

Chapter 120-2-100

LIMITED PURPOSE SUBSIDIARIES

Section

120-2-100-.01	Authority
120-2-100-.02	Scope and Purpose
120-2-100-.03	Definitions
120-2-100-.04	Organization of limited purpose subsidiary
120-2-100-.05	Officers and Directors
120-2-100-.06	Certificate of Authority
120-2-100-.07	Capital and Surplus
120-2-100-.08	Plan of Operation
120-2-100-.09	Dividends and Distributions
120-2-100-.10	Reports and Notifications
120-2-100-.11	Material Transactions
120-2-100-.12	Investments
120-2-100-.13	Securities
120-2-100-.14	Permitted Reinsurance and Credit for Reinsurance
120-2-100-.15	Effective
120-2-100-.16	Severability

120-2-100-.01 Authority.

This regulation is promulgated by the Commissioner of Insurance pursuant to the authority set forth in O.C.G.A. §§ 33-14-100 *et seq.*

Authority O.C.G.A. §§ 33-2-9, 33-14-100 *et seq.*

120-2-100-.02 Scope and Purpose.

- (1) This regulation applies to any limited purpose subsidiary as defined in O.C.G.A. § 33-14-100.
- (2) The purposes of this regulation include:
 - (a) Providing requirements for the organization of limited purpose subsidiaries;
 - (b) Providing for the requirements for the plan of operation for limited purpose subsidiaries;
 - (c) Providing capital, surplus and risk-based capital requirements for limited purpose subsidiaries;
 - (d) Providing reporting and notification requirements for limited purpose subsidiaries;
 - (e) Providing requirements for reserves of limited purpose subsidiaries;
 - (f) Providing requirements for authorized investments of limited purpose subsidiaries;
 - (g) Providing requirements with respect to reinsurance ceded or assumed by limited purpose subsidiaries;
 - (h) Providing requirements and restrictions for Material Transactions of limited purpose subsidiaries;
 - (i) Providing requirements for dividends and distributions;
 - (j) Providing requirements for operations of limited purpose subsidiaries;
 - (k) Providing conditions of, forms for, and approval of the financing of limited purpose subsidiaries;

(l) Providing for other regulation of limited purpose subsidiaries.

Authority O.C.G.A. §§ 33-2-9, 33-14-100 *et seq.*

120-2-100-.03 Definitions.

(1) “NAIC” means the National Association of Insurance Commissioners.

(2) “Material Transaction” means a transaction or series of transactions involving amounts equal to or exceeding 5 percent of a limited purpose subsidiary’s admitted assets less any letters of credit, guaranties of a parent, intangible assets and any other assets approved by the Commissioner pursuant to Section 120-2-100-.12(2).

Authority O.C.G.A. §§ 33-2-9, 33-14-100 *et seq.*

120-2-100-.04 Organization of limited purpose subsidiary.

(1) A limited purpose subsidiary’s organizational documents shall limit the limited purpose subsidiary’s authority to transact the business of reinsurance to reinsure only the risks of the organizing domestic reinsurer and shall state that the limited purpose subsidiary shall not otherwise engage in the business of insurance or reinsurance.

(2) A limited purpose subsidiary’s organizational documents shall provide that the limited purpose subsidiary shall always be owned by the organizing domestic reinsurer and that the limited purpose subsidiary’s stock shall be issued only to the organizing domestic reinsurer.

Authority O.C.G.A. §§ 33-2-9, 33-14-100 *et seq.*

120-2-100-.05 Officers and Directors

(1) Each limited purpose subsidiary shall have not less than three directors.

(2) At least one-fourth of the directors of a limited purpose subsidiary must be residents of this state. A majority of the directors must be citizens of the United States.

(3) The officers and directors of a limited purpose subsidiary may serve as officers and directors of the organizing domestic reinsurer.

(4) A limited purpose subsidiary shall have the following officers: president; chief financial officer, secretary; and employed appointed actuary. The same individual may simultaneously hold more than one office in a limited purpose subsidiary.

Authority O.C.G.A. §§ 33-2-9, 33-14-100 *et seq.*

120-2-100-.06 Certificate of Authority.

(1) No limited purpose subsidiary shall do any reinsurance business in this state unless it first obtains from the Commissioner a certificate of authority.

(2) Before receiving a certificate of authority, a limited purpose subsidiary shall do all of the following:

(a) File with the Commissioner a copy of its plan of operation.

