

## CHAPTER 20:06:09

### INSURANCE HOLDING COMPANIES

#### Section

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20:06:09:03	Repealed.
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20:06:09:05	Repealed.
20:06:09:06	Repealed.
20:06:09:07	Repealed.
20:06:09:08	Repealed.
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**20:06:09:48. ORSA guidance manual.** The own risk and solvency assessment (ORSA) shall be conducted in accordance with the standards and requirements set forth in the National Association of Insurance Commissioners' ORSA Guidance Manual, 2014 edition.

**Source:**

**General Authority:** SDCL 58-5A-93.

**Law Implemented:** SDCL 58-5A-1(8), 58-5A-82 to 58-5A-84, inclusive, 58-5A-93.

**Reference: National Association of Insurance Commissioners Own Risk and Solvency Assessment (ORSA) Guidance Manual, 2014 edition. Copies may be obtained from NAIC, 1100 Walnut Street, Ste. 1500, Kansas City, MO 64106-2197, (816) 783-8300.**

## CHAPTER 20:06:31

### CREDIT FOR REINSURANCE

#### Section

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**20:06:31:01. Reinsurer licensed in this state.** The director shall allow credit for reinsurance ceded by a domestic insurer to an assuming insurers insurer which were that was licensed in this state as of the any date of the on which ~~ceding insurer's~~ statutory financial statement, ~~which is the financial statement filed either quarterly or annually~~ credit for reinsurance is claimed.

**Source:** 22 SDR 52, effective October 25, 1995.

**General Authority:** SDCL 58-14-17.

**Law Implemented:** SDCL 58-14-8, 58-14-17.

**20:06:31:02. Accredited reinsurers.** The director shall allow credit for reinsurance ceded by a domestic insurer to an assuming insurer that is accredited as a reinsurer in this state as

of the date on which statutory financial statement credit for reinsurance is claimed. An accredited reinsurer shall:

(1) File a completed Form AR-1 provided by the director as evidence of its submission to this state's jurisdiction and to this state's authority to examine its books and records. ~~See Appendix A at the end of this chapter.~~

(2) File with the director a certified copy of a letter or a certificate of authority ~~or of compliance as~~ other acceptable evidence that it is licensed to transact insurance or reinsurance in at least one state, or, in the case of a United States branch of an alien assuming insurer, is entered through and licensed to transact insurance or reinsurance in at least one state; ~~and~~

(3) File annually with the director; a copy of its annual statement filed with the insurance department of its state of domicile or, in the case of an alien assuming insurer, a copy of its annual statement filed with the state through which it is entered and in which it is licensed to transact insurance or reinsurance, and a copy of its most recent audited financial statement; and

(4) Maintain a surplus as regards policyholders in an amount not less than \$20,000,000, or obtain the affirmative approval of the director upon a finding that it has adequate financial capacity to meet its reinsurance obligations and is otherwise qualified to assume reinsurance from domestic insurers.

Credit shall not be allowed a domestic ceding insurer under this section if the assuming insurer's accreditation has been revoked by the director or if the reinsurance was ceded while the assuming insurer's accreditation was under suspension by the director.

**Source:** 22 SDR 52, effective October 25, 1995.

**General Authority:** SDCL 58-14-17.

**Law Implemented:** SDCL 58-14-9, 58-14-17.

**20:06:31:03. Reinsurer domiciled and licensed in another state jurisdiction.**

~~Reinsurers domiciled and licensed in another state with substantially similar laws shall file a properly executed Form AR-1, attached as Appendix A to this chapter, with the director as evidence of its submission to this state's authority to examine its books and records. The director shall allow credit for reinsurance ceded by a domestic insurer to an assuming insurer that as of any date on which statutory financial statement credit for reinsurance is claimed:~~

(1) Is domiciled in a state or, in the case of an alien assuming insurer with the state through which it is entered, that employs standards regarding credit for reinsurance substantially similar to this state;

(2) Maintains a surplus as regards policyholders in an amount not less than \$20,000,000;  
and

(3) Has filed a properly executed Form AR-1 with the director as evidence of its submission to this state's authority to examine its books and records on a form to be provided by the director.

The provisions of this section relating to surplus as regards policyholders may not apply to reinsurance ceded and assumed pursuant to pooling arrangements among insurers in the same holding company system. As used in this section, substantially similar standards means credit for reinsurance standards that the director determines are equal to or exceeding the standards of SDCL chapter 58-14 and this chapter.

**Source:** 22 SDR 52, effective October 25, 1995.

**General Authority:** SDCL 58-14-17.



**Law Implemented:** SDCL 58-14-10, 58-14-17.

**20:06:31:04. Reinsurers maintaining trust funds -- Requirements.** ~~No amendment to the trust is effective unless reviewed and approved in advance by the director~~ Repealed.

**Source:** 22 SDR 52, effective October 25, 1995.

**General Authority:** ~~SDCL 58-14-17.~~

~~Law Implemented: SDCL 58-14-11, 58-14-13, 58-14-17.~~

**20:06:31:04.01. Group of incorporated insurers under common administration.** The trust fund for a group of incorporated insurers under common administration, whose members possess aggregate policyholders' surplus of \$10,000,000,000, calculated in substantially the same manner as prescribed by the annual statement instructions and Accounting Practices and Procedures Manual of the National Association of Insurance Commissioners as provided in §20:06:25:01, and which has continuously transacted an insurance business outside the United States for at least three years immediately prior to making application for accreditation, shall:

(1) Consist of funds in trust in an amount not less than the assuming insurers' several liabilities attributable to business ceded by U.S. domiciled ceding insurers to any members of the group pursuant to reinsurance contracts issued in the name of such group; and

(2) File a properly executed Form AR-1, provided by the director, 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 on a form provided by the director.

**Source:**

**General Authority: SDCL 58-14-17.**

**Law Implemented: SDCL 58-14-11, 58-14-12, 58-14-17.**

**20:06:31:04.02. Trust liabilities.** For purposes of SDCL 58-14-11 to 58-14-12.1, inclusive, and §§ 20:06:31:03 and 20:06:31:04.01, the term, liabilities, shall mean the assuming insurer's gross liabilities attributable to reinsurance ceded by U.S. domiciled insurers excluding liabilities that are otherwise secured by acceptable means and shall include:

(1) Business ceded by domestic insurers authorized to write accident and health, and property and casualty insurance, including losses and allocated loss expenses paid by the ceding insurer, recoverable from the assuming insurer, reserves for losses reported and outstanding, reserves for losses incurred but not reported, reserves for allocated loss expenses, and unearned premiums; and

(2) Business ceded by domestic insurers authorized to write life, health and annuity insurance, including aggregate reserves for life policies and contracts net of policy loans and net due and deferred premiums, aggregate reserves for accident and health policies, deposit funds and other liabilities without life or disability contingencies, and liabilities for policy and contract claims.

**Source:**

**General Authority: SDCL 58-14-17.**

**Law Implemented: SDCL 58-14-11, 58-14-13, 58-14-17, 58-14-20.**

**20:06:31:04.03. Trust assets and investments.** Assets deposited in trusts established pursuant to SDCL 58-14-11 and this chapter shall be valued according to their current fair market value and shall consist only of cash in U.S. dollars; certificates of deposit issued by a

U.S. financial institution as defined SDCL 58-14-16.18; clean, irrevocable, unconditional, and evergreen letters of credit issued or confirmed by a qualified U.S. financial institution, as defined in SDCL 58-14-16.18; and investments of the type specified in this chapter, but investments in or issued by an entity controlling, controlled by, or under common control with either the grantor or beneficiary of the trust may not exceed five percent of total investments. No more than twenty percent of the total of the investments in the trust may be foreign investments authorized under §§ 20:06:31:04.04(5), 20:06:31:04.06, 20:06:31:04.09(2) or 20:06:31:04.10, and no more than ten percent of the total of the investments in the trust may be securities denominated in foreign currencies. A depository receipt denominated in U.S. dollars and representing rights conferred by a foreign security shall be classified as a foreign investment denominated in a foreign currency. The assets of a trust established to satisfy the requirements of SDCL 58-14-11 shall be invested in accordance with §§ 20:06:31:04.04 to 20:06:31:04.13, inclusive.

