan brought by a ceding insurance creditor to challenge the value of its claim assessed in any commutation plan will be consistent with the provisions of title 9, United States code;

(2) The adjudicator and the court, if applicable, hearing any appeal from an adjudication proceeding where the ceding insurance creditor challenges the value of its claim assessed by the applicant in its commutation plan, shall:

(i) Not attempt to enforce a reinsurance contract on terms different than those set forth in the reinsurance contract;

(ii) Not apply the laws of Rhode Island to reinsurance agreements of ceding insurers not domiciled in Rhode Island unless the reinsurance contract provides that Rhode Island law shall apply;

(iii) Apply the law applicable to the underlying contract between the ceding insurer and the applicant or, if the underlying reinsurance contract has no choice of law provision, the law of the state of domicile of the ceding insurer shall apply.

(e) *Order of dissolution or discharge.*

(1) Upon completion of the commutation plan, the applicant shall advise the court.

(2) The court shall then enter an order that:

(i) Is effective upon filing with the court proof that the applicant has provided notice of entry of the order;

(ii) Transfers those liabilities subject to an assumption reinsurance agreement to the assumption reinsurer, thereby novating the original policy by substituting the assumption reinsurer for the applicant and releasing the applicant of any liability relating to the transferred liabilities;

(iii) Assigns each assumption reinsurer the benefit of reinsurance on transferred liabilities, except that the assignment shall only be effective upon the consent of the reinsurer if either:

(A) The reinsurance contract requires that consent; or

(B) The consent would otherwise be required under applicable law; and

(iv) Either:

(A) The applicant be discharged from the proceeding without any liabilities; or

(B) The applicant be dissolved.

(3) The applicant shall provide notice of entry of the order.

(f) *Reinsurance.* Nothing in this chapter shall be construed as authorizing the applicant, or any other entity, to compel payment from a reinsurer on the basis of estimated incurred but not reported losses or loss expenses, or case reserves for unpaid losses and loss expenses.

(g) *Modifications to plan.* After provision of notice and an opportunity to object, and upon a showing that some material factor in approving the plan has changed, the court may modify or change a commutation plan, except that upon entry of an order under subsection (e)(2) of this section, there shall be no recourse against the applicant's owners absent a showing of fraud.

(h) *Role of commissioner and guaranty funds; relationship to rehabilitation/liquidation statutes.*

(1) The commissioner and guaranty funds shall have the right to intervene in any and all proceedings under this section; provided, that notwithstanding any provision of this title, any action taken by a commercial run-off insurer to restructure pursuant to this chapter, including the formation or re-activation of an insurance company for the sole purpose of entering into a voluntary restructuring shall not affect the guaranty fund coverage existing on the business of such commercial run-off insurer prior to the taking of such action.

(2) If, at any time, the conditions for placing an insurer in rehabilitation or liquidation specified in chapter 14.3 of this title exist, the commissioner may request and, upon a proper showing, the court shall order that the commissioner be named statutory receiver of the applicant.

(3) If no implementation order has been entered, then upon being named receiver, the commissioner may request, and if requested, the court shall order, that the proceeding under this chapter be converted to a rehabilitation or liquidation pursuant to chapter 14.3 of this title. If an implementation order has already been entered, then the court may order a conversion upon a showing that some material factor in approving the original order has changed.

(4) The commissioner, any creditor, or the court on its own motion may move to have the commissioner named as receiver. The court may enter such an order only upon finding either that one or more grounds for rehabilitation or liquidation specified in chapter 14.3 of this title exist or that the applicant has materially failed to follow the commutation plan or any other court instructions.

(5) Unless and until the commissioner is named receiver, the board of directors or other controlling body of the applicant shall remain in control of the applicant.

§ 27-14.5-4.1. Insurance business transfer plans.

The commissioner shall promulgate rules and regulations establishing standards by which liabilities may be novated to a new or existing domestic insurer pursuant to an Insurance Business Transfer Plan.

§ 27-14.5-5. Taxes, fees, assessments, pools, and regulatory and supervision fund.

(a) *Application fee.* Upon application to a court pursuant to § 27-14.5-4, the applicant shall pay a fee to the department in the amount of ten thousand dollars (\$10,000).

(1) In connection with the departments' participation in the proceedings undertaken pursuant to § 27-14.5-4, the applicant shall be assessed the following expenses:

(i) One hundred fifty percent (150%) of the total salaries and benefits paid to the personnel of the department of business regulation engaged in the proceedings, including, but not limited to, examiners, actuaries, attorneys, managers, and para-professionals, less any salary reimbursements.

(ii) The department may retain independent attorneys, appraisers, actuaries, certified public accountants, or other professionals and specialists to assist department personnel in connection with the proceedings, the cost of which shall be borne by the applicant.

(b) *Ongoing assessment.*

(1) Every March 15, the commissioner shall assess each run-off insurer an amount equal to the greater of: (i) one thousand dollars (\$1,000), or (ii) the sum of that run-off insurer's proportionate share of estimated regulatory expenditure for that calendar year and that run-off insurer's assessment deficit, less its assessment surplus.

(2) The calculation of the assessment surplus or deficit shall reflect the total cost of any examinations, which shall be borne by the companies so examined, and shall include the following expenses:

(i) One hundred fifty percent (150%) of the total salaries and benefits paid to the examining personnel of the department of business regulation engaged in those examinations, including, but not limited to, examiners, actuaries, attorneys, managers, and para-professionals, less any salary reimbursements;

(ii) All reasonable technology costs related to the examination process. Technology costs shall include the actual cost of software and hardware utilized in the examination process and the cost of training examination personnel in the proper use of the software or hardware;

(iii) All necessary and reasonable education and training costs incurred by the state to maintain the proficiency and competence of the examining personnel. All such costs shall be incurred in accordance with appropriate state of Rhode Island regulations, guidelines and procedures.

(3) Each run-off insurer shall pay the assessment to the department on or before the following fifteenth (15th) day of April.

(4) An insurer that redomiciles to Rhode Island after March 15 of any year and that qualifies as a run-off insurer upon redomestication shall pay an assessment equal to the commissioner's estimate of redomestication expenditure attributable to that run-off insurer.

(5) All revenues collected pursuant to this section shall be deposited as general revenues. That assessment shall be in addition to any taxes and fees otherwise payable to the state.

(c) *Pools.* Except with respect to policy renewals required by law or contract, no run-off insurer shall be subject to any assessment or assignment in connection with any residual market, fair plan, or assigned-risk plan mechanisms in this state.

(d) *Scope.* This section shall only apply to run-off insurers that cease underwriting new business after January 1, 2002, or that were not domiciled in Rhode Island on January 1, 2002.

§ 27-14.5-6. Rules and regulations.

The commissioner shall promulgate rules and regulations that may be necessary to effectuate the purposes of this chapter including, but not limited to, procedures for transferring commercial liabilities to a new or existing domestic insurer and standards for commutation plans.