(b) File with the Commissioner an affidavit of its president- or chief financial officer that includes all of the following statements, to the best of such person's knowledge and belief, after reasonable inquiry:

1. The proposed organization and operation of the limited purpose subsidiary shall comply with all provisions of O.C.G.A. §§ 33-14-100 *et seq.* and this Regulation Chapter.

2. The limited purpose subsidiary's investment policy specifies guidelines as to the quality, maturity, and diversification of investments and other specifications, including investment strategies intended to assure that the investments and investment practices are appropriate for the business conducted by the limited purpose subsidiary, its liquidity needs, and its capital and surplus.

3. Any reinsurance contract and any arrangement for securing the limited purpose subsidiary's obligations under such reinsurance contract including, but not limited to, any agreements or other documentation to implement such arrangement, comply with the provisions of O.C.G.A. §§ 33-14-100 *et seq.* and this Regulation Chapter.

(c) File with the Commissioner an opinion of legal counsel, in a form acceptable to the Commissioner, that the offer and sale of any limited purpose subsidiary securities comply with all applicable registration requirements or applicable exemptions from or exceptions to such requirements of the federal securities laws and that the offer and sale of securities by the limited purpose subsidiary itself comply with all registration requirements or applicable exemptions from or exceptions to such requirements of the securities laws of this state. Such opinions shall not be required as part of the application if the limited purpose subsidiary includes a specific statement in its plan of operation that such opinions will be provided to the Commissioner in advance of the offer or sale of any limited purpose subsidiary securities.

(d) Agree to pay the reasonable expenses and costs incurred incident to an examination of the limited purpose subsidiary's application by a qualified third party selected by the Commissioner.

(e) Submit any other statements or documents required by the Commissioner to evaluate the limited purpose subsidiary's application for a certificate of authority.

(3) In the event of any material change in any item required in 120-2-100-.06(2), the limited purpose subsidiary shall notify the Commissioner at least 30 days prior to the change and submit to the Commissioner for approval any revised documents, opinions, or certifications.

(4) The Commissioner may grant a certificate of authority to a limited purpose subsidiary, which shall be valid through the next June 1 following the date of initial issuance and which may be renewed annually thereafter, authorizing the limited purpose subsidiary to transact reinsurance business as a limited purpose subsidiary in this state upon a finding that:

(a) The proposed plan of operation provides for a viable operation;

(b) The terms of any reinsurance contract and related transactions comply with O.C.G.A. §§ 33-14-100 *et seq.* and this Regulation Chapter and all applicable insurance laws and regulations; and

(c) The proposed plan of operation is not hazardous to the organizing domestic reinsurer.

(5) In conjunction with the issuance of a certificate of authority to a limited purpose subsidiary, the Commissioner may issue an order that includes any provisions, terms, and conditions regarding the organization, licensing, and operation of the limited purpose subsidiary that the Commissioner deems

appropriate and that are not inconsistent with the provisions of O.C.G.A. §§ 33-14-100 *et seq.* and this Regulation Chapter.

(6) A limited purpose subsidiary issued a certificate of authority may reinsure only risks of an organizing domestic reinsurer. A limited purpose subsidiary shall not otherwise engage in the business of insurance or reinsurance. A limited purpose subsidiary may purchase reinsurance to cede all or a portion of its risks subject to the prior approval of the Commissioner.

Authority O.C.G.A. §§ 33-2-9, 33-14-100 *et seq.*

120-2-100-.07 Capital and Surplus.

(1) The amount of minimum capital and surplus required for each limited purpose subsidiary shall be determined on an individual basis; however, no limited purpose subsidiary shall be issued a certificate of authority unless it shall possess unimpaired capital and surplus of not less than \$10 million. The Commissioner may require additional capital and surplus of any limited purpose subsidiary in an amount he deems appropriate under the circumstances based on the limited purpose subsidiary's plan of operation.

(2) Each limited purpose subsidiary shall maintain a minimum risk-based capital equal to the product of 2.5 and the number determined under the risk-based capital formula in accordance with risk-based capital instructions prescribed by the National Association of Insurance Commissioners.

Authority O.C.G.A. §§ 33-2-9, 33-14-100 *et seq.*

120-2-9-.08 Plan of Operation.

(1) A limited purpose subsidiary shall have a plan of operation approved by its board of directors. The plan of operation shall include all of the following:

(a) A complete description of all reinsurance transactions, reinsurance security arrangements, securitizations, and any other Material Transactions or arrangements.

(b) The source and form of the limited purpose subsidiary's capital and surplus.

(c) The investment policy of the limited purpose subsidiary.