**Source:**

**General Authority:** SDCL 58-14-17.

**Law Implemented:** SDCL 58-14-11, 58-14-13, 58-14-17, 58-14-20.

**20:06:31:04.04. Government obligations.** Trust assets may be invested in government obligations that are not in default as to principal or interest, that are valid and legally authorized, and that are issued, assumed, or guaranteed by:

- (1) The United States or by any agency or instrumentality of the United States;
- (2) A state of the United States;
- (3) A territory, possession or other governmental unit of the United States;

(4) An agency or instrumentality of a governmental unit if the obligations shall be payable by law, as to both principal and interest, from taxes levied or required by law to be levied or from adequate special revenues pledged or otherwise appropriated or required by law to be provided for making these payments, but the obligations may not be eligible for investment under this section if payable solely out of special assessments on properties benefited by local improvements; or

(5) The government of any other country that is a member of the Organization for Economic Cooperation and Development and whose government obligations are rated A or higher, or the equivalent, by a rating agency recognized by the Securities Valuation Office of the National Association of Insurance Commissioners.

**Source:**

**General Authority:** SDCL 58-14-17.

**Law Implemented:** SDCL 58-14-11, 58-14-13, 58-14-17, 58-14-20.

**20:06:31:04.05. Securities ratings.** Trust assets may be invested in obligations that are issued in the United States, that are dollar denominated and issued in a non-U.S. market by a solvent U.S. institution other than an insurance company, or that are assumed or guaranteed by a solvent U.S. institution other than an insurance company and that are not in default as to principal or interest if the obligations:

(1) Are rated A or higher, or the equivalent, by a securities rating agency recognized by the Securities Valuation Office of the National Association of Insurance Commissioners, or, if not so rated, are similar in structure and other material respects to other obligations of the same institution that are so rated;

(2) Are insured by at least one authorized insurer, other than the investing insurer or a parent, subsidiary, or affiliate of the investing insurer, licensed to insure obligations in this state and, after considering the insurance, are rated AAA, or the equivalent, by a securities rating agency recognized by the Securities Valuation Office of the National Association of Insurance Commissioners; or

(3) Have been designated as Class One or Class Two by the Securities Valuation Office of the National Association of Insurance Commissioners.

**Source:**

**General Authority: SDCL 58-14-17.**

**Law Implemented: SDCL 58-14-11, 58-14-13, 58-14-17, 58-14-20.**

**20:06:31:04.06. Organization for Economic Cooperation and Development.** Trust assets may be invested in obligations issued, assumed, or guaranteed by a solvent non-U.S. institution chartered in a country that is a member of the Organization for Economic Cooperation and Development or in obligations of U.S. corporations issued in a non-U.S. currency, provided that in either case the obligations are rated A or higher, or the equivalent, by a rating agency recognized by the Securities Valuation Office of the National Association of Insurance Commissioners.

**Source:**

**General Authority: SDCL 58-14-17.**

**Law Implemented: SDCL 58-14-11, 58-14-13, 58-14-17, 58-14-20.**

**20:06:31:04.07. Investment limitations.** An investment made pursuant to §§ 20:06:31:04.04 to 20:06:31:04.06, inclusive, shall be subject to the following additional limitations:

(1) An investment in or loan upon the obligations of an institution other than an institution that issues mortgage-related securities may not exceed five percent of the assets of the trust;

(2) An investment in any one mortgage-related security may not exceed five percent of the assets of the trust;

(3) The aggregate total investment in mortgage-related securities may not exceed twenty-five percent of the assets of the trust; and

(4) Preferred or guaranteed shares issued or guaranteed by a solvent U.S. institution are permissible investments if all of the institution's obligations are eligible as investments under subdivisions 20:06:31:04.05(1) and 20:06:31:04.05(3), but may not exceed two percent of the assets of the trust.

**Source:**

**General Authority:** SDCL 58-14-17.

**Law Implemented:** SDCL 58-14-11, 58-14-13, 58-14-17, 58-14-20.

**20:06:31:04.08. Definition of mortgage-related security.** The term, mortgage-related security, means an obligation that is rated AA or higher, or the equivalent, by a securities rating agency recognized by the Securities Valuation Office of the National Association of Insurance Commissioners, that either:

(1) Represents ownership of one or more promissory notes or certificates of interest or participation in the notes, including any rights designed to assure servicing of, or the receipt or timeliness of receipt by the holders of the notes, certificates, or participation of amounts payable under the notes, certificates, or participation, that:

(a) Are directly secured by a first lien on a single parcel of real estate, including stock allocated to a dwelling unit in a residential cooperative housing corporation, upon which is located a dwelling or mixed residential and commercial structure, or on a residential manufactured home as defined in 42 U.S.C. Section 5402(6), whether the manufactured home is considered real or personal property under the laws of the state in which it is located; and

(b) Were originated by a savings and loan association, savings bank, commercial bank, credit union, insurance company, or similar institution that is supervised and examined by a federal or state housing authority or by a mortgagee approved by the Secretary of Housing and Urban Development pursuant to 12 U.S.C. §§ 1709 and 1715-b or, where the notes involve a lien on the manufactured home, by an institution or by a financial institution approved for insurance by the Secretary of Housing and Urban Development pursuant to 12 U.S.C. § 1703; or

(2) Is secured by one or more promissory notes, certificates of deposit, or participations in the notes (with or without recourse to the insurer of the notes) and, by its terms, provides for payments of principal in relation to payments, or reasonable projections of payments, or notes meeting the requirements of subdivision (1) of this section;

The term, promissory note, when used in connection with a manufactured home, shall also include a loan, advance, or credit sale as evidenced by a retail installment sales contract or other instrument.

**Source:**

**General Authority:** SDCL 58-14-17.

**Law Implemented:** SDCL 58-14-11, 58-14-13, 58-14-17, 58-14-20.

**20:06:31:04.09. Equity interests.** Trust investments shall be made in accordance with the following requirements:

(1) Investments in common shares or partnership interests of a solvent U.S. institution are permissible if, its obligations and preferred shares, if any, are eligible as investments under this section; and the equity interests of the institution, except an insurance company, are registered on a national securities exchange as provided in the Securities Exchange Act of 1934, 15 U.S.C. §§ 78a to 78kk or otherwise registered pursuant to that Act, and, if otherwise registered, price quotations for them are furnished through a nationwide automated quotations system approved by the Financial Industry Regulatory Authority, or a successor organization. A trust may not invest in equity interests under this section an amount exceeding one percent of the assets of the trust, even though the equity interests are not so registered and are not issued by an insurance company;

(2) Investments in common shares of a solvent institution organized under the laws of a country that is a member of the Organization for Economic Cooperation and Development are permissible if all its obligations are rated A or higher, or the equivalent, by a rating agency recognized by the Securities Valuation Office of the National Association of Insurance



Commissioners and the equity interests of the institution are registered on a securities exchange regulated by the government of a country that is a member of the Organization for Economic Cooperation and Development; and

(3) An investment in or loan upon any one institution's outstanding equity interests may not exceed one percent of the assets of the trust. The cost of an investment in equity interests, when added to the aggregate cost of other investments in equity interests, may not exceed ten percent of the assets in the trust.

**Source:**

**General Authority:** SDCL 58-14-17.

**Law Implemented:** SDCL 58-14-11, 58-14-13, 58-14-17, 58-14-20.

**20:06:31:04.10. Obligations guaranteed by multinational development banks.** Trust assets may be invested in obligations issued, assumed, or guaranteed by a multinational development bank are permissible provided the obligations are rated A or higher, or the equivalent, by a rating agency recognized by the Securities Valuation Office of the National Association of Insurance Commissioners.

**Source:**

**General Authority:** SDCL 58-14-17.

**Law Implemented:** SDCL 58-14-11, 58-14-13, 58-14-17, 58-14-20.

**20:06:31:04.11. Investment companies.** Securities of an investment company registered pursuant to the Investment Company Act of 1940, 15 U.S.C. § 80a, are permissible investments if the investment company:

(1) Invests at least ninety percent of its assets in the types of securities that qualify as an investment under §§ 20:06:31:04.04 to 20:06:31:06.06, inclusive, or invests in securities that are determined by the director to be substantively similar to the types of securities set forth in §§ 20:06:31:04.04 to 20:06:31:06.06, inclusive; or

(2) Invests at least ninety percent of its assets in the types of equity interests that qualify as an investment under subdivision 20:06:31:04.09(1).

