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A BILL

22-935

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 coordinate with other state, federal and international regulators to accomplish the same; and to amend the Law on Credit for Reinsurance Act of 1993 to grant the Commissioner rulemaking authority; 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. Short title.

This title may be cited as the “Insurance Holding Company Systems Amendment Act of 2018”.

Sec. 102. 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:

ENGROSSED ORIGINAL

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

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

32 “(3B) “Group-wide supervisor” means the regulatory official authorized to engage
33 in conducting and coordinating group-wide supervision activities who is determined and
34 acknowledged by the Commissioner under section 7a of this act to have sufficient significant
35 contacts with the internationally active insurance group.”.

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

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

39 “(5A) “Internationally active insurance group” means an insurance holding
40 company system that includes an insurer registered pursuant to section 5 that:

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

42 “(B) The percentage of gross premiums written outside the United States
43 is at least 10% of its total gross written premiums; and

44 “(C) based on a 3-year rolling average, the total assets of the insurance
45 holding company system are at least \$50 billion or the total gross written premiums of the
46 insurance holding company system are at least \$10 billion.”.

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

48 “(5C) “NAIC” means the National Association of Insurance Commissioners.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

99 “(d) Notwithstanding any other provision of law, when another regulatory official is
100 acting as the group-wide supervisor of an internationally active insurance group, the
101 Commissioner shall acknowledge that regulatory official as the group-wide supervisor; provided,
102 that, in the event of a material change in the internationally active insurance group that results in
103 the internationally active insurance group’s insurers domiciled in the District holding the largest
104 share of the group’s premiums, assets, or liabilities or the District being the place of domicile of
105 the top-tiered insurers in the insurance holding company system of the internationally active
106 insurance group, the Commissioner shall make a determination or acknowledgment as to the

107 appropriate group-wide supervisor for such an internationally active insurance group pursuant to
108 subsection (b) of this section.

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

114 “(2) Before issuing a determination that an internationally active insurance group
115 is subject to group-wide supervision by the Commissioner, the Commissioner shall notify the
116 insurer registered pursuant to section 6 and the ultimate controlling person within the
117 internationally active insurance group. The internationally active insurance group shall have at a
118 minimum 30 days to provide the Commissioner with additional information pertinent to the
119 pending determination.

120 “(3) The Commissioner shall publish in the District of Columbia Register and on
121 the Department’s website the identity of internationally active insurance groups that the
122 Commissioner has determined are subject to group-wide supervision by the Commissioner.

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

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

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

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

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

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

137 “(B) Capital adequacy; and

138 “(C) Material intercompany transactions,

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

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

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

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

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

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

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

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

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

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

181 **TITLE II. CREDIT FOR REINSURANCE.**

182 Sec. 201. Short title.

183 This title may be cited as the “Credit for Reinsurance Amendment Act of 2018”.

184 Sec. 202. The Law on Credit for Reinsurance Act of 1993, effective October 15, 1993
185 (D.C. Law 10-36; D.C. Official Code § 31-501 *et seq.*), is amended as follows:

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

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

190 “(A) Valuation of assets or reserve credits;

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

192 and

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

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

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

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

203 “(1) Valuation of assets or reserve credits;

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

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

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

213 “(1) Cash;

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

218 “(3) Clean, irrevocable, unconditional letters of credit, issued or confirmed by a
219 qualified United States financial institution effective no later than December 31 of the year for
220 which the filing is being made, and in the possession of, or in trust for, the ceding insurer on or
221 before the filing date of its annual statement; provided, that letters of credit meeting applicable
222 standards of issuer acceptability as of the dates of their issuance (or confirmation) shall,
223 notwithstanding the issuing (or confirming) institution’s subsequent failure to meet applicable

224 standards of issuer acceptability, continue to be acceptable as security until their expiration,
225 extension, renewal, modification or amendment, whichever first occurs; or

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

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

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

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

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

232 “(2) Is regulated, supervised and examined by U.S. federal or state authorities
233 having regulatory authority over banks and trust companies;

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

239 “(4) When eligible to act as a fiduciary of a trust under this act, an institution that:

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

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

245 (c) Section 5 is amended to read as follows:

246 “Sec. 5 Rulemaking.

