

DEPARTMENT OF INSURANCE**Legal Division, Corporate Affairs Bureau**

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**NOTICE OF HOLDING COMPANY ACT REVIEW STANDARDS**

To: ALL ADMITTED INSURERS AND INTERESTED PERSONS

Date: January 24, 2017

Subject: NEW PROVISIONS FOR HOLDING COMPANY ACT SERVICE AGREEMENTS EFFECTIVE JANUARY 1, 2017

In September 2016, Omnibus bill AB 2884 was passed to reflect changes to the NAIC Model Holding Company Act Regulations that occurred in 2010. As a result of AB 2884, the section 1215.5(a)(1) Holding Company Act legislative changes will take effect on January 1, 2017.

California Insurance Code section 1215.5(a)(1) now provides:

(a) Transactions by registered insurers with their affiliates are subject to the following standards:
(1) The terms shall be fair and reasonable *and consistent with the current version of Section 19 of the NAIC Insurance Holding Company System Model Regulation, subject to the requirements of this article.* (Italics indicate new language for 2017.)

The changes to Section 19 of the NAIC Holding Company Act Model Regulation require agreements for cost sharing and management services "at a minimum and as applicable" to include specific provisions. Many of these provisions are safeguard provisions that CDI already requires and are reflected on CDI's service agreement checklist. Starting January 1, 2017, CDI will require new provisions detailed in Section 19, "as applicable."

Attached is the following for reference:

- An updated CDI checklist with Section 19 provisions added

Questions regarding this Notice should be directed to the Corporate Affairs Bureau at (415) 538-4442 or (415) 538-4130.


Susan J. Stapp
Deputy General Counsel

STATE OF CALIFORNIA – DEPARTMENT OF INSURANCE
DELEGATION OF INSURER FUNCTIONS CHECKLIST
 CDI-019 (Rev. 01/2017)

Applicant: _____

Application No: _____

Entity(ies) Providing the Service: _____

Relationship to the Applicant: _____

Insurer Functions (Check Applicable Functions)

- A. Claims Payment or Adjusting
- B. Underwriting
- C. Investment Advice or Servicing
- D. Tax Allocation (See separate Checklist)
- E. Producer's Commissions Computation or Payment
- F. Appointment and Cancellation of Agents
- G. Issuance of Policies and Endorsements
- H. Cancellation of Policies
- I. Collection and Handling of Premiums and Other Funds
- J. Reinsurance (See separate Checklist)
- K. Facility Sharing
- L. Preparation of Financial Reports
- M. Advertising, Sales Promotion and Agency Development
- N. Reserving for Claims and Expenses
- O. Others (Specify): _____

General Provisions:

The following provisions must be included in every agreement.

(Column 1 must be completed by the Applicant.)

1. Effective Date of the Agreement. _____
2. The insurer shall have ultimate control and responsibility of the functions that it has delegated, and will monitor services annually for quality assurance. _____

<u>Column 1</u> <u>Contract</u> <u>References</u>	(Department Use Only)	
	<u>Column 2</u> <u>Compliance</u> <u>Yes/No</u>	<u>Column 3</u> <u>Comments</u>
	_____	_____
_____	_____	_____

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|---|-------|-------|-------|
| 3. All books and records of the insurer include all books and records developed or maintained under or related to the agreement. | _____ | _____ | _____ |
| 4. The insurer shall own and have custody of its general corporate accounts and records. | _____ | _____ | _____ |
| 5. The term of the agreement shall not be for more than five years unless the agreement contains a provision for renegotiation at least every three years. | _____ | _____ | _____ |
| 6. The insurer shall retain the right to terminate the agreement with and without cause. | _____ | _____ | _____ |
| 7. The agreement shall not be assigned. | _____ | _____ | _____ |
| 8. Compensation (also refer to Nos. 8, 9, and 10 of the Instructions.) | | | |
| a. Entity is an affiliate: Terms shall be fair and reasonable (refer to SSAP No. 25). | _____ | _____ | _____ |
| b. Method of allocation for indirect and shared expenses (refer to SSAP No. 70). | _____ | _____ | _____ |
| c. Entity is non-affiliated: Disfavored if based on a percentage of premium volume. | _____ | _____ | _____ |
| 9. Settlement: The agreement must include a description of when the amounts due are to be settled. Settlement shall occur no less frequently than quarterly, and shall comply with the requirements in the Accounting Practices and Procedures Manual. The agreement must include a provision for interest in the event that the settlements are not made in a timely manner. | _____ | _____ | _____ |
| 10. The advancement of funds to the affiliate by the insurer is prohibited, except to pay for services defined in the agreement. | _____ | _____ | _____ |
| 11. All funds and invested assets of the insurer are the exclusive property of the insurer, held for the benefit of the insurer, and subject to the control of the insurer. | _____ | _____ | _____ |
| 12. Provision for indemnification of the insurer in the event of negligence or willful misconduct of the affiliate providing the service. | _____ | _____ | _____ |
| 13. If the insurer is placed in receivership or seized by the commissioner: | | | |
| a. All of the rights of the insurer under the agreement extend to the receiver or commissioner; and | _____ | _____ | _____ |

b. All books and records will immediately be made available to the receiver or the commissioner, and shall be turned over to the receiver or the commissioner immediately upon request.

14. The affiliate has no automatic right to terminate the agreement if the insurer is placed in receivership or seized by the commissioner.

15. The affiliate will continue to maintain any systems, programs or other infrastructure if the insurer is placed in receivership or seized by the commissioner, and will make them available to the receiver or commissioner for as long as the affiliate continues to receive timely payment for services rendered.

Specific Provisions:

The following provisions must be included in the agreement if the specific function identified below is delegated to another entity.

1. **Collection and Handling of Premiums:** Any premiums that are collected must be held in a fiduciary capacity and paid over to the insurer within 30 days following collection. If the agreement is with a U.S. manager of an alien insurer, the premiums must be deposited into a trust account for the benefit of the U.S. branch.

2. **Investment Advice and Servicing:** The agreement shall specifically set forth Investment Guidelines under which the insurer has directed the investment manager/advisor to act on its behalf. The agreement shall provide that the investment manager/advisor will adhere to specific investment guidelines set by the insurer and that the insurer may change those guidelines from time to time.

Preparer or Contact Person: _____

Position or Title: _____

Telephone number: _____

E-mail address: _____

Source: [CDI Public Website for Management, Service and Cost-Sharing Agreements](#)