**Source:**

**General Authority:** SDCL 58-14-17.

**Law Implemented:** SDCL 58-14-17, 58-14-20.

**20:06:31:04.12. Limitations on investment companies.** Investments made by a trust in investment companies pursuant to § 20:06:31:04.11 may not exceed the following limitations:

(1) An investment in an investment company qualifying under subdivision 20:06:31:04.11(1) may not exceed ten percent of the assets in the trust and the aggregate amount of investment in qualifying investment companies may not exceed twenty-five percent of the assets in the trust; and

(2) Investments in an investment company qualifying under subdivision 20:06:31:04.11(2) may not exceed five percent of the assets in the trust and the aggregate amount of investment in qualifying investment companies shall be included when calculating the permissible aggregate value of equity interests pursuant to subdivision 20:06:31:04.09(1).

**Source:**

**General Authority:** SDCL 58-14-17.

**Law Implemented:** SDCL 58-14-16, 58-14-17, 58-14-20.

**20:06:31:04.13. Letters of credit.** In order for a letter of credit to qualify as an asset of the trust, the trustee shall have the right and the obligation pursuant to the deed of trust or other binding agreement, as duly approved by the director, to immediately draw down the full amount of the letter of credit and hold the proceeds in trust for the beneficiaries of the trust if the letter of credit will otherwise expire without being renewed or replaced.

The trust agreement shall provide that the trustee shall be liable for its negligence, willful misconduct, or lack of good faith. The failure of the trustee to draw against the letter of credit in circumstances where such draw would be required shall be deemed to be negligence or willful misconduct.

**Source:**

**General Authority:** SDCL 58-14-17.

**Law Implemented:** SDCL 58-14-16, 58-14-17, 58-14-20.

**20:06:31:05.01. Security for risks located in foreign or alien jurisdictions.** A specific security provided to a ceding insurer by an assuming insurer pursuant to SDCL 58-14-14 shall be applied, until exhausted, to the payment of liabilities of the assuming insurer to the ceding insurer holding the specific security prior to, and as a condition precedent for, presentation of a claim by the ceding insurer for payment by a trustee of a trust established by the assuming insurer pursuant to §§ 20:06:31:04.01 to 20:06:31:04.13, inclusive.

**Source:**

**General Authority:** SDCL 58-14-17.

**Law Implemented:** SDCL 58-14-17, 58-14-20.

**20:06:31:06. Reduction from liability for reinsurance ceded to an unauthorized assuming insurer.** ~~An admitted asset or a reduction from liability for reinsurance ceded to an unauthorized assuming insurer pursuant to subdivisions (1), (2), and (3) of SDCL 58-14-16 is allowed only when the requirements of §§ 20:06:31:07 to 20:06:31:12, inclusive, are met. The director shall allow a reduction from liability for reinsurance ceded by a domestic insurer to an assuming insurer not meeting the requirements of SDCL 58-14-7 to 58-14-16.1, inclusive, and 58-14-16.16 to 58-14-16.20, inclusive, in an amount not exceeding the liabilities carried by the ceding insurer. The reduction shall be in the amount of funds held by or on behalf of the ceding insurer, including funds held in trust for the exclusive benefit of the ceding insurer, under a reinsurance contract with such assuming insurer as security for the payment of obligations under the reinsurance contract. The security shall be held in the United States subject to withdrawal solely by, and under the exclusive control of, the ceding insurer or, in the case of a trust, held in a qualified United States financial institution as defined in SDCL 58-14-23. This security may be in the form of any of the following:~~

(1) Cash;

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

(3) Clean, irrevocable, unconditional, and evergreen letters of credit issued or confirmed by a qualified United States institution, as defined in SDCL 58-14-16.18, effective no later than December 31 of the year for which filing is being made, and in the possession of, or in trust for,

the ceding insurer on or before the filing date of its annual statement. Letters of credit meeting applicable standards of issuer acceptability as of the dates of their issuance or confirmation shall, notwithstanding the issuing or confirming institution's subsequent failure to meet applicable standards of issuer acceptability, continue to be acceptable as security until their expiration, extension, renewal, modification, or amendment, whichever first occurs; or

(4) Any other form of security acceptable to the director.

An admitted asset or a reduction from liability for reinsurance ceded to an unauthorized assuming insurer pursuant to this section shall be allowed only when the requirements of § 20:06:31:24 and the applicable portions of §§ 20:06:31:07 to 20:06:31:16, inclusive, or §§ 20:06:31:18 to 20:06:31:23, inclusive, have been satisfied.

**Source:** 22 SDR 52, effective October 25, 1995.

**General Authority:** SDCL 58-14-17.

**Law Implemented:** SDCL 58-14-16, 58-14-20.

**20:06:31:07. Trust agreements qualified under SDCL 58-14-16 -- Definitions.** The terms used in this chapter as they apply to trust agreements qualified under SDCL 58-14-16 mean:

(1) "Beneficiary," the entity for whose sole benefit the trust has been established and any successor of the beneficiary by operation of law. If a court of law appoints a successor in interest to the named beneficiary, the named beneficiary is limited to the court-appointed domiciliary receiver, including the conservator, rehabilitator, or liquidator;

(2) "Grantor," the entity that has established a trust for the sole benefit of the beneficiary. When established in conjunction with a reinsurance agreement, the grantor is the unlicensed, unaccredited assuming insurer;

(3) "Obligations," as used in § 20:06:31:09 include:

- (a) Reinsured losses and allocated loss expenses paid by the ceding company, but not recovered from the assuming insurer;
- (b) ~~Reserve~~ Reserves for reinsured losses reported and outstanding;
- (c) ~~Reserve~~ Reserves for reinsured losses incurred but not reported; and
- (d) Reserves for allocated reinsured loss expenses and unearned premiums.

**Source:** 22 SDR 52, effective October 25, 1995.

**General Authority:** SDCL 58-14-17.

**Law Implemented:** SDCL 58-14-17.

**20:06:31:08. Trust agreements qualified under SDCL 58-14-16 -- Required conditions.** The following required conditions apply to trust agreements qualified under SDCL 58-14-16:

- (1) The trust agreement must be entered into between the beneficiary, the grantor, and a trustee which is a qualified United States institution as defined in SDCL 58-14-23;
- (2) The trust agreement must create a trust account into which assets are deposited;
- (3) All assets in the trust account must be held by the trustee's office in the United States; ~~except that a bank may apply for the director's permission to use a foreign branch office of the bank as trustee for trust agreements established pursuant to this chapter. If the director approves the use of the foreign branch office as trustee, its use must be approved by the beneficiary in~~

~~writing and the trust agreement must provide that the written notice described in subdivision (4)(a) of this section must also be presentable, as a matter of legal right, at the trustee's principal office in the United States;~~

(4) The trust agreement shall provide that:

(a) The beneficiary has the right to withdraw assets from the trust account at any time, without notice to the grantor, subject only to written notice from the beneficiary to the trustee;

(b) No other statement or document is required to be presented in order to withdraw assets, except that the beneficiary may be required to acknowledge receipt of withdrawn assets;

(c) It is not subject to any conditions or qualifications outside of the trust agreement; and

(d) It does not contain references to any other agreements or documents except as provided for under ~~§ 20:06:31:11~~ §§ 20:06:31:09 or 20:06:31:09.01 of this chapter;

(5) The trust agreement must be established for the sole benefit of the beneficiary;

(6) The trust agreement must require the trustee to:

(a) Receive assets and hold all assets in a safe place;

(b) Determine that all assets are in such a form that the beneficiary, or the trustee upon direction of the beneficiary, may whenever necessary negotiate any assets, without consent or signature from the grantor or any other person or entity;

(c) Furnish to the grantor and the beneficiary a statement of all assets in the trust account upon its inception and at least at the end of each calendar quarter;

(d) Notify the grantor and the beneficiary within ten days of any deposits to or withdrawals from the trust account;

(e) Upon written demand of the beneficiary, immediately take any and all steps necessary to transfer absolutely and unequivocally all right, title, and interest in the assets held in the trust account to the beneficiary and deliver physical custody of the assets to the beneficiary; and

(f) Allow no substitutions or withdrawals of assets from the trust account, except on written instructions from the beneficiary. However, the trustee may, without the consent of but with notice to the beneficiary, upon call or maturity of any trust asset, withdraw the asset on condition that the proceeds are paid in the trust account;

(7) The trust agreement must provide that at least 30 days but not more than 45 days before termination of the trust account, written notice of termination must be delivered by the trustee to the beneficiary;

(8) The trust agreement must be made subject to and governed by the laws of the state in which the trust is established;

(9) The trust agreement must prohibit invasion of the trust corpus for the purpose of paying compensation to or reimbursing the expenses of the trustee; and

(10) The trust agreement must provide that the trustee is liable for its own negligence, willful misconduct, or lack of good faith.