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

249 “(b) The Commissioner is further authorized to adopt rules and regulations applicable to
250 reinsurance arrangements as follows:

251 “(1) A regulation adopted pursuant to subsection (b) of this section may apply
252 only to reinsurance relating to:

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

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

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

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

259 “(E) Such other life and health insurance and annuity products as to which
260 the NAIC adopts model regulatory requirements with respect to credit for reinsurance.

261 “(2) A regulation adopted pursuant to paragraph (1)(A) or (1)(B) of this
262 subsection may apply to any treaty containing:

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

264 “(ii) Policies issued prior to January 1, 2015, if risk pertaining to such pre-
265 2015 policies is ceded in connection with the treaty, in whole or in part, on or after January 1,
266 2015.

267 “(3) A regulation adopted pursuant to this subsection may require the ceding
268 insurer, in calculating the amounts or forms of security required to be held under regulations
269 promulgated under this authority, to use the Valuation Manual adopted by the NAIC, as
270 amended.

271 “(4) A regulation adopted pursuant to this subsection shall not apply to cessions to
272 an assuming insurer that:

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

274 “(B) Maintains at least \$250 million in capital and surplus when
275 determined in accordance with the NAIC Accounting Practices and Procedures Manual,
276 including all amendments thereto adopted by the NAIC, excluding the impact of any permitted
277 or prescribed practices; and is:

278 “(i) Licensed in at least 26 states; or

279 “(ii) Licensed in at least 10 states, and licensed or accredited in a
280 total of at least 35 states.

281 “(5) The authority to adopt regulations pursuant to this subsection shall not limit
282 the Commissioner’s general authority to adopt regulations pursuant to subsection (a) of this
283 section.”

284 TITLE III. ANNUAL FINANCIAL REPORTING

285 Sec. 301. Short Title.

286 This title may be cited as the “Annual Audited Financial Reporting Amendment Act of
287 2018”.

288 Sec. 302. The Annual Audited Financial Reports Act of 1993, effective October 21, 1993
289 (D.C. Law 10-48; D.C. Official Code § 31-301 *et seq.*), is amended as follows:

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

291 (1) The first sentence in paragraph (1B) is amended to read as follows:

292 “Audit Committee” means a committee established by the board of directors of an
293 entity for the purpose of overseeing the accounting and financial reporting processes of an
294 insurer or group of insurers, the internal audit function of an insurer or group of insurers if
295 applicable, and external audits of financial statements of the insurer or group of insurers.”.

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

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

298 “(3B) “Internal audit function” means a person or persons that
299 provide independent, objective and reasonable assurance designed to add value and improve an
300 organization’s operations and accomplish its objectives by bringing a systematic, disciplined

301 approach to evaluate and improve the effectiveness of risk management, control and governance
302 processes.”.

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

305 “(b-1) The audit committee of an insurer or group of insurers shall be responsible for
306 overseeing the insurer’s internal audit function and granting the person or persons performing the
307 function suitable authority and resources to fulfill their responsibilities if required by section
308 12a(b-2) of this act.”.

309 (c) A new section 12d is added to read as follows:

310 “Sec. 12d. Internal audit function requirements.

311 “(a) An insurer shall be exempt from the requirements of section 12a if:

312 “(1) The insurer has annual direct written and unaffiliated assumed premium,
313 including international direct and assumed premium but excluding premium reinsured with the
314 Federal Crop Insurance Corporation and Federal Flood Program, less than \$500,000,000; and

315 “(2) If the insurer is a member of a group of insurers, the group has annual direct
316 written and unaffiliated assumed premium including international direct and assumed premium,
317 but excluding premium reinsured with the Federal Crop Insurance Corporation and Federal
318 Flood Program, less than \$1,000,000,000.

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

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

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

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

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

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

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

341 “(g) An insurer or group of insurers that was exempt from section 12a pursuant to section
342 12d but no longer qualifies for the exemption shall have one-year from the reporting year the
343 threshold is exceeded to comply with this act.”.

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346

347 TITLE IV. GENERAL PROVISIONS

348 Sec. 401. Applicability.

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

351 Sec. 402. Fiscal impact statement.

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

355 Sec. 403. Effective date.

356 This act shall take effect following approval by the Mayor (or in the event of veto by the
357 Mayor, action by the Council to override the veto), a 30-day period of Congressional review as
358 provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December
359 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(1)), and publication in the District of
360 Columbia Register.