(d) Pro forma financial statements and risk-based capital projections illustrating one or more adverse case scenarios, as determined under criteria required by the Commissioner, for the performance of the limited purpose subsidiary under all reinsurance contracts. Pro forma financial statements and risk-based capital projections shall be in the format prescribed by the NAIC's Uniform Certificate of Authority Application.

(e) Copies of all contracts between the limited purpose subsidiary and affiliated companies.

(2) Any change in the limited purpose subsidiary's plan of operation shall require prior approval of the Commissioner.

Authority O.C.G.A. §§ 33-2-9, 33-14-100 *et seq.*

120-2-100-.09 Dividends and Distributions.

No limited purpose subsidiary shall pay any dividend or make any other distribution to the organizing domestic reinsurer until 30 days after the Commissioner has received notice of the declaration thereof and has not within such period disapproved such payment or other distribution, or the Commissioner shall have approved such payment within such 30 day period. The notice required by this section shall include the amount of the dividend or distribution and a certification signed by an officer of the limited purpose subsidiary stating that the dividend or distribution would not jeopardize the ability of the limited purpose subsidiary to fulfil the limited purpose subsidiary's obligations.

Authority O.C.G.A. §§ 33-2-9, 33-14-100 *et seq.*

120-2-100-.10 Reports and Notifications.

- (1) A limited purpose subsidiary shall file on or before March 1 of each year a financial report of its business and affairs as of December 31 of the calendar year immediately preceding. Such report shall be filed on the life and accident and health blank adopted by the NAIC. The financial reports required by this rule shall be prepared in accordance with the NAIC's Annual Statement Instructions and the NAIC Accounting Practices and Procedures Manual unless otherwise prescribed by the Commissioner.
- (2) A limited purpose subsidiary shall file quarterly financial reports on the life and accident and health blank adopted by the NAIC. Such reports shall be as of March 31, June 30 and September 30 and shall be due May 15, August 15 and November 15 respectively.
- (3) All limited purpose subsidiaries shall have an annual audit by an independent certified public accountant and shall file an audited financial report with the Commissioner on or before June 1 for the year ended December 31 immediately preceding. Extensions of the June 1 filing date may be granted by the Commissioner for thirty (30) day periods upon a showing by the insurer and its independent certified public accountant the reasons for requesting such extension and determination by the Commissioner of good cause for an extension. The request for extension must be submitted in writing not less than ten (10) days prior to the due date in sufficient detail to permit the Commissioner to make an informed decision with respect to the extension.
- (4) A limited purpose subsidiary shall provide the Commissioner with a copy of a complete set of executed documentation of an insurance securitization no later than 45 days after the closing of the transactions for such securitization.
- (5) In the event of any material change in the financial condition or any change in the officers or directors of a limited purpose subsidiary, the limited purpose subsidiary shall notify the Commissioner in writing within two business days of any such change.
- (6) A limited purpose subsidiary shall file annually with the Commissioner an actuarial opinion, in compliance with O.C.G.A. § 33-10-13 and Regulation 120-2-74, on reserves for all risks retained by the limited purpose subsidiary. The actuarial opinion shall be provided by an appointed actuary that meets the qualification standards prescribed by Regulation 120-2-74-.05.(2).
- (7) A limited purpose subsidiary shall file annually with the Commissioner a report of the limited purpose subsidiary's risk-based capital level as of the end of the calendar year immediately preceding containing the information required by the risk-based capital instructions adopted by the NAIC.

(8) A limited purpose subsidiary shall notify the Commissioner immediately of any action by an organizing domestic reinsurer or any other person to foreclose on or otherwise take possession of collateral provided by the limited purpose subsidiary to secure any obligation of the limited purpose subsidiary.

Authority O.C.G.A. §§ 33-2-9, 33-14-100 *et seq.*

120-2-100-.11 Material Transactions.

(1) In addition to the reporting requirements prescribed by O.C.G.A. §§ 33-55-1 *et seq.*, a limited purpose subsidiary shall not take any of the following actions unless the limited purpose subsidiary provides the Commissioner at least 30 days' prior written notice and the Commissioner expressly approves the action:

(a) Any assignment, pledge or other transfer or granting of a security interest in over 30 percent of the assets of the limited purpose subsidiary.

(b) Any incurrence of material indebtedness by the limited purpose subsidiary.

(c) The termination of all or any part of a limited purpose subsidiary's business.

(2) This Rule shall not apply when a limited purpose subsidiary takes any action in accordance with the limited purpose subsidiary's plan of operation.

Authority O.C.G.A. §§ 33-2-9, 33-14-100 *et seq.*

120-2-100-.12 Investments.