**Source:** 22 SDR 52, effective October 25, 1995.

**General Authority:** SDCL 58-14-17.

**Law Implemented:** SDCL 58-14-11 to 58-14-13, 58-14-17, 58-14-23.



**20:06:31:09.01. Trust agreements established under SDCL 58-14-16.** Notwithstanding other provisions of this chapter, when a trust agreement is established to meet the requirements of SDCL 58-14-16 in conjunction with a reinsurance agreement covering life, annuities, or accident and health risks, where it is customary to provide a trust agreement for a specific purpose, the trust agreement may provide that the ceding insurer shall undertake to use and apply amounts drawn upon the trust account, without diminution because of the insolvency of the ceding insurer or the assuming insurer, only for the following purposes:

(1) To pay or reimburse the ceding insurer for:

(a) The assuming insurer's share under the specific reinsurance agreement of premiums returned, but not yet recovered from the assuming insurer, to the owners of policies reinsured under the reinsurance agreement on account of cancellations of the policies; and

(b) The assuming insurer's share under the specific reinsurance agreement of surrenders and benefits or losses paid by the ceding insurer, but not yet recovered from the assuming insurer, under the terms and provisions of the policies reinsured under the reinsurance agreement;

(2) To pay to the assuming insurer amounts held in the trust account in excess of the amount necessary to secure the credit or reduction from liability for reinsurance taken by the ceding insurer; or

(3) Where the ceding insurer has received notification of termination of the trust and where the assuming insurer's entire obligations under the specific reinsurance agreement remain unliquidated and undischarged ten days prior to the termination date, to withdraw amounts equal to the assuming insurer's share of liabilities, to the extent that the

liabilities have not yet been funded by the assuming insurer, and deposit those amounts in a separate account, in the name of the ceding insurer in any qualified U.S. financial institution apart from its general assets, in trust for the uses and purposes specified in subdivisions (1) and (2) of this section as may remain executory after withdrawal and for any period after the termination date.

**Source:**

**General Authority:** SDCL 58-14-17.

**Law Implemented:** SDCL 58-14-16, 58-14-17

**20:06:31:09.02. Assets deposited in trust account.** The reinsurance agreement or the trust agreement must stipulate that assets deposited in the trust account shall be valued according to their current fair market value and shall consist only of cash in United States dollars, certificates of deposit issued by a United States bank and payable in United States dollars, investments permitted by the Insurance Code, or any combination of the above. However, investments in or issued by an entity controlling, controlled by, or under common control with either the grantor or the beneficiary of the trust may not exceed five percent of total investments in the trust. The agreement may further specify the types of investments to be deposited. If the reinsurance agreement covers life, annuities or accident and health risks, then the provisions required by this section must be included in the reinsurance agreement.

**Source:**

**General Authority:** SDCL 58-14-17.

**Law Implemented:** SDCL 58-14-16, 58-14-17, 58-14-20.

**20:06:31:10. Trust agreements qualified under SDCL 58-14-16 -- Permitted conditions.** The following permitted conditions apply to trust agreements qualified under SDCL 58-14-16;

(1) The trust agreement may provide that the trustee may resign upon delivery of a written notice of resignation, effective not less than 90 days after receipt by the beneficiary and grantor of the notice and that the trustee may be removed by the grantor by delivery to the trustee and the beneficiary of a written notice of removal, effective not less than 90 days after receipt by the trustee and the beneficiary of the notice. Such a resignation or removal may not be effective until a successor trustee has been appointed and approved by the beneficiary and the grantor and all assets in the trust have been transferred to the new trustee;

(2) The grantor may have the full and unqualified right to vote any shares of stock in the trust account and to receive from time to time payments of any dividends or interest on any shares of stock or obligations included in the trust account. ~~The~~ Any interest or dividend must be either forwarded promptly upon receipt to the grantor or deposited in a separate account established in the grantor's name;

(3) The trustee may be given authority to invest and may accept substitutions of any funds in the account, but no investment or substitution may be made without prior approval of the beneficiary, unless the trust agreement specifies categories of investments acceptable to the beneficiary and authorizes the trustee to invest funds and to accept substitutions which the trustee determines are at least equal in current fair market value to the assets withdrawn and that are consistent with the restrictions in subdivision 20:06:31:11(2);

(4) The trust agreement may provide that the beneficiary may, at any time, designate a party to which all or part of the trust assets are to be transferred. The transfer may be conditioned upon the trustee receiving, prior to or simultaneously with, other specified assets; and

(5) The trust agreement may provide that, upon termination of the trust account, all assets not previously withdrawn by the beneficiary shall, with written approval by the beneficiary, be delivered over to the grantor.

**Source:** 22 SDR 52, effective October 25, 1995.

**General Authority:** SDCL 58-14-17.

**Law Implemented:** SDCL 58-14-16, 58-14-17, 58-14-20.

**20:06:31:11. Trust agreements qualified under SDCL 58-14-16 -- Additional conditions applicable to reinsurance agreements -- Assets.** A reinsurance agreement which is entered into in conjunction with a trust agreement and the establishment of a trust account may contain provisions that require the following:

(1) Require the assuming insurer to enter into a trust agreement, specifying what the agreement is to cover, and to establish a trust account for the benefit of the ceding insurer;

~~(2) Stipulate that assets deposited in the trust account must be valued according to their current fair market value and may consist only of cash (United States legal tender), certificates of deposit (issued by a United States bank and payable in United States legal tender), and investments of the types permitted by SDCL title 58 or any combination of these if the investments are issued by an institution that is not the parent, subsidiary, or affiliate of either the grantor or the beneficiary. The reinsurance agreement may further specify the types of investments to be deposited. If a trust agreement is entered into in conjunction with a reinsurance~~

~~agreement covering risks other than life, annuities, and accident and health, the trust agreement may contain the provisions required by this paragraph in lieu of including them in the reinsurance agreement;~~

~~(3)~~ Require the assuming insurer, before depositing assets with the trustee, to execute assignments or endorsements in blank or to transfer legal title to the trustee of all shares, obligations, or any other assets requiring assignments, in order that the ceding insurer, or the trustee upon the direction of the ceding insurer, may as necessary negotiate these assets without consent or signature from the assuming insurer or any other entity;

~~(4)~~(3) Require that all settlements of account between the ceding insurer and the assuming insurer be made in cash or its equivalent; and

~~(5)~~(4) Stipulate that the assuming insurer and the ceding insurer agree that the assets in the trust account, established pursuant to the provisions of the reinsurance agreement, may be withdrawn by the ceding insurer at any time and may be utilized and applied only for the following purposes by the ceding insurer or its successors in interest by operation of law, including any liquidator, rehabilitator, receiver, or conservator of the company, without diminution because of insolvency on the part of the ceding insurer or the assuming insurer, only for the following purposes:

(a) To pay or reimburse the ceding insurer for;

(i) ~~the~~ The assuming insurer's share under the specific reinsurance agreement of premiums returned, but not yet recovered from the assuming insurer, to the owners of policies reinsured under the reinsurance agreement because of cancellations of the policies;

~~(b) To reimburse the ceding insurer for the~~ (ii) The assuming insurer's share of surrenders and the benefits or losses paid by the ceding insurer, pursuant to the provisions of the policies reinsured under the reinsurance agreement; and

~~(c) To fund an account with the ceding insurer in an amount at least equal to the deduction, for reinsurance ceded, from the ceding insurer's liabilities for policies ceded under the agreement. The account shall include amounts for policy reserves, claims and losses incurred (including losses incurred but not reported), loss adjustment expenses, and unearned premium reserves~~ (iii) Any other amounts necessary to secure the credit or reduction from liability for reinsurance taken by the ceding insurer; or

~~(d) To pay any other amounts the ceding insurer claims are due under the reinsurance agreement.~~

(b) To make payment to the assuming insurer of amounts held in the trust account in excess of the amount necessary to secure the credit or reduction from liability for reinsurance taken by the ceding insurer.

