

NEW YORK INSURANCE LAW

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ARTICLE 77
THE LIFE INSURANCE COMPANY GUARANTY CORPORATION
OF NEW YORK ACT

[as amended November 21, 2014]

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§ 7701. **Short title.** This article shall be known and may be cited as "The Life Insurance Company Guaranty Corporation of New York Act".

§ 7702. **Purpose.** The purpose of this article is to provide funds to protect policy owners, insureds, beneficiaries, annuitants, payees and assignees of life insurance policies, health insurance policies, annuity contracts, funding agreements and supplemental contracts issued by life insurance companies, subject to certain limitations, against failure in the performance of contractual obligations due to the impairment or insolvency of the insurer issuing such policies, contracts, or funding agreements. In the judgment of the legislature, the foregoing objects and purposes not being capable of accomplishment by a corporation created under general laws, the creation of a not-for-profit corporation of insurers is provided for by this article to enable the guarantee of payment of benefits and of continuation of coverages, and members of the

corporation are subject to assessment to carry out the purposes of this article.

§ 7703. Scope. (a) (1) This article shall apply to direct life insurance policies, health insurance policies, annuity contracts, funding agreements, and supplemental contracts issued by a life insurance company licensed to transact life or health insurance or annuities in this state at the time the policy, contract, or funding agreement was issued or on the date of entry of a court order of liquidation or rehabilitation with respect to such a company that is an impaired or insolvent insurer, as the case may be.

(2) Except as otherwise provided in this section, this article shall apply to the policies, contracts, and funding agreements specified in paragraph one of this subsection with regard to a person who is:

(A) an owner or certificate holder under a policy, contract, or funding agreement and in each case who:

(i) is a resident; or

(ii) is not a resident, but only under all of the following conditions:

(I) the insurer that issued the policy, contract, or agreement is domiciled in this state;

(II) the state or states in which the person resides has or have a guaranty entity similar to the corporation created by this article; and

(III) the person is not eligible for coverage by a guaranty entity in any other state because the insurer was not licensed or authorized in that state at the time specified in that state's guaranty entity law; or

(B) the beneficiary, assignee, or payee of the person specified in subparagraph (A) of this paragraph, regardless of where the person resides.

(3) Except as otherwise provided in this section:

(A) with regard to a group annuity contract (or portion of any such contract) that does not guarantee annuity benefits with respect to any specific individual identified in the contract, this article shall apply to a person who is the owner of such a contract:

(i) if the contract is issued to or in connection with a specific benefit plan where the plan sponsor has its principal place of business in this state; provided, however, that for the purpose of this subparagraph:

(I) "plan sponsor" shall mean:

(aa) the employer in the case of a benefit plan established or maintained by a single employer;

(bb) the employee organization in the case of a benefit plan established or maintained by an employee organization, provided that "employee organization" shall mean any labor union or any organization of any kind, or any agency or employee representation committee, association, group, or plan, in which employees participate and that

exists for the purpose, in whole or in part, of dealing with employers concerning an employee benefit plan, or other matters incidental to employment relationships, or any employees' beneficiary association organized for the purpose in whole or in part, of establishing such a plan; or

(cc) in the case of a benefit plan established or maintained by two or more employers or jointly by one or more employers and one or more employee organizations, the association, committee, joint board of trustees, or other similar group of representatives of the parties who establish or maintain the benefit plan; and

(II) "principal place of business" shall mean:

(aa) the state in which the individuals who establish policy for the direction, control, and coordination of the operations of the entity as a whole primarily exercise that function, except that if more than fifty percent of the participants in the benefit plan are employed in a single state, then that state shall be deemed to be the principal place of business of the plan sponsor; or

(bb) with regard to a plan sponsor of a benefit plan described in subitem (cc) of clause (I) of this item, the principal place of business, as determined pursuant to subitem (aa) of this clause, of the employer or employee organization that has the largest investment in the benefit plan; or

(ii) issued to or in connection with a government lottery if the owner is a resident; and

(B) with regard to a structured settlement annuity, this section shall apply to a person who is a payee under the structured settlement annuity, or the beneficiary of a payee if the payee is deceased, if the payee (or beneficiary):

(i) is a resident, regardless of where the owner of the structured settlement annuity resides; or

(ii) is not a resident, but only under the following conditions:

(I) (aa) the owner of the structured settlement annuity is a resident; or

(bb) the owner of the structured settlement annuity is not a resident, but the insurer that issued the structured settlement annuity is domiciled in this state and the state in which the owner resides has a guaranty entity similar to the corporation created by this article; and

(II) neither the payee (or beneficiary) nor the owner of the structured settlement annuity is eligible for coverage by a guaranty entity of the state in which the payee (or beneficiary) or owner resides.

