

ALABAMA DEPARTMENT OF INSURANCE
ADMINISTRATIVE CODECHAPTER 482-1-096
PLACEMENT OF INSURANCE THROUGH ALIEN UNAUTHORIZED INSURERS

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482-1-096-.01 Authority.

The authority for the promulgation of this chapter is under the provision of Sections 27-2-17 and 27-10-1, et seq., Code of Ala. 1975.

Author: Commissioner of Insurance

Statutory Authority: Code of Ala. 1975, §§27-2-17; 27-10-1, et seq.

History: New: September 23, 1996; effective October 3, 1996.
Filed for codification in the Alabama Administrative Code by the Department of Insurance on November 14, 2005, pursuant to the Code of Ala. 1975, §27-7-43.

482-1-096-.02 Purpose.

This chapter is to carry out the provisions of the Unauthorized Insurers and Surplus Lines Act, Section 27-10-1, et seq., Code of Ala. 1975, to the extent applicable to alien insurers, by promoting the following purposes:

- (a) Protecting persons seeking insurance in this state; and
- (b) Permitting surplus lines insurance to be placed with reputable and financially sound non-admitted insurers under certain conditions.

Author: Commissioner of Insurance

Statutory Authority: Code of Ala. 1975, §§27-2-17; 27-10-1, et seq.

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482-1-096-.03 Definitions.

As used in this chapter:

(a) ALIEN INSURER. An insurer formed under the laws of any other country other than the United States of America, its states, district, territory and commonwealths which does not hold a certificate of authority to engage in insurance transactions in this state.

(b) RECOGNIZED FINANCIAL INSTITUTION. Any financial institution qualified under Section 27-5-12(b)(2)e.4., Code of Ala. 1975.

(c) FINANCIALLY SOUND. An unauthorized alien insurer is financially sound when it is possessed of admissible assets at least equal to all due or accrued liabilities (including unearned premium and claim reserves) and other required reserves, together with its total issued and outstanding capital stock, if a stock insurer, or the minimum surplus, if a Lloyd's plan or mutual insurer, amounting to at least the requirements of either Section 27-10-26(b)(1) or Section 27-10-26(b)(2), Code of Ala. 1975, as appropriate.

(d) ADMISSIBLE ASSETS. Any asset of an insurer permitted by the Commissioner of Insurance to be taken into account in any determination of the financial condition of such insurer.

(e) AUTHORIZED INSURER. An insurer duly authorized, by a subsisting certificate of authority issued by the Commissioner, to transact insurance in this state.

(f) AFFILIATES. Such term shall include an "affiliate" of, or person "affiliated" with, a specific person, and shall mean a person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, the person specified. "Control" shall mean the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract other than a commercial contract for goods or nonmanagement services, or otherwise, unless the power is the result of an official position with or corporate office held by the person.

Author: Commissioner of Insurance

Statutory Authority: Code of Ala. 1975, §§27-2-17; 27-10-1, et seq.

History: New: September 23, 1996; effective October 3, 1996. Filed for codification in the Alabama Administrative Code by the Department of Insurance on November 14, 2005, pursuant to the Code of Ala. 1975, §27-7-43.

482-1-096-.04 Eligibility Of Alien Insurers.

Surplus lines insurance may be placed with alien insurers only if the insurer:

(a) Has established satisfactory evidence of good repute and financial integrity.

(b) Is authorized as an insurer to insure risks in its country of domicile; has transacted insurance under such authority in its country of domicile for not less than the immediately past five years, unless wholly owned by an authorized insurer; and is actively regulated as an insurer by its country of domicile pursuant to regulations which mandate adequate reserving and financial integrity.

(c) If not authorized to transact insurance in at least one state of the United States, has established an effective trust fund of at least \$2,500,000 within the United States administered by a recognized financial institution and held for the benefit of its policyholders or policyholders and creditors and consisting of cash, securities, or of investments of substantially the same character and quality as those which are eligible investments for the capital and statutory reserves of admitted insurers authorized to write like kinds of insurance in this state. Such trust fund, which shall be included in any calculation of capital and surplus or its equivalent, shall have an expiration date which at no time shall be less than five (5) years. The recognized financial institution administering the trust shall be independent of any person affiliated with the alien insurer.

(d) Is financially sound.

(e)1. Has provided to the Commissioner and the surplus lines broker a copy of its current annual statement certified by such insurer. The annual statement shall be provided each year to the Commissioner within thirty (30) days from the time it is submitted to the regulatory agency in the insurer's country of domicile, and must be either:

(i) Filed with and approved by the regulatory authority in the country of domicile of the insurer, or

(ii) Certified by an accounting or auditing firm licensed either in the country of domicile of the insurer or in the United States.