**Source:** 22 SDR 52, effective October 25, 1995.

**General Authority:** SDCL 58-14-17.

**Law Implemented:** SDCL 58-14-17.

**20:06:31:12. Reinsurance agreements -- Transfer of assets.** The reinsurance agreement may also contain the following provisions for transfer of assets as follows:

(1) ~~That give~~ Give the assuming insurer the right to seek approval from the ceding insurer, which may not be unreasonably or arbitrarily withheld, to withdraw from the trust account all or any part of the trust assets and transfer those assets to the assuming insurer, if:

(a) The assuming insurer, at the time of withdrawal, replaces the withdrawn assets with other qualified assets having a current fair market value equal to the market value of the assets withdrawn so as to maintain at all times the deposit in the required amount; or

(b) After withdrawal and transfer, the current fair market value of the trust account is no less than 102 percent of the required amount;

~~(c) The ceding insurer does not unreasonably or arbitrarily withhold its approval;~~

(2) Provide for the return of any amount withdrawn in excess of the actual amounts required for subdivision ~~20:06:31:10(5)(a), (b), and (c), or in the case of subdivision 20:06:31:10(5)(d), any amounts that are subsequently determined not to be due~~ 20:06:31:11(5) and for interest payments at a rate not in excess of the prime rate of interest; on the such amounts ~~held pursuant to subdivision 20:06:31:10(5)(e); and~~

(3) Permit the award by an arbitration panel or court of competent jurisdiction of the following:

(a) Interest at a rate different from that provided in subdivision (2) of this section;

(b) Court or arbitration costs;

(c) Attorneys' fees; and

(d) Any other responsible expenses.

**Source:** 22 SDR 52, effective October 25, 1995.

**General Authority:** SDCL 58-14-17.

**Law Implemented:** SDCL 58-14-17.

**20:06:31:14. Acceptability of existing trust agreements.** A trust agreement or underlying reinsurance agreement in existence before ~~the effective date of this chapter~~ January 1, 2018, will continue to be acceptable to the director until renewal of the underlying reinsurance agreement, at which time the agreements must be in full compliance with this chapter.

**Source:** 22 SDR 52, effective October 25, 1995.

**General Authority:** SDCL 58-14-17.

**Law Implemented:** SDCL 58-14-17.

**20:06:31:17. Contracts affected.** All new and renewal transactions entered into after ~~December 31, 1995~~ December 31, 2017, must conform to the requirements of this chapter if credit for reinsurance is to be given to the ceding insurer.

**Source:** 22 SDR 52, effective October 25, 1995.

**General Authority:** SDCL 58-14-17.

**Law Implemented:** SDCL 58-14-17.

**20:06:31:18. Letters of credit qualified under SDCL 58-14-16.** The letter of credit must be clean, irrevocable, unconditional, and issued or confirmed by a qualified United States financial institution as defined in SDCL 58-14-16.18. The letter of credit shall contain an issue date and expiration date and shall stipulate that the beneficiary need only draw a sight draft under the letter of credit and present it to obtain funds and that no other document need be presented. The letter of credit also shall indicate that it is not subject to any condition or qualifications



outside of the letter of credit. The letter of credit may not contain reference to any other agreements, documents, or entities, except as provided in § 20:06:31:21.

The letter of credit shall contain a statement to the effect that the obligation of the qualified United States financial institution under the letter of credit is in no way contingent upon reimbursement with respect thereto.

As used in this section, beneficiary, means the domestic insurer for whose benefit the letter of credit has been established and any successor of the beneficiary by operation of law. If a court of law appoints a successor in interest to the named beneficiary, then the named beneficiary includes and is limited to the court appointed domiciliary receiver, including conservator, rehabilitator, or liquidator.

**Source:**

**General Authority:** SDCL 58-14-17.

**Law Implemented:** SDCL 58-14-16, 58-14-17.

**20:06:31:19. Heading and term for letters of credit.** The heading of the letter of credit may include a boxed section containing the name of the applicant and other appropriate notations to provide a reference for the letter of credit. The boxed section shall be clearly marked to indicate the information is for internal identification purposes only.

The term of the letter of credit shall be for at least one year and shall contain an evergreen clause that prevents the expiration of the letter of credit without due notice from the issuer. The evergreen clause shall provide for a period of no less than thirty days' notice prior to expiration date or nonrenewal.

**Source:**

**General Authority: SDCL 58-14-17.**

**Law Implemented: SDCL 58-14-16, 58-14-17.**

**20:06:31:20. Letter of credit issued by a financial institution.** If the letter of credit is issued by a financial institution authorized to issue letters of credit, other than a qualified United States financial institution as described SDCL 58-14-16.18, then the following additional requirements shall be met:

(1) The issuing financial institution shall formally designate the confirming qualified United States financial institution as its agent for the receipt and payment of the drafts; and

(2) The evergreen clause shall provide for thirty days' notice prior to expiration date for nonrenewal.

**Source:**

**General Authority: SDCL 58-14-17.**

**Law Implemented: SDCL 58-14-16, 58-14-17.**

**20:06:31:21. Reinsurance agreements in conjunction with letters of credit.** The reinsurance agreement in conjunction with which the letter of credit is obtained may contain provisions that:

(1) Require the assuming insurer to provide letters of credit to the ceding insurer and specify what they are to cover;

(2) Stipulate that the assuming insurer and ceding insurer agree that the letter of credit provided by the assuming insurer pursuant to the provisions of the reinsurance agreement may be drawn upon at any time, notwithstanding any other provisions in the agreement, and shall be

utilized by the ceding insurer or its successors in interest only for one or more of the following reasons:

(a) To pay or reimburse the ceding insurer for:

(i) The assuming insurer's share under the specific reinsurance agreement of premiums returned, but not yet recovered from the assuming insurers, to the owners of policies reinsured under the reinsurance agreement on account of cancellations of such policies;

(ii) The assuming insurer's share, under the specific reinsurance agreement, of surrenders and benefits or losses paid by the ceding insurer, but not yet recovered from the assuming insurers, under the terms and provisions of the policies reinsured under the reinsurance agreement; and

(iii) Any other amounts necessary to secure the credit or reduction from liability for reinsurance taken by the ceding insurer;

(b) Where the letter of credit will expire without renewal or be reduced or replaced by a letter of credit for a reduced amount and where the assuming insurer's entire obligations under the reinsurance agreement remain unliquidated and undischarged ten days prior to the termination date, to withdraw amounts equal to the assuming insurer's share of the liabilities, to the extent that the liabilities have not yet been funded by the assuming insurer and exceed the amount of any reduced or replacement letter of credit, and deposit those amounts in a separate account in the name of the ceding insurer in a qualified U.S. financial institution apart from its general assets, in trust for such uses and purposes specified in subdivision (2)(a)(i) of this section as may remain after withdrawal and for any period after the termination date.

All of the provisions of this section shall be applied without diminution because of insolvency on the part of the ceding insurer or assuming insurer.

**Source:**

**General Authority:** SDCL 58-14-17.

**Law Implemented:** SDCL 58-14-16, 58-14-17.

**20:06:31:22. Interest payments and amounts drawn in excess.** Nothing contained in § 20:06:31:21 shall preclude the ceding insurer and assuming insurer from providing for:

(1) An interest payment, at a rate not in excess of the prime rate of interest, on the amounts held pursuant to subdivision 20:06:31:21(2); or

(2) The return of any amounts drawn down on the letters of credit in excess of the actual amounts required that are subsequently determined not to be due.

