



**STATE OF NEW YORK  
INSURANCE DEPARTMENT**  
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**OGC Op. No. 08-10-02**

The Office of General Counsel issued the following opinion on October 6, 2008 representing the position of the New York State Insurance Department.

**Re: Reinsurance by a Risk Pooling Trust of a New York Authorized Property/Casualty Insurer**

**Question Presented:**

May a New York domestic property/casualty insurance company enter into a reinsurance agreement with an Illinois-based risk pooling trust and obtain credit for that reinsurance?

**Conclusion:**

Yes. A New York domestic property/casualty insurance company may enter into a reinsurance agreement with an Illinois-based risk pooling trust and obtain credit for that reinsurance, provided that the ceding New York company holds funds provided by the risk pooling trust in accordance with the requirements set forth in New York Insurance Law § 1301(a)(14) and 11 NYCRR § 125.1 et seq. (Regulations 17, 20 and 20-A).

**Facts:**

A New York domestic property/casualty company is contemplating entering into a reinsurance arrangement with a risk pooling trust formed in accordance with Illinois law ("RPT"). The question raised is whether this arrangement would be permissible under New York law, and whether the New York insurer could count the reinsurance as an admitted asset.

Illinois law allows for the formation of risk pooling trusts pursuant to its Religious and Charitable Risk Pooling Trust Act, 215 ILL. COMP. STAT. 150/1 – 150/128 (2001), which allows certain tax-exempt organizations to form risk pooling trusts to (1) provide protection for themselves against the risk of financial loss due to damage, destruction of or loss to property or the imposition of legal liability; or (2) providing protection for their employees or full-time students, but not dependents, against the risk of financial loss due to accident, sickness or disablement. The inquirer asserts that such a risk pooling trust is expressly permitted under Illinois law to reinsure insurance companies.

**Analysis:**

New York Insurance Law §§ 1308(a), 1301(a)(14) (McKinney 2006) and Insurance Department

Regulations 17, 20 and 20A are relevant to the inquiry. Insurance Law § 1308(a) expressly permits insurers to enter into reinsurance agreements as they see fit, and states, in relevant part, as follows:

Any authorized insurer ... may, subject to the limitations of this chapter, reinsure its risks and policy liabilities in any other assuming insurer with the effects herein prescribed. No prohibition or limitation in this chapter shall invalidate any reinsurance agreement as between parties thereto.

Insurance Law § 1301(a)(14) allows an insurer to count reinsurance as an admitted asset for purposes of determining the insurer's financial condition, that statute provides:

(a) In determining the financial condition of a domestic or foreign insurer or the United States branch of an alien insurer for the purposes of this chapter, there may be allowed as admitted assets of such insurer, unless otherwise specifically provided in this chapter, only the following assets owned by such insurer:

\* \* \* \*

(14) Reinsurance recoverable by a ceding insurer:

(i) from an insurer authorized to transact such business in this state, except from a captive insurance company licensed pursuant to the provisions of article seventy of this chapter, in the full amount thereof;

(ii) from an accredited reinsurer, as defined in subsection (a) of section one hundred seven of this chapter, to the extent allowed by the superintendent on the basis of the insurer's compliance with the conditions of any applicable regulation; or

(iii) from an insurer not so authorized or accredited or from a captive insurance company licensed pursuant to the provisions of article seventy of this chapter, in an amount not exceeding the liabilities carried by the ceding insurer for amounts withheld under a reinsurance treaty with such unauthorized insurer or captive insurance company licensed pursuant to the provisions of article seventy of this chapter as security for the payment of obligations thereunder if such funds are held subject to withdrawal by, and under the control of, the ceding insurer. Notwithstanding any other provision of this chapter, the superintendent may by regulation prescribe the conditions under which a ceding insurer may be allowed credit, as an asset or as a deduction from loss and unearned premium reserves, for reinsurance recoverable from an accredited reinsurer, an insurer not authorized in this state or a captive insurance company licensed pursuant to the provisions of article seventy of this chapter. (Emphasis supplied.)

Regulations 17, 20 and 20-A, at 11 NYCRR § 125.6 provide specific detail as to the type of arrangements that constitute "amounts withheld" under a reinsurance treaty that will enable a ceding insurer to take credit on its balance sheet for reinsurance obtained from an unauthorized reinsurer. 11 NYCRR § 125.6(b) provides, in pertinent part, as follows:

(b) Other than as permitted pursuant to section 125.4(e), (f) or (g) of this Part,

credit taken by a ceding insurer for reinsurance ceded to an unauthorized insurer, which is not an accredited reinsurer, shall not exceed the amounts withheld under a reinsurance treaty with such unauthorized insurer as security for the payment of obligations thereunder, provided such funds are held subject to withdrawal by, and under the control of the ceding insurer. Amounts withheld include:

- (1) funds withheld for which the ceding insurer has set up a liability;
- (2) letters of credit complying with Part 79 of this Title (Regulation 133); and
- (3) funds deposited in trust agreements complying with Part 126 of this Title (Regulation 114).

Inquirer describes a situation wherein a New York authorized insurer seeks to reinsure risk with a nontraditional insurance entity that is not authorized to conduct the business of insurance in New York. The fact that the proposed reinsurer is an Illinois risk pooling trust does not alter the analysis. Rather, the key issue is that the proposed reinsurer, which is authorized under Illinois law to accept reinsurance, is not authorized to do an insurance business in New York and is not an accredited reinsurer in New York. That being the case, a New York ceding insurer can receive credit for reinsurance placed with such a reinsurer only if the reinsurer provides funds to the ceding company in accordance with 11 NYCRR § 125.6(b).

Accordingly, assuming that the RPT provides funds for the protection of the New York ceding insurer as provided by Regulations 17, 20 and 20-A, a New York domestic property/casualty insurance company may enter into a reinsurance agreement with an Illinois-based risk pooling trust and obtain credit for that reinsurance. Furthermore, if the funds provided are placed in a credit for reinsurance trust, the provisions of 11 NYCRR Part 126 (Regulation 114) would apply to such an arrangement.

For further information you may contact Supervising Attorney Michael Campanelli at the New York City office.