(b) This article shall not apply to:

(1) that portion or part of a variable life insurance policy, variable annuity contract or variable funding agreement not guaranteed by an insurer;

(2) that portion or part of any policy, contract or agreement under

which the risk is borne by the holder thereof;

(3) any policy, contract, or agreement, or part thereof, assumed by the impaired or insolvent insurer under a contract of reinsurance, other than reinsurance for which assumption certificates have been issued;

(4) any policy, contract, or agreement issued by or through the facilities of the New York Insurance Exchange, Inc., or any similar entity, or pursuant to article sixty-three of this chapter;

(5) any policy, contract, or agreement issued or issued for delivery outside the United States, to the extent it covers persons not citizens or permanent residents of the United States; and

(6) any policy, contract, or agreement payable other than in United States dollars.

(c) This article shall not apply to a person:

(1) who is a payee, or the beneficiary of a payee if the payee is deceased, of an owner resident if the payee (or beneficiary) is afforded any coverage by a guaranty entity of another state; or

(2) covered under subparagraph (A) of paragraph three of subsection (a) of this section if the guaranty entity of another state provides any coverage to the person.

§ 7704. Construction. This article shall be liberally construed to effect the purpose under section seven thousand seven hundred two of this article which shall constitute an aid and guide to interpretation.

§ 7705. Definitions. As used in this article:

(a) "Account" means any of the two accounts created under section seven thousand seven hundred six of this article.

(b) "Contractual obligations" means any obligation under covered policies, but shall not include any obligation with respect to policyholder dividends unpaid or unapplied, retrospective rate credits or similar benefits or provisions.

(c) "Corporation" means The Life Insurance Company Guaranty Corporation of New York created under section seven thousand seven hundred six of this article unless the context otherwise requires.

(d) "Covered policy" means any of the kinds of insurance specified in paragraph one, two or three of subsection (a) of section one thousand one hundred thirteen of this chapter, any supplemental contract, or any funding agreement referred to in section three thousand two hundred twenty-two of this chapter, or any portion or part thereof, within the scope of this article under section seven thousand seven hundred three of this article, except that any certificate issued to an individual under any group policy or contract shall be considered to be a separate covered policy for purposes of section seven thousand seven hundred eight of this article.

(e) "Health insurance" means the kinds of insurance specified under items (i) and (ii) of paragraph three of subsection (a) of section one

thousand one hundred thirteen of this chapter.

(f) "Impaired insurer" means a member insurer which after the effective date of this article is found to be impaired for the purposes of section one thousand three hundred ten or one thousand three hundred eleven of this chapter and is consequently placed under an order of liquidation, rehabilitation or conservation under article seventy-four of this chapter.

(g) "Insolvent insurer" means a member insurer which after the effective date of this article becomes insolvent for the purposes of section one thousand three hundred nine of this chapter and is placed under a final order of liquidation, rehabilitation or conservation by a court of competent jurisdiction.

(h) "Member insurer" means any life insurance company licensed to transact in this state any kind of insurance to which this article applies under section seven thousand seven hundred three of this article; provided, however, that the term "member insurer" also means any life insurance company formerly licensed to transact in this state any kind of insurance to which this article applies under section seven thousand seven hundred three of this article.

(i) "Premiums" means direct gross insurance premiums and annuity and funding agreement considerations received on covered policies, less return premiums and considerations thereon and dividends paid or credited to policyholders on such direct business, subject to such modifications as the superintendent may establish by regulation or order as necessary to facilitate the equitable administration of this article. Premiums do not include premiums and considerations on contracts between insurers and reinsurers. For the purposes of determining the assessment for an insurer under this article, the term "premiums", with respect to a group annuity contract (or portion of any such contract) that does not guarantee annuity benefits to any specific individual identified in the contract and with respect to any funding agreement issued to fund benefits under any employee benefit plan, means the lesser of one million dollars or the premium attributable to that portion of such group contract that does not guarantee benefits to any specific individuals or such agreements that fund benefits under any employee benefit plan.

(j) "Person" means any individual or legal entity, including a corporation, partnership, association, limited liability company, trust, or voluntary organization.

(k) "Resident" means a person to whom a contractual obligation is owed and who either: (1) resides in this state on the date of entry of a court order of liquidation or rehabilitation with respect to a member insurer that is an impaired or insolvent insurer; or (2) resided in this state at the time a member insurer issued a covered policy to such person.

(l) "Supplemental contract" means an agreement or any other mechanism

for the distribution of proceeds under a life insurance policy, health insurance policy, annuity contract, or funding agreement.