**Source:**

**General Authority:** SDCL 58-14-17.

**Law Implemented:** SDCL 58-14-16, 58-14-17.

**20:06:31:23. Letters of credit and Uniform Customs and Practice for Documentary Credits.** The letter of credit shall state whether it is subject to and governed by the laws of this state or by the Uniform Customs and Practice for Documentary Credits of the International Chamber of Commerce Publication 600 (UCP 600), the International Standby Practices of the International Chamber of Commerce Publication 590 (ISP98), or any successor publication, and all drafts drawn thereunder shall be presentable at an office located in the United States of a qualified United States financial institution.

If the letter of credit is made subject to the Uniform Customs and Practice for Documentary Credits of the International Chamber of Commerce Publication 600 (UCP 600),

the International Standby Practices of the International Chamber of Commerce Publication 590 (ISP98), or any successor publication, then the letter of credit shall specifically address and provide for an extension of time to draw against the letter of credit in the event that one or more of the occurrences specified in Article 36 of Publication 600, or any other successor publication, occur.

**Source:**

**General Authority:** SDCL 58-14-17.

**Law Implemented:** SDCL 58-14-16, 58-14-17.

**20:06:31:24. Insolvency and intermediary clauses.** Credit will not be granted, nor an asset or reduction from liability allowed, to a ceding insurer for reinsurance effected with assuming insurers meeting the requirements of §§ 20:06:31:01 to 20:06:31:12, inclusive, 20:06:31:25 to 20:06:31:33, inclusive, or otherwise in compliance with SDCL 58-14-7 to 58-14-16.1, inclusive, and 58-14-16.16 to 58-14-16.20, inclusive, after the effective date of this section, unless the reinsurance agreement:

(1) Includes a proper insolvency clause, which stipulates that reinsurance is payable directly to the liquidator or successor without diminution regardless of the status of the ceding company, in compliance with SDCL chapter 58-29B;

(2) Includes a provision pursuant to SDCL 58-14-7 to 58-14-16.1, inclusive, and 58-14-16.16 to 58-14-16.20, inclusive, whereby the assuming insurer, if an unauthorized assuming insurer, has submitted to the jurisdiction of an alternative dispute resolution panel or court of competent jurisdiction within the United States, has agreed to comply with all requirements

necessary to give the court or panel jurisdiction, has designated an agent upon whom service of process may be effected, and has agreed to abide by the final decision of the court or panel; and

(3) Includes a proper reinsurance intermediary clause, if applicable, which stipulates that the credit risk for the intermediary is carried by the assuming insurer.

**Source:**

**General Authority:** SDCL 58-14-17.

**Law Implemented:** SDCL 58-14-17.

**20:06:31:25. Certified reinsurers.** Pursuant to SDCL 58-14-16.1, the director shall allow credit for reinsurance ceded by a domestic insurer to an assuming insurer that has been certified as a reinsurer in this state at all times for which statutory financial statement credit for reinsurance is claimed under this section. The credit allowed shall be based upon the security held by or on behalf of the ceding insurer in accordance with a rating assigned to the certified reinsurer by the director. The security shall be in a form consistent with the provisions of SDCL 58-14-16 and 58-14-16.1 and §§ 20:06:31:07 to 20:06:31:16, inclusive, or §§ 20:06:31:18 to 20:06:31:23, inclusive. The amount of security required in order for full credit to be allowed shall correspond with the following requirements:

<b><u>Ratings</u></b>	<b><u>Security Required</u></b>
<u>Secure – 1</u>	<u>0%</u>
<u>Secure – 2</u>	<u>10%</u>
<u>Secure – 3</u>	<u>20%</u>
<u>Secure – 4</u>	<u>50%</u>
<u>Secure – 5</u>	<u>75%</u>

Affiliated reinsurance transactions shall receive the same opportunity for reduced security requirements as all other reinsurance transactions.

The director shall require the certified reinsurer to post one hundred percent security, for the benefit of the ceding insurer or its estate, upon the entry of an order of rehabilitation, liquidation, or conservation against the ceding insurer.

In order to facilitate the prompt payment of claims, a certified reinsurer may not be required to post security for catastrophe recoverables for a period of one year from the date of the first instance of a liability reserve entry by the ceding company as a result of a loss from a catastrophic occurrence as recognized by the director. The one year deferral period is contingent upon the certified reinsurer continuing to pay claims in a timely manner. Reinsurance recoverables for only the following lines of business as reported on the National Association of Insurance Commissioners' annual financial statement related specifically to the catastrophic occurrence will be included in the deferral:

Line 1: Fire

Line 2: Allied Lines

Line 3: Farmowners multiple peril

Line 4: Homeowners multiple peril

Line 5: Commercial multiple peril

Line 9: Inland Marine

Line 12: Earthquake

Line 21: Auto physical damage

Credit for reinsurance under this section shall apply only to reinsurance contracts entered into or renewed on or after the effective date of the certification of the assuming insurer. Any reinsurance contract entered into prior to the effective date of the certification of the assuming insurer that is subsequently amended after the effective date of the certification of the assuming insurer, or a new reinsurance contract, covering any risk for which collateral was provided previously, shall only be subject to this section with respect to losses incurred and reserves reported from and after the effective date of the amendment or new contract.

Nothing in this section shall prohibit the parties to a reinsurance agreement from agreeing to provisions establishing security requirements that exceed the minimum security requirements established for certified reinsurers under this section.

**Source:**

**General Authority:** SDCL 58-14-17.

**Law Implemented:** SDCL 58-14-16.1, 58-14-17, 58-14-20.

**20:06:31:26. Certified reinsurers – certification procedure.** The director shall post notice on the division’s website promptly upon receipt of any application for certification, including instructions on how members of the public may respond to the application. The director may not take final action on the application until at least thirty days after posting the notice required by this section.

The director shall issue written notice to an assuming insurer that has made application and been approved as a certified reinsurer. Included in such notice shall be the rating assigned



the certified reinsurer in accordance with § 20:06:31:25. The director shall publish a list of all certified reinsurers and their ratings.

In order to be eligible for certification, the assuming insurer shall meet the following requirements:

(1) The assuming insurer must be domiciled and licensed to transact insurance or reinsurance in a qualified jurisdiction, as determined by the director pursuant to § 20:06:31:32.

(2) The assuming insurer must maintain capital and surplus, or its equivalent, of no less than \$250,000,000, calculated in accordance with subdivision 20:06:31:27(8). This requirement may also be satisfied by an association including incorporated and individual unincorporated underwriters having minimum capital and surplus equivalents, net of liabilities, of at least \$250,000,000, and a central fund containing a balance of at least \$250,000,000.

(3) The assuming insurer must maintain financial strength ratings from two or more rating agencies deemed acceptable by the director. These ratings shall be based on interactive communication between the rating agency and the assuming insurer and shall not be based solely on publicly available information. These financial strength ratings will be one factor used by the director in determining the rating that is assigned to the assuming insurer. Acceptable rating agencies include: Standard & Poor's, Moody's Investors Service, Fitch Ratings, A.M. Best Company, or any other Nationally Recognized Statistical Rating Organization; and

(4) The certified reinsurer must comply with any other requirements reasonably imposed by the director.

**Source:**

**General Authority: SDCL 58-14-17.**

**Law Implemented: SDCL 58-14-16.1, 58-14-17.**

**20:06:31:27. Certified reinsurers – ratings.** Each certified reinsurer shall be rated on a legal entity basis, with due consideration being given to the group rating where appropriate, except that an association including incorporated and individual unincorporated underwriters that has been approved to do business as a single certified reinsurer may be evaluated on the basis of its group rating. Factors that may be considered as part of the evaluation process include:

(1) The certified reinsurer’s financial strength rating from an acceptable rating agency.

