RULE 126

INSURANCE BUSINESS TRANSFERS

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Section 1. Authority

This rule is issued pursuant to Act 1018 of 2021, "An Act to Establish the Arkansas Business Transfer Act," codified at Ark. Code Ann. §23-69-501 et seq.

Section 2. Purpose

The purpose of this rule is to implement the Arkansas Insurance Business Transfer Act ("the Act") to provide standards and procedures for the transfer and novation of insurance policies from a transferring insurer to an assuming insurer through a transaction known as an "insurance business transfer." The Act permits an insurer to take a book of insurance policies and completely transfer all risks, obligations and liabilities to another company. This mechanism can provide legal and economic finality to legacy insurance risks and improve the use of capital and management resources by permitting another company with expertise in run-off business to assume the discontinued lines of business that are the subject of the transfer.

Such a transaction does not require the affirmative consent of policyholders or reinsureds if the transfer and novation is conducted in accordance with the Act. However, even with the absence of affirmative consent, the interests of policyholders, claimants, and reinsureds is always

a primary consideration when this type of transaction is pursued. Procedural safeguards found in the Act and this Rule exist to avoid any adverse material impact on those interests.

Section 3. Applicability and Scope

This rule applies to all proposed transactions pursued under the Arkansas Insurance Business Transfer Act in which a transfer is sought of some or all insurance obligations, risks, or both, of existing or in-force contracts for insurance or reinsurance by a transferring insurer to one or more assuming insurers. Application of this rule does not limit or restrict other valid means of effecting a transfer or novation.

Section 4. Definitions

As used in this rule:

(1) "Affiliate" has the meaning ascribed to such term in Ark. Code Ann. § 23-63-503.

(2) "Applicant" means a transferring insurer or reinsurer applying under Ark. Code Ann. § 23-69-506.

(3) "Assuming insurer" means an insurer domiciled in Arkansas that assumes or seeks to assume policies from a transferring insurer pursuant to this act. An assuming insurer may be a company established pursuant to Ark. Code Ann. §§ 23-63-1601, et seq., regarding captive insurers.

(4) "Court" means the Pulaski County Circuit Court. All proceedings brought under the Insurance Business Transfer Act have proper and exclusive venue in the Pulaski County Circuit Court.

(5) "Department" means the Arkansas Insurance Department.

(6) "Commissioner" means the Arkansas Insurance Commissioner.

(7) "Implementation order" means an order issued by the Pulaski County Circuit Court under Ark. Code Ann. § 23-69-506.

(8) "Insurance business transfer" means a transfer and novation in accordance with the Act or this rule. Insurance business transfers will transfer insurance obligations or risks, or both, of existing or in-force contracts of insurance or reinsurance from a transferring insurer to an assuming insurer. Once approved pursuant to this act, the insurance business transfer will effect a novation of the transferred contracts of insurance or reinsurance with the result that the assuming

insurer becomes directly liable to the policyholders of the transferring insurer and the transferring insurer's insurance obligations or risks, or both, under the contracts are extinguished.

(9) "Insurance business transfer plan" or "Plan" means the plan submitted to the Department to accomplish the transfer and novation pursuant to an insurance business transfer, including any associated transfer of assets and rights from or on behalf of the transferring insurer to the assuming insurer.

(10) "Independent expert" means an impartial person who has no financial interest in either the assuming insurer or transferring insurer, has not been employed by or acted as an officer, director, consultant or other independent contractor for either the assuming insurer or transferring insurer within the past twelve (12) months, is not appointed by the Commissioner to assist in any capacity in any proceeding and is receiving no compensation in connection with the transaction governed by this Act other than a fee based on a fixed or hourly basis that is not contingent on the approval or consummation of an insurance business transfer and provides proof of insurance coverage that is satisfactory to the Commissioner.

(11) "Insurer" means an insurance or surety company, including a reinsurance company, and shall be deemed to include a corporation, company, partnership, association, society, order, individual or aggregation of individuals engaging in or proposing or attempting to engage in any kind of insurance or surety business, including the exchanging of reciprocal or inter-insurance contracts between individuals, partnerships and corporations.

(12) "Notice" means provision of notification pursuant to Ark. Code Ann. §23-69-505 within fifteen (15) days of an event triggering a notice requirement under the Act.