2. The annual statement shall be provided to each surplus lines broker on the first occasion of each year in which such broker proposes to place insurance with the insurer. The surplus lines broker must be satisfied as to the financial soundness of the insurer prior to the placement of the insurance.

Author: Commissioner of Insurance

Statutory Authority: Code of Ala. 1975, §§27-2-17; 27-10-1, et seq.

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Determination Of Financial Soundness.

(1) The following shall be the minimum considerations for determining the financial soundness of an alien surplus lines insurer:

(a) The value of any assets to be considered in the determination of financial soundness shall be readily ascertainable.

(b) The language contained in the required trust agreement shall be consistent with the requirements of the NAIC regarding alien non-admitted insurers, except as to the minimum amount of the trust fund.

(c) The annual financial statement of each surplus lines company shall accurately reference the admissible assets, liabilities, capital, and/or surplus of the insurer as of year-end of the preceding year.

(d) No surplus lines insurer shall retain any risks on any one subject of insurance in an amount exceeding 10% of its surplus to policyholders.

(e) No surplus lines insurer shall exceed a net premiums written to policyholder surplus ratio of 3.5 to 1.

(f) No surplus lines insurer shall maintain an admitted assets to premiums written ratio of less than 1.

(g) Any securities maintained for the benefit of U.S. policyholders shall be on the list of the "Securities Valuation Office" of the NAIC as being eligible for

amortization and classed as 1, 2, or 3 (highest, high, or medium quality).

(h) Any alien non-admitted insurer on the listing of the Non-Admitted Insurers Information Office of the NAIC shall be deemed to be in compliance with these financial requirements, until otherwise determined by the Commissioner.

(i) The company shall adjust the amount of assets in its statutory trust fund according to its premium volume, policy limits, reinsurance, reserves, and liabilities so that the trust fund provides adequate protection to policyholders and creditors. The Commissioner may require periodic increases or allow decreases in the amount held in the statutory trust, except that the trust amount shall never be less than the minimum statutory requirement.

(2) Notwithstanding these requirements, the Commissioner may exercise his authority under Section 27-10-26(b)(5), Code of Ala. 1975, for the reasons stated therein including the financial soundness of the company.

Author: Commissioner of Insurance

Statutory Authority: Code of Ala. 1975, §§27-2-17; 27-10-1, et seq.

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Miscellaneous.

(1) The Commissioner may require the submission of audited financial statements. Such statements shall be certified by an independent certified or chartered public accountant licensed and in good standing with all jurisdictions in which the accountant is licensed to practice.

(2) At the time of filing its annual statement, the company shall provide to the Commissioner an organizational chart of the company and any affiliated entities, including the names, addresses, and social security or other appropriate number of each of the board members and officers of the company and any affiliated entity, as well as the same information of the owners or persons in control of the company and any affiliated entities.

(3) For determinations related to financial soundness or the admissibility of assets, NAIC manuals and publications and the Alabama Insurance Code may be used as guidelines.

(4) Prior to insuring any risk resident or located in this state, an alien unauthorized insurer shall register with the Commissioner

by providing the documents and information contained in this chapter and by providing the name and address of the person designated by the company to receive service of process in this state.

(5) The Commissioner may require any alien unauthorized insurer to submit documents and information needed to determine the eligibility, financial soundness, and compliance with Alabama statutes and this chapter.

(6) Any credit extended by the surplus lines broker to any producing agent or broker shall be done at the peril of the surplus lines broker.

Author: Commissioner of Insurance

Statutory Authority: Code of Ala. 1975, §§27-2-17; 27-10-1, et seq.

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482-1-096-.07 Severability.

If any provision of this chapter or the application thereof to any person or circumstances is for any reason held to be invalid, the remainder of this chapter and the application of such provision to other persons or circumstances shall not be affected thereby.

Author: Commissioner of Insurance

Statutory Authority: Code of Ala. 1975, §§27-2-17; 27-10-1, et seq.

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482-1-096-.08 Effective Date.

This chapter shall become effective ten (10) days from the date of certification that the properly executed chapter was delivered to the Secretary of State.

Author: Commissioner of Insurance

Statutory Authority: Code of Ala. 1975, §§27-2-17; 27-10-1, et seq.

History: New: September 23, 1996; effective October 3, 1996.

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