The maximum rating that a certified reinsurer may be assigned will correspond to its financial strength rating as outlined in the table below. The director shall use the lowest financial strength rating received from an approved rating agency in establishing the maximum rating of a certified reinsurer. A failure to obtain or maintain at least two financial strength ratings from acceptable rating agencies will result in loss of eligibility for certification;

<u>Ratings</u>	<u>Best</u>	<u>S&amp;P</u>	<u>Moody’s</u>	<u>Fitch</u>
<u>Secure – 1</u>	<u>A++</u>	<u>AAA</u>	<u>Aaa</u>	<u>AAA</u>
<u>Secure – 2</u>	<u>A+</u>	<u>AA+, AA, AA-</u>	<u>Aa1, Aa2, Aa3</u>	<u>AA+, AA, AA-</u>
<u>Secure – 3</u>	<u>A</u>	<u>A+, A</u>	<u>A1, A2</u>	<u>A+, A</u>

<u>Secure – 4</u>	<u>A-</u>	<u>A-</u>	<u>A3</u>	<u>A-</u>
<u>Secure – 5</u>	<u>B++, B+</u>	<u>BBB+, BBB, BBB-</u>	<u>Baa1, Baa2, Baa3</u>	<u>BBB+, BBB, BBB-</u>
<u>Vulnerable</u> <u>=6</u>	<u>B, B-C++,</u> <u>C+,</u> <u>C, C-, D, E,</u> <u>F</u>	<u>BB+, BB, BB-,</u> <u>B+, B, B-, CCC, CC,</u> <u>C, D, R</u>	<u>Ba1, Ba2, Ba3,</u> <u>B1, B2, B3, Caa, Ca,</u> <u>C</u>	<u>BB+, BB, BB-,</u> <u>B+, B, B-, CCC+, CC,</u> <u>CCC-, DD</u>

(2) The business practices of the certified reinsurer in dealing with its ceding insurers, including its record of compliance with reinsurance contractual terms and obligations;

(3) For certified reinsurers domiciled in the U.S., a review of the most recent applicable National Association of Insurance Commissioners Annual Statement Blank, either Schedule F for property/casualty reinsurers or Schedule S for life and health reinsurers;

(4) For certified reinsurers not domiciled in the U.S., a review annually of Form CR-F, provided by the director, for property/casualty reinsurers or Form CR-S, provided by the director, for life and health reinsurers;

(5) The reputation of the certified reinsurer for prompt payment of claims under reinsurance agreements, based on an analysis of ceding insurers' Schedule F reporting of overdue reinsurance recoverables, including the proportion of obligations that are more than ninety days past due or that are in dispute, with specific attention given to obligations payable to companies that are in administrative supervision or receivership;

(6) Regulatory actions against the certified reinsurer;

(7) The report of the independent auditor on the financial statements of the insurance enterprise, on the basis described in subdivision (8) of this section;

(8) Audited financial statements for certified reinsurers not domiciled in the U.S., audited U.S. GAAP basis if available. Audited IFRS basis statements are allowed but must include an audited footnote reconciling equity and net income to a U.S. GAAP basis or, with the permission of the state insurance director, audited IFRS statements with reconciliation to U.S. GAAP certified by an officer of the company, regulatory filings, and actuarial opinion as filed with the non-U.S. jurisdiction supervisor. Upon the initial application for certification, the director will consider audited financial statements for the last three years filed with its non-U.S. jurisdiction's supervisor;

(9) The liquidation priority of obligations to a ceding insurer in the certified reinsurer's domiciliary jurisdiction in the context of an insolvency proceeding;

(10) A certified reinsurer's participation in any solvent scheme of arrangement, or similar procedure, which involves U.S. ceding insurers. The director shall receive prior notice from a certified reinsurer that proposes participation by the certified reinsurer in a solvent scheme of arrangement; and

(11) Any other information deemed relevant by the director.

**Source:**

**General Authority: SDCL 58-14-17.**

**Law Implemented: SDCL 58-14-16.1, 58-14-17**

**20:06:31:28. Certified reinsurers – prompt payment of claims.** Based on the analysis conducted under subdivision 20:06:31:27(5) of a certified reinsurer's reputation for prompt

payment of claims, the director may make appropriate adjustments in the security the certified reinsurer is required to post to protect its liabilities to U.S. ceding insurers, provided that the director shall, at a minimum, increase the security the certified reinsurer is required to post by one rating level under subdivision 20:06:31:27(1), if the director finds:

(1) More than fifteen percent of the certified reinsurer's ceding insurance clients have overdue reinsurance recoverables on paid losses of ninety days or more which are not in dispute and which exceed \$100,000 for each cedent; or

(2) The aggregate amount of reinsurance recoverables on paid losses which are not in dispute that are overdue by ninety days or more exceeds \$50,000,000.

**Source:**

**General Authority:** SDCL 58-14-17.

**Law Implemented:** SDCL 58-14-16.1, 58-14-17.

**20:06:31:29. Certified reinsurers – form filing.** A certified reinsurer must submit a properly executed Form CR-1, provided by the director, as evidence of its submission to the jurisdiction of this state, appointment of the director as an agent for service of process in this state, and agreement to provide security for one hundred percent of the assuming insurer's liabilities attributable to reinsurance ceded by U.S. ceding insurers if it resists enforcement of a final U.S. judgment. The director may not certify any assuming insurer that is domiciled in a jurisdiction that the director has determined does not adequately and promptly enforce final U.S. judgments or arbitration awards. The form of the initial and renewal application will be provided by the director.

**Source:**

**General Authority: SDCL 58-14-17.**

**Law Implemented: SDCL 58-14-16.1, 58-14-17**

**20:06:31:30. Certified reinsurers – filing requirements.** The certified reinsurer must agree to meet applicable information filing requirements as determined by the director, both with respect to an initial application for certification and on an ongoing basis. All information submitted by certified reinsurers shall be investigated by the division. The filing requirements are, as follows:

(1) Notify the director within ten days of any regulatory actions taken against the certified reinsurer, any change in the provisions of its domiciliary license or any change in rating by an approved rating agency, including a statement describing such changes and the reasons therefore;

(2) Annually file the applicable Form CR-F or CR-S, provided by the director;

(3) Annually file the report of the independent auditor on the financial statements of the insurance enterprise, on the basis described in subdivision (4) of this section;

(4) Annually file audited financial statements, audited U.S. GAAP basis if available. Audited IFRS basis statements are allowed but must include an audited footnote reconciling equity and net income to a U.S. GAAP basis or, with the permission of the state insurance director, audited IFRS statements with reconciliation to U.S. GAAP certified by an officer of the company, regulatory filings, and actuarial opinion as filed with the certified reinsurer's domiciliary jurisdiction. Upon the initial certification, audited financial statements for the last three years filed with the certified reinsurer's supervisor;

(5) At least annually file an updated list of all disputed and overdue reinsurance claims regarding reinsurance assumed from U.S. domestic ceding insurers;

(6) File a certification from the certified reinsurer's domestic regulator that the certified reinsurer is in good standing and maintains capital in excess of the jurisdiction's highest regulatory action level; and

(7) Any other information that the director may reasonably require.

**Source:**

**General Authority:** SDCL 58-14-17.

**Law Implemented:** SDCL 58-14-16.1, 58-14-17.

**20:06:31:31. Certified reinsurers - change in rating or revocation of certification.** In the case of a downgrade by a rating agency or other disqualifying circumstance, the director shall upon written notice assign a new rating to the certified reinsurer in accordance with the requirements of subdivision 20:06:31:27(1).

The director shall have the authority to suspend, revoke, or otherwise modify a certified reinsurer's certification at any time if the certified reinsurer fails to meet its obligations or security requirements under this section or if other financial or operating results of the certified reinsurer or documented significant delays in payment by the certified reinsurer lead the director to reconsider the certified reinsurer's ability or willingness to meet its contractual obligations.

If the rating of a certified reinsurer is upgraded by the director, the certified reinsurer may meet the security requirements applicable to its new rating on a prospective basis, but the director shall require the certified reinsurer to post security under the previously applicable security requirements as to all contracts in force on or before the effective date of the upgraded rating. If the rating of a certified reinsurer is downgraded by the director, the director shall

require the certified reinsurer to meet the security requirements applicable to its new rating for all business it has assumed as a certified reinsurer.