(13) "Policy" means a policy, contract or certificate of insurance or a contract of reinsurance pursuant to which the insurer agrees to assume an obligation or risk, or both, of the policyholder or to make payments on behalf of, or to, the policyholder or its beneficiaries, and shall include property, casualty, life, health and any other line of insurance the Commissioner finds is suitable for an insurance business transfer.

(14) "Policyholder" means an insured or a reinsured under a policy that is part of the subject business.

(15) "Subject business" means the policy or policies that are the subject of the Plan.

(16) "Transfer and novation" means the transfer of insurance obligations or risks, or both, of existing or in-force policies from a transferring insurer to an assuming insurer, and is intended

to effect a novation of the transferred policies with the result that the assuming insurer becomes directly liable to the policyholders of the transferring insurer on the transferred policies and the transferring insurer's insurance obligations or risks, or both, under the transferred policies are extinguished.

(17) "Transferring insurer" means an insurer or reinsurer that transfers and novates or seeks to transfer and novate obligations or risks, or both, under one or more policies to an assuming insurer pursuant to a Plan.

Section 5. Application Procedure

(a) Insurance Business Transfer Plan-Fee and Contents

An Insurance Business Transfer Plan must be filed by the applicant with the Commissioner for his or her review and approval. At the time of filing its application with the Commissioner for review and approval of a Plan, the applicant shall pay a nonrefundable fee to the Department in the amount of ten thousand dollars ($10,000.00).

The Plan must contain the information set forth below or an explanation as to why the information is not included. The Plan may be supplemented by other information deemed necessary by the Commissioner:

(1) the name, address and telephone number of the transferring insurer and the assuming insurer and their respective direct and indirect controlling persons, if any;

(2) summary of the Plan;

(3) identification and description of the subject business;

(4) most recent audited financial statements and statutory annual and quarterly reports of the transferring insurer and assuming insurer filed with their domiciliary regulator;

(5) the most recent actuarial report and opinion that quantify the liabilities associated with the subject business, including the assuming company's report or opinion;

(6) pro-forma financial statements showing the projected statutory balance sheet, results of operations and cash flows of the assuming insurer for the three (3) years following the proposed transfer and novation;

(7) officers' certificates of the transferring insurer and the assuming insurer attesting that each has obtained all required internal approvals and authorizations regarding the Plan and completed all necessary and appropriate actions relating thereto;

(8) proposal for implementation and administration of the Plan, including the form of notice to be provided under the Plan to any policyholder whose policy is part of the subject business;

(9) full description as to how such notice shall be provided;

(10) description of any reinsurance arrangements that would pass to the assuming insurer under the Insurance Business Transfer Plan;

(11) description of any guarantees or additional reinsurance that will cover the subject business following the transfer and novation;

(12) a statement describing the assuming insurer's proposed investment policies and any contemplated third-party claims management and administration arrangements;

(13) evidence of approval or nonobjection of the transfer from the chief insurance regulator of the state of the transferring insurer's domicile; and

(14) an opinion report from an independent expert, selected by the Commissioner from a list of at least two nominees submitted jointly by the transferring insurer and the assuming insurer, to assist the Commissioner and the court in connection with their review of the proposed transaction. Should the Commissioner, in his or her sole discretion reject the nominees, he or she may appoint the independent expert.

(b) Independent Expert Opinion Report – Contents

The Independent Expert Opinion Report shall provide the following:

(1) a statement of the independent expert's professional qualifications and descriptions of the experience that qualifies him or her as an expert suitable for the engagement,

(2) whether the independent expert has, or has had, direct or indirect interest in the transferring or assuming insurer or any of their respective affiliates,

(3) the scope of the report,

(4) a summary of the terms of the Plan to the extent relevant to the report,

(5) documents, reports and other material information the independent expert has considered in preparing the report and whether any information requested was not provided,

(6) the extent to which the independent expert has relied on information provided by and the judgment of others,

(7) the people on whom the independent expert has relied and why, in his or her opinion, such reliance is reasonable,

(8) the independent expert's opinion of the likely effects of the Insurance Business Transfer Plan on policyholders and claimants, distinguishing between:

(A) transferring policyholders and claimants,

(B) policyholders and claimants of the transferring insurer whose policies will not be transferred, and

(C) policyholders and claimants of the assuming insurer,

(9) for each opinion that the independent expert expresses in the report the facts and circumstances supporting the opinion, and

(10) consideration as to whether the security position of policyholders that are affected by the insurance business transfer are adversely materially affected by the transfer.