§ 7706. Creation of the corporation. (a) There is created a not-for-profit corporation to be known as "The Life Insurance Company Guaranty Corporation of New York". To the extent that the provisions of the not-for-profit corporation law do not conflict with the provisions of this article or the plan of operation of the corporation hereunder the not-for-profit corporation law shall apply to the corporation and the corporation shall be a type C corporation pursuant to the not-for-profit corporation law. If an applicable provision of this article or the plan of operation of the corporation hereunder relates to a matter embraced in a provision of the not-for-profit corporation law but is not in conflict therewith, both provisions shall apply. All member insurers shall be and remain members of the corporation as a condition of their authority to transact insurance in this state. The corporation shall perform its functions under the plan of operation established and approved under section seven thousand seven hundred ten of this article and shall exercise its powers through a board of directors established under section seven thousand seven hundred seven of this article. For purposes of administration and assessment the corporation shall maintain two accounts:

- (1) the health insurance account; and
- (2) the life insurance, annuity and funding agreement account.

(b) The corporation shall come under the immediate supervision of the superintendent and shall be subject to the applicable provisions of this article.

§ 7707. Board of directors. (a) The board of directors of the corporation shall consist of not less than five nor more than thirteen member insurers serving terms as established in the plan of operation. The members of the board shall be selected by member insurers subject to the approval of the superintendent. Vacancies on the board shall be filled for the remaining period of the term by a majority vote of the remaining board members, subject to the approval of the superintendent. To select the initial board of directors, and initially organize the corporation, the superintendent shall give notice to all member insurers of the time and place of the organizational meeting. In determining voting rights at the organizational meeting each member insurer shall be entitled to one vote in person or by proxy. If the board of directors is not selected within sixty days after notice of the organizational meeting, the superintendent may appoint the initial members of the board.

(b) In approving selections or in appointing members to the board, the superintendent shall consider, among other things, whether all member insurers are fairly represented.

(c) Members of the board may be reimbursed from the assets of the corporation for expenses incurred by them as members of the board of directors but shall not otherwise be compensated by the corporation for their services.

(d) The superintendent shall be ex-officio chairman of the board of directors but shall not be entitled to vote.

§ 7708. Powers and duties of the corporation. In addition to the powers and duties enumerated in other sections of this article, and subject to limitations and exclusions contained in this and other sections of this article:

(a) (1) If a domestic insurer is an impaired or insolvent insurer, the corporation shall, with the approval of the superintendent:

(A) guarantee, assume, or reinsure, or cause to be guaranteed, assumed, or reinsured, the covered policies, or arrange for replacement by policies found by the superintendent to be substantially similar to such covered policies;

(B) assure payment of the contractual obligations of the impaired or insolvent insurer; and

(C) provide such moneys, pledges, notes, guarantees or other means as are reasonably necessary to discharge such duties.

(2) The aggregate liability of the corporation under this subsection shall not exceed five hundred thousand dollars for all benefits, including cash values, with respect to any one life or, to the extent benefits are not allocated pursuant to a covered policy to any one life, to any one covered policy; provided, however, that (A) the foregoing limitation shall not apply to any group or blanket accident or health insurance or accident and health insurance policy; and (B) the corporation shall be liable under this subsection in an amount not to exceed one million dollars for all benefits, including cash values, with respect to any group annuity contract (or portion of any such contract) that does not guarantee annuity benefits with respect to any specific individual identified in the contract and with respect to any funding agreement issued to fund benefits under any employee benefit plan.

(b) (1) If a foreign or alien insurer is an impaired or insolvent insurer, the corporation shall, with the approval of the superintendent:

(A) guarantee, assume, or reinsure or cause to be guaranteed, assumed, or reinsured the covered policies, or arrange for replacement by policies found by the superintendent to be substantially similar to such covered policies;

(B) assure payment of the contractual obligations of the insolvent insurer; and

(C) provide such moneys, pledges, notes, guarantees, or other means as are reasonably necessary to discharge such duties.

(2) The aggregate liability of the corporation under this subsection shall be the excess over any amount that the superintendent determines

to be the statutory obligation of the guaranty corporation or association of the foreign or alien insurer's state of domicile or state of entry, but in no event shall the corporation's liability, when added to the amount so determined to be available from such other guaranty corporation or association, exceed five hundred thousand dollars for all benefits, including cash values, with respect to any one life, or, to the extent benefits are not allocated pursuant to a covered policy to any one life, to any one covered policy; provided, however, that the (A) foregoing five hundred thousand dollar limitation shall not apply to any group or blanket accident or health insurance or accident and health insurance policy; and (B) liability of all such guaranty corporations or associations may in the aggregate equal, but shall not exceed one million dollars for all benefits, including cash values, with respect to any group annuity contract (or portion of any such contract) that does not guarantee annuity benefits with respect to any specific individual identified in the contract and with respect to any funding agreement issued to fund benefits under any employee benefit plan.