Upon revocation of the certification of a certified reinsurer by the director, the assuming insurer shall be required to post security in accordance with § 20:06:31:06 in order for the ceding insurer to continue to take credit for reinsurance ceded to the assuming insurer. If funds continue to be held in trust, the director may allow additional credit equal to the ceding insurer's pro rata share of such funds, discounted to reflect the risk of uncollectibility and anticipated expenses of trust administration. Notwithstanding the change of a certified reinsurer's rating or revocation of its certification, a domestic insurer that has ceded reinsurance to that certified reinsurer may not be denied credit for reinsurance for a period of three months for all reinsurance ceded to that certified reinsurer, unless the reinsurance is found by the director to be at high risk of uncollectibility.

**Source:**

**General Authority:** SDCL 58-14-17.

**Law Implemented:** SDCL 58-14-16.1, 58-14-17.

**20:06:31:32. Certified reinsurers – qualified jurisdictions.** If, upon conducting an evaluation under this section with respect to the reinsurance supervisory system of any non-U.S. assuming insurer, the director determines the jurisdiction qualifies to be recognized as a qualified jurisdiction, the director shall publish notice and evidence of such recognition in an appropriate manner. The director may establish a procedure to withdraw recognition of those jurisdictions that are no longer qualified.



To determine whether the domiciliary jurisdiction of a non-U.S. assuming insurer is eligible to be recognized as a qualified jurisdiction, the director shall evaluate the reinsurance supervisory system of the non-U.S. jurisdiction, both initially and on an ongoing basis, and consider the rights, benefits, and extent of reciprocal recognition afforded by the non-U.S. jurisdiction to reinsurers licensed and domiciled in the U.S. The director shall determine the appropriate approach for evaluating the qualifications of such jurisdictions and publish a list of jurisdictions whose reinsurers may be approved by the director as eligible for certification. A qualified jurisdiction must agree to share information and cooperate with the director with respect to all certified reinsurers domiciled within that jurisdiction.

A list of qualified jurisdictions shall be published through the National Association of Insurance Commissioners committee process. The director shall consider the list published by the National Association of Insurance Commissioners in determining qualified jurisdictions. If the director approves a jurisdiction as qualified that does not appear on the list of qualified jurisdictions, the director shall provide thoroughly documented justification with respect to the criteria provided under the criteria in this section. U.S. jurisdictions that meet the requirements for accreditation under the National Association of Insurance Commissioners financial standards and accreditation program shall be recognized as qualified jurisdictions.

The director may consider additional factors in determining whether to recognize a qualified jurisdiction, including:

- (1) The framework under which the assuming insurer is regulated;
- (2) The structure and authority of the domiciliary regulator with regard to solvency regulation requirements and financial surveillance;

(3) The substance of financial and operating standards for assuming insurers in the domiciliary jurisdiction;

(4) The form and substance of financial reports required to be filed or made publicly available by reinsurers in the domiciliary jurisdiction and the accounting principles used;

(5) The domiciliary regulator's willingness to cooperate with U.S. regulators in general and the director in particular;

(6) The history of performance by assuming insurers in the domiciliary jurisdiction;

(7) Any documented evidence of substantial problems with the enforcement of final U.S. judgments in the domiciliary jurisdiction. A jurisdiction will not be considered to be a qualified jurisdiction if the director has determined that it does not adequately and promptly enforce final U.S. judgments or arbitration awards;

(8) Any relevant international standards or guidance with respect to mutual recognition of reinsurance supervision adopted by the International Association of Insurance Supervisors, or a successor organization; and

(9) Any other matters deemed relevant by the director.

**Source:**

**General Authority:** SDCL 58-14-17.

**Law Implemented:** SDCL 58-14-16.1, 58-14-16.5, 58-14-17.

**20:06:31:33. Certified reinsurers – recognition of certification.** If an applicant for certification has been certified as a reinsurer in a National Association of Insurance Commissioners accredited jurisdiction, the director has the discretion to defer to that jurisdiction's certification and to defer to the rating assigned by that jurisdiction, if the assuming

insurer submits a properly executed Form CR-1, provided by the director, and any additional information the director requires. The assuming insurer shall be considered to be a certified reinsurer in this state.

Any change in the certified reinsurer's status or rating in the other jurisdiction shall apply automatically in this state as of the date it takes effect in the other jurisdiction. The certified reinsurer shall notify the director of any change in its status or rating within ten days after receiving notice of the change.

The director may withdraw recognition of the other jurisdiction's rating at any time and assign a new rating in accordance with § 20:06:31:31.

The director may withdraw recognition of the other jurisdiction's certification at any time, with written notice to the certified reinsurer. Unless the director suspends or revokes the certified reinsurer's certification in accordance with § 20:06:31:31, the certified reinsurer's certification shall remain in good standing in this state for a period of three months, which shall be extended if additional time is necessary to consider the assuming insurer's application for certification in this state.

In addition to the clauses required in § 20:06:31:24, reinsurance contracts entered into or renewed under this section shall include a proper funding clause, which requires the certified reinsurer to provide and maintain security in an amount sufficient to avoid the imposition of any financial statement penalty on the ceding insurer under this section for reinsurance ceded to the certified reinsurer.

**Source:**

**General Authority: SDCL 58-14-17.**

**Law Implemented: SDCL 58-14-16.1, 58-14-17.**

~~DEPARTMENT OF LABOR AND REGULATION~~

~~DIVISION OF INSURANCE~~

~~FORM AR-1~~

~~CERTIFICATE OF ASSUMING INSURER~~

~~Chapter 20:06:31~~

~~APPENDIX A~~

~~SEE: § 20:06:31:02~~

Repealed.

**Source:** 22 SDR 52, effective October 25, 1995.

FORM AR 1  
CERTIFICATE OF ASSUMING INSURER

I, \_\_\_\_\_,  
\_\_\_\_\_  
(name of officer) (title of officer)

of \_\_\_\_\_, the assuming insurer  
\_\_\_\_\_  
(name of assuming insurer)

under a reinsurance agreement with one or more insurers domiciled in  
\_\_\_\_\_  
\_\_\_\_\_  
(name of state), hereby certify that

\_\_\_\_\_  
\_\_\_\_\_  
(name of assuming insurer) (“Assuming Insurer”):

1. Submits to the jurisdiction of any court of competent jurisdiction in \_\_\_\_\_  
\_\_\_\_\_  
(ceding insurer’s state of domicile)

~~for the adjudication of any issues arising out of the reinsurance agreement, agrees to comply with all requirements necessary to give such court jurisdiction, and will abide by the final decision of such court or any appellate court in the event of an appeal. Nothing in this paragraph constitutes or should be understood to constitute a waiver of Assuming Insurer’s rights to commence an action in any court of competent jurisdiction in the United States, to remove an action to a United States District Court, or to seek a transfer of a case to another court as permitted by the laws of the United States or of any state in the United States. This paragraph is not intended to conflict with or override the obligation of the parties to the reinsurance agreement to arbitrate their disputes if such an obligation is created in the agreement.~~

2. Designates the Insurance Commissioner of \_\_\_\_\_  
\_\_\_\_\_  
(ceding insurer’s state of domicile)

~~as its lawful attorney upon whom may be served any lawful process in any action, suit or proceeding arising out of the reinsurance agreement instituted by or on behalf of the ceding insurer.~~

3. Submits to the authority of the Insurance Commissioner of \_\_\_\_\_ to examine  
\_\_\_\_\_  
(ceding insurer’s state of domicile)

~~its books and records and agrees to bear the expense of any such examination.~~

4. Submits with this form a current list of insurers domiciled in \_\_\_\_\_  
\_\_\_\_\_  
(ceding insurer’s state of domicile)

~~reinsured by Assuming Insurer and undertakes to submit additions to or deletions from the list to the Insurance Commissioner at least once per calendar quarter.~~

Dated: \_\_\_\_\_  
\_\_\_\_\_  
(name of assuming insurer)

BY: \_\_\_\_\_  
\_\_\_\_\_  
(name of officer)

\_\_\_\_\_  
\_\_\_\_\_  
(title of officer)