(1) The limited purpose subsidiary's investment policy and its investments shall comply with Article 2 of Chapter 11 of Title 33 of the Official Code of Georgia Annotated unless otherwise specified in this Rule or approved by the Commissioner in the limited purpose subsidiary's plan of operation or an amendment to the limited purpose subsidiary's plan of operation.

(2) In addition to assets permitted by O.C.G.A. § 33-10-1, admitted assets of the limited purpose subsidiary shall include letters of credit, guaranties of a parent, and any other assets approved by the Commissioner, which shall be deemed to be, and reported as, admitted assets of the limited purpose subsidiary. The Commissioner shall have the authority to reduce the value of admitted assets, other than assets already covered by the Accounting Practices and Procedures Manual of the NAIC, if the Commissioner determines that the value of those assets has decreased. At least 30 days prior to reducing the value of such admitted assets, the Commissioner shall notify the limited purpose subsidiary and provide the limited purpose subsidiary an opportunity to remedy the issues identified by the Commissioner.

(3) A limited purpose subsidiary shall not make a loan to or an investment in any person, other than as permitted in the limited purpose subsidiary's plan of operation, without prior written approval of the Commissioner, and any such loan or investment must be evidenced by documentation approved by the Commissioner.

Authority O.C.G.A. §§ 33-2-9, 33-14-100 *et seq.*

120-2-100-.13 Securities.

(1) A limited purpose subsidiary securitization, the security-offering memorandum or other document issued to prospective investors regarding the offer and sale of a surplus note or other security shall include a disclosure that all or part of the proceeds of such insurance securitization or surplus note transaction will be used to fund the limited purpose subsidiary's obligations to the organizing domestic reinsurer.

(2) A security issued by a limited purpose subsidiary shall not be subject to regulation as an insurance or reinsurance contract. An investor in such a security or a holder of such a security shall not be considered to be transacting the business of insurance or reinsurance in this state solely by reason of having an interest in the security. The underwriter's placement or selling agents and their partners, commissioners, officers, members, managers, employees, agents, representatives, and advisors involved in an insurance securitization by a limited purpose subsidiary shall not be considered to be insurance producers or brokers or to be conducting business as an insurance or reinsurance company or as an insurance agency, brokerage, intermediary, advisory, or consulting business solely by virtue of their underwriting activities in connection with such securitization.

Authority O.C.G.A. §§ 33-2-9, 33-14-100 *et seq.*

120-2-100-.14 Permitted Reinsurance and Credit for Reinsurance.

(1) A limited purpose subsidiary may reinsure only the risks of the organizing domestic reinsurer.

(2) Unless otherwise approved in advance by the Commissioner, a reinsurance contract shall not contain any provision for payment by the limited purpose subsidiary in discharge of its obligations as a reinsurer under the reinsurance contract to any person other than the organizing domestic reinsurer or any receiver of the organizing domestic reinsurer.

(3) A limited purpose subsidiary may cede risks to one or more reinsurers approved by the Commissioner.

(4) Credit for reinsurance shall be allowed limited purpose subsidiary as either an asset or a reduction from liability on account of reinsurance ceded only when the reinsurance transaction has been approved by the Commissioner.

Authority O.C.G.A. §§ 33-2-9, 33-14-100 *et seq.*

120-2-100-.15 Contracts and Other Commercial Activities.

A limited purpose subsidiary may enter into contracts and conduct other commercial activities related or incidental to and necessary to fulfil the purposes of a reinsurance contract, an insurance securitization, and this Regulation Chapter, provided such contracts and activities are included in the limited purpose subsidiary's plan of operation or are otherwise approved in advance by the Commissioner. Such contracts and activities may include but are not limited to: entering into reinsurance contracts; issuing limited purpose subsidiary securities; complying with the terms of these contracts or securities; entering into trust, guaranteed investment contract, swap, derivative, tax, administration, services reimbursement, or fiscal agent transactions; complying with trust indentures, or reinsurance or retrocession contracts; or entering into other agreements necessary or incidental to

effect a reinsurance contract or an insurance securitization in compliance with this chapter and the limited purpose subsidiary's plan of operation.

Authority O.C.G.A. §§ 33-2-9, 33-14-100 *et seq.*

120-2-100-.16 Severability.

If any provision of this chapter or the application thereof to any person or circumstance, is held invalid by a court of competent jurisdiction, the remainder of the chapter or the applicability of such provision to other person or circumstances shall not be affected.

Authority O.C.G.A. §§ 33-2-9, 33-14-100 *et seq.*