(11) The independent expert's opinion report shall include, but not be limited to, a review of the following:

(A) analysis of the transferring insurer's actuarial review of reserves for the subject business to determine the reserve adequacy,

(B) analysis of the financial condition of the transferring and assuming insurers and the effect the transfer will have on the financial condition of each company,

(C) review of the plans or proposals the assuming insurer has with respect to the administration of the policies subject to the proposed transfer,

(D) whether the proposed transfer has an adverse material impact on the policyholders and claimants of the transferring and the assuming insurers,

(E) analysis of the assuming insurer's corporate governance structure to ensure that there is proper board and management oversight and expertise to manage the subject business, and:

(F) The Business purposes of the proposed transfer.

(G) Capital adequacy and risk-based capital, including consideration of the effects of asset quality, non-admitted assets and actuarial stresses to reserve assumptions;

(H) Cash flow and reserve adequacy testing, including consideration of the effects of diversification on policy liabilities;

(I) Business plans

(J) The impact, if any, of concentration of lines of business following the proposed transfer; and

(K) Management's competence, experience, and integrity

(L) any other information that the Commissioner requests in order to review the insurance business transfer.

(12) Within five (5) days of receiving a completed application for an Insurance Business Transfer, the Commissioner shall provide general notice by posting an acknowledgment of the application on the AID website and by transmitting it the Department's routine email distribution system to interested parties in the industry.

Section 6. Review of Insurance Business Transfer Plan

(a) Matters to be Considered During Commissioner's Review

(1) When reviewing an applicant's insurance business transfer plan for authorization to submit to the court, the Commissioner shall consider, among other things:

(A) all assets, liabilities, and cash flow, the nature and composition of the assets proposed to be transferred in support of the plan, and

(B) all proposed assets of the transferring and assuming insurers, which consideration must include an

assessment of the risks and quality, including the liquidity and marketability, of the proposed portfolio of the assuming insurer; consideration of assets and liability matching; and the treatment of the material elements of the portfolio based on the statutory accounting practices.

(2) After making the considerations described in subsection (a)(1) of this section, the Commissioner shall approve an insurance business transfer plan for submission to the court if the Commissioner finds that the following requirements are met:

(A) The financial condition of the transferring insurer and the assuming insurer, will not jeopardize the financial stability of the transferring insurer or prejudice the interest of its policyholders, contract holders, or reinsurers, in each case, in a manner that is unfair to its policyholders, contract holders, or reinsurers;

(B) The terms of the plan of transfer are fair and reasonable to the transferring insurer's and any assuming insurer's policyholders, contract holders, or reinsurers;

(C) Neither a transferring insurer nor an assuming insurer has plans or proposals to liquidate the transferring insurer or of any assuming insurer, consolidate or merge the transferring insurer or any assuming insurer with a person, or make any other material change in the transferring insurer's or any assuming insurer's business or corporation structure or management that is unfair or unreasonable to the transferring insurer's or assuming insurers' policyholders, contract holders, or reinsurers and not in the public interest;

(D) The competence, experience, and integrity of the persons who would control the operation of a transferring insurer, if it survives the transfer, and any assuming insurer are such that it would be consistent with the interest of the transferring insurers and any assuming insurers' policyholders, contract holders, or reinsurers and the general public to permit the transfer;

(E) The business transfer is not likely to be hazardous or prejudicial to the insurance-buying public;

(F) The interest of the policyholders of the transferring insurer that may become policyholders of an assuming insurer will be adequately protected by the assuming insurer;

(G) The transferring insurer, if it survives the business transfer, and the assuming insurers will be solvent upon the consummation of the transfer;

(H) The assets allocated to the transferring insurer, if it survives the business transfer, and the assuming insurer will not, upon the consummation of the business transfer, be unreasonably small in relation to the business and transactions in which the insurers were engaged or are about to engage;

(I) The proposed business transfer is not being made for the purpose of hindering, delaying, or defrauding any policyholders, contract holders, or reinsurers.

(J) If the business transfer plan includes policies of long-term care insurance, as defined in the Long Term Care Insurance Act of 2005, Ark. Code Ann §23-97-301 et seq., the liabilities associated with those policies do not constitute more than a de minimus amount of the insurance liabilities of the transferring insurer, if it survives the business transfer, or to any assuming insurer;

(3) A transferring insurer that files an insurance business transfer plan shall pay all expense incurred by the Commissioner in connection with proceedings under the section, including expenses for Attorneys, Actuaries, Accountants, and other experts not otherwise a part

of the Commissioner's staff as may be reasonably necessary to assist the Commissioner in reviewing the proposed plan of business transfer. A transferring insurer may treat the expense in the plan in the same manner as any other liability.

