

304.37-160 Identification of groupwide supervisor for internationally active insurance company -- Commissioner's powers when acting as supervisor -- Cooperation with other regulatory officials -- Agreements and documentation - - Commissioner's expenses.

- (1) (a) The commissioner may:
 1. Act as the groupwide supervisor for any internationally active insurance group in accordance with this section; or
 2. Acknowledge another regulatory official as the groupwide supervisor, if the internationally active insurance group:
 - a. Does not have substantial insurance operations in the United States;
 - b. Has substantial insurance operations in the United States, but not in this state; or
 - c. Has substantial insurance operations in the United States and in this state, but the commissioner determines under this section that the other regulatory official is the appropriate groupwide supervisor.
 - (b) An insurance holding company system that does not otherwise qualify as an internationally active insurance group may request the commissioner to make a determination or acknowledgment as to a groupwide supervisor under this section.
- (2) (a) In cooperation with other state, federal, and international regulatory agencies, the commissioner shall identify a single groupwide supervisor for an internationally active insurance group.
 - (b) For an internationally active insurance group that conducts substantial insurance operations in this state, the commissioner may:
 1. Determine that he or she is the appropriate groupwide supervisor; or
 2. Acknowledge a regulatory official from another jurisdiction as the appropriate groupwide supervisor.
 - (c) In making a determination or acknowledgment of a groupwide supervisor, the commissioner shall consider the following factors:
 1. With regard to the internationally active insurance group:
 - a. The place of domicile of:
 - i. The insurers within the group that hold the largest share of the group's written premiums, assets, or liabilities; and
 - ii. The top-tiered insurer or insurers in the insurance holding company system of the group; and
 - b. The location of the executive officers or largest operational officers of the group; and
 2. Whether another regulatory official acting or seeking to act as the groupwide supervisor:

- a. Acts under a regulatory system that the commissioner determines to be:
 - i. Substantially similar to the system of regulation provided under the laws of this state; or
 - ii. Otherwise sufficient in terms of providing for groupwide supervision, enterprise risk analysis, and cooperation with other regulatory officials; and
 - b. Provides the commissioner with reasonably reciprocal recognition and cooperation.
- (d) If the commissioner is identified under this section as the groupwide supervisor, he or she may determine that it is appropriate to acknowledge another supervisor to serve as the groupwide supervisor. This acknowledgement shall be made:
 - 1. After consideration of the factors set forth in paragraph (c) of this subsection;
 - 2. In cooperation with and subject to the acknowledgement of other regulatory officials involved with supervision of members of the internationally active insurance group; and
 - 3. In consultation with the internationally active insurance group.
- (3) (a) Notwithstanding any other provision of law, when another regulatory official is acting as the groupwide supervisor of an internationally active insurance group, the commissioner shall acknowledge that regulatory official as the groupwide supervisor until there is a material change in the internationally active insurance group that results in:
 - 1. Insurers domiciled in this state holding the largest share of the group's premiums, assets, or liabilities; or
 - 2. This state being the place of domicile of the top-tiered insurer or insurers in the insurance company holding system of the group.
- (b) In the event of a material change under paragraph (a) of this subsection, the commissioner shall make a determination or acknowledgement as to the appropriate groupwide supervisor in accordance with subsection (2) of this section.
- (4) (a) Pursuant to KRS 304.37-040, the commissioner may collect from any insurer registered under KRS 304.37-020 all information necessary to make a determination or acknowledgment of groupwide supervisor under this section.
- (b) Prior to making a determination that he or she is the appropriate groupwide supervisor for an internationally active insurance group, the commissioner shall notify the insurer registered under KRS 304.37-020 and the ultimate controlling person within the group.
- (c) The internationally active insurance group shall have at least thirty (30) days to provide the commissioner with additional information pertinent to the pending determination.

- (d) The commissioner shall publish the identity of internationally active insurance groups that the commissioner has determined are subject to groupwide supervision by him or her.
- (5) The commissioner may engage in any of following activities when acting as a groupwide supervisor of an internationally active insurance group:
 - (a) Assess the enterprise risks within the group to ensure that:
 - 1. The material financial condition and liquidity risks to the members of the group engaged in the business of insurance are identified by management; and
 - 2. Reasonable and effective mitigation measures are in place;
 - (b) Request from any member of the group subject to the commissioner's supervision information necessary and appropriate to assess enterprise risk, including but not limited to information about the group member's:
 - 1. Governance, risk assessment, and management;
 - 2. Capital adequacy; and
 - 3. Material intercompany transactions;
 - (c) Coordinate and, through the authority of the regulatory officials of the jurisdictions where members of the group are domiciled, compel development and implementation of reasonable measures designed to ensure that the group is able to timely recognize and mitigate enterprise risks to group members that are engaged in the business of insurance;
 - (d) Communicate with other state, federal, and international regulatory agencies for members of the group and share relevant information, subject to the confidentiality provisions of KRS 304.37-050, through supervisory colleges as set forth in KRS 304.37-055 or otherwise;
 - (e) Enter into agreements with or obtain documentation from any insurer registered under KRS 304.37-020, any member of the group, and any other state, federal, and international regulatory agencies for group members, providing the basis for or otherwise clarifying the commissioner's role as groupwide supervisor, including provisions for resolving disputes with other regulatory officials. These agreements or documentation shall not serve or be admissible as evidence in any proceeding seeking to establish that an insurer or person within an insurance holding company system not domiciled or incorporated in this state is doing business or is otherwise subject to the personal jurisdiction of a court in this state; and
 - (f) Other groupwide supervision activities, consistent with the authority and purposes set forth in this section, considered necessary by the commissioner.
- (6) If the commissioner acknowledges that another regulatory official from a jurisdiction that is not accredited by the National Association of Insurance Commissioners is the appropriate groupwide supervisor, the commissioner may reasonably cooperate, through supervisory colleges or otherwise, with groupwide supervision undertaken by the groupwide supervisor if:

- (a) The commissioner's cooperation is in compliance with the laws of this state; and
 - (b) The regulatory official acknowledged as the groupwide supervisor also recognizes and cooperates with the commissioner's activities as a groupwide supervisor for other internationally active insurance groups where applicable. If recognition and cooperation is not reasonably reciprocal, the commissioner may refuse recognition and cooperation.
- (7) The commissioner may enter into agreements with or obtain documentation from:
- (a) Any insurer registered under KRS 304.37-020, including any affiliate of the insurer; and
 - (b) Other state, federal, and international regulatory agencies for members of an internationally active insurance group, if the regulatory officials for the state, federal, or international agencies provide the basis for or otherwise clarify the officials' roles as groupwide supervisors for the group.
- (8) An insurer registered under KRS 304.37-020 and subject to this section shall be liable for and pay the reasonable expenses of the commissioner's participation in the administration of this section, including:
- (a) The engagement of attorneys, actuaries, and any other professionals; and
 - (b) All reasonable travel expenses.

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