(4) If the Commissioner approves an insurance business transfer plan, the Commissioner shall issue:

(A) An order that is accompanied by finding of fact and conclusion of law; and

(B) A Certificate of Authority authorizing the Assuming insurer to transact the business of insurance in this state; except that the Commissioner may waive this requirement if an assuming insurer will not survive a merger simultaneous with the business transfer in accordance with the insurance business transfer plan.

(5) the conditions in this section for freeing one or more of the transferring insurers from the liabilities of the transferring insurer and for eliminating some or all the liabilities of the transferring insurer are deemed to have been satisfied if the Commissioner approves the plan of transfer and a circuit court issues a final order.

(b) Procedure for Review and Approval

The Commissioner shall have sixty (60) business days from the date of receipt of a complete Plan to review the Plan to determine if the applicant will be authorized to submit it to the court. The Commissioner may extend the sixty-day review period for an additional thirty (30) business days.

(1) The Commissioner shall authorize the submission of the Plan to the court unless he or she finds that the insurance business transfer would have an adverse material impact on the interests of policyholders or claimants that are part of the subject business.

(2) The commissioner shall not authorize the submission of the insurance business transfer plan to the court unless:

(A) the assuming insurer is licensed in each line of business in each state where the transferring insurer is licensed and policies subject to the proposed transfer were written, or the assuming insurer demonstrates an extraordinary circumstance preventing it from obtaining such license or licenses; and

(B) the commissioner determines that the lack of such license or licenses would not result in an adverse material impact on the interests of policyholders, contract holders, or reinsurers.

(3) If the Commissioner determines that the insurance business transfer would have an adverse material impact on the interests of policyholders or claimants that are part of the subject business, he or she shall notify the applicant and specify any modifications, supplements or amendments and any additional information or documentation with respect to the Plan that must be provided to the Commissioner before he or she will allow the applicant to proceed with the court filing.

(4) The applicant shall have thirty (30) days from the date the Commissioner notifies him or her in writing, to file an amended Plan providing the modifications, supplements or amendments and additional information or documentation as requested by the Commissioner. If necessary, the applicant may request in writing an extension of time of thirty (30) days. If the applicant does not make an amended filing within the time period provided for in this paragraph, including any extension of time granted by the Commissioner, the Plan filing will terminate and a subsequent filing by the applicant will be considered a new filing which shall require compliance with all provisions of this act as if the prior filing had never been made.

(5) The Commissioner's review period shall recommence when the modification, supplement, amendment, or additional information is received.

Section 7. Petition for Court Approval and Implementation Order

(a) If the Commissioner determines that the Plan may proceed with the court filing, the Commissioner shall confirm that fact in writing to the applicant.

(b) Within thirty (30) days after the Commissioner confirms that the applicant may proceed with the court filing, the applicant shall apply to the court for approval of the Plan pursuant to Ark. Code Ann. §23-69-509. Upon written request by the applicant, the Commissioner may extend the period for filing an application with the court for an additional thirty (30) days.

(c) The applicant shall inform the court of the reasons why he or she petitions the court to find no adverse material impact to policyholders or claimants affected by the proposed transfer.

(d) The application shall be in the form of a verified petition for implementation of the Plan in the court. The petition shall include the Plan and shall identify any documents and witnesses which the applicant intends to present at a hearing regarding the petition.

(e) The Commissioner shall be a party to the proceedings before the court concerning the petition and shall be served with copies of all filings pursuant to the Arkansas Rules of Civil Procedure. The Commissioner's position in the proceeding shall not be limited by his or her initial review of the Plan.

Section 8. Confidentiality

The confidentiality provisions in the Arkansas Insurance Code and Rules, including but not limited to Ark. Code Ann. § 23-61-103(d)(5), related to actuarial reports, Ark. Code Ann. § 23-61-103(d), related to active investigations or examinations, Ark. Code Ann. § 23-61-107, related to financial records, and Ark. Code Ann. § 23-61-207, related to ancillary information and workpapers, shall apply to transactions governed by this rule.

Section 9. Effective Date

The effective date of this Rule is January 1, 2022.

ALAN McCLAIN
INSURANCE COMMISSIONER

12-2-21
DATE