(c) (1) The superintendent may, with the approval of the court, suspend cash surrender rights and policy loan rights under any covered policy for an initial period not to exceed one year and for additional successive periods, each not to exceed one year, all in addition to any contractual provision for deferral of cash or policy loan values, upon a finding that:

(A) The amounts which can be assessed under this article are less than the amounts needed to assure full and prompt performance of the impaired or insolvent insurer's contractual obligations, or that the economic or financial conditions as they affect member insurers are sufficiently adverse to render the imposition of policy or contract liens to be in the public interest, or

(B) Such suspension is necessary and proper to effectuate at a reasonable cost any guarantee, assumption or reinsurance agreement.

(2) The obligations of the corporation under subsection (a) or (b) of this section, whichever is applicable, with regard to maintaining in force any policy or contract of group life insurance or group health insurance shall be limited to one hundred eighty days from the date the impaired or insolvent insurer was placed under an order of liquidation, rehabilitation or conservation under article seventy-four of this chapter, and the corporation shall have no obligation with regard to any claim incurred pursuant to any such policy or contract beyond one hundred eighty days from such date, provided (A) that the superintendent shall have discretion to extend the period of one hundred eighty days up to three hundred sixty-six days with regard to any policy or contract when he believes circumstances warrant, and

(B) that the superintendent and the corporation may make such further extensions of such period as they mutually agree are warranted.

(3) If the superintendent or the corporation shall find that at the

time a covered annuity contract or funding agreement or a class thereof, other than an annuity contract, funding agreement or class thereof which funds a compromise or settlement contained in a judgment or order entered pursuant to the provisions of section twelve hundred seven of the civil practice law and rules, was issued by the impaired or insolvent insurer the interest rate guaranteed under such contract or agreement or class thereof was clearly excessive, the superintendent may petition the court having jurisdiction in this state, upon appropriate notice to and opportunity for submission of comments from the corporation and owners of contracts and agreements proposed to be affected, to limit the corporation's obligations under this article with respect to payment of interest to an interest rate which the court finds would have been appropriate and reasonable at the time the contract or agreement or class thereof was issued. Nothing in this subsection shall limit the rights of a holder of a contract or agreement so affected as against the impaired or insolvent insurer.

(4) Notwithstanding anything to the contrary in this article, under no circumstances shall the corporation have any obligation on account of an impaired or insolvent insurer either to, or which inures to the benefit of, any person or firm which at the time the policy, contract or agreement was issued or renewed or within ninety days of the date the insurer was determined to be impaired or insolvent, as the case may be, directly or indirectly owned ten percent or more of or controlled such impaired or insolvent insurer; provided, however, that nothing in this subsection shall relieve the corporation of responsibility with regard to contractual obligations of such insurer under certificates of insurance issued to, and insuring solely to the benefit of, the employees of such person or firm.

(d) If the corporation fails to act within a reasonable period of time as provided in subsection (a) or (b) of this section, whichever is applicable, the superintendent shall have the powers and duties of the corporation under this article with respect to any impaired or insolvent insurer.

(e) The corporation may render assistance and advice to the superintendent, upon his request, concerning rehabilitation, payment of claims, continuance of coverage, or the performance of other contractual obligations of any impaired or insolvent insurer.

(f) When any person receives benefits under this article, the corporation shall possess all of the rights under the covered policy that such person had immediately before such receipt to the extent of the benefits received because of this article whether the benefits are payments of contractual obligations or continuation of coverage; provided, however, that the corporation shall not have any greater priority against the assets of an impaired or insolvent insurer by reason of this subsection than is expressly given by section seven thousand four hundred thirty-five of this chapter. The corporation may

require an assignment to it, or the execution of any other instrument evidencing the corporation's possession, of such rights by any payee, policy or contract owner, beneficiary, insured or annuitant. The receipt of such assignment or other instrument, and its validity and enforceability by the corporation in accordance with its terms under the laws of the insurer's state of domicile or state of entry, shall be a condition precedent to the receipt of any rights or benefits conferred by this article upon such person.

(g) The contractual obligations of the impaired or insolvent insurer for which the corporation becomes or may become liable shall be no greater than the contractual obligations of the impaired or insolvent insurer would have been in the absence of an impairment or insolvency.

(h) The corporation may:

(1) enter into such contracts as are necessary or proper to carry out the provisions and purposes of this article;

(2) sue or be sued, including taking any legal actions necessary or proper for recovery of any unpaid assessments under section seven thousand seven hundred nine of this article;

(3) borrow money to effect the purposes of this article, provided, however, that the corporation may agree, as a condition of any borrowing, that the lender will be subrogated to the rights of the corporation against the impaired or insolvent insurer to the extent of the amount borrowed and interest accruing thereon, and provided further that any note or other evidence of indebtedness of the corporation not in default shall be a legal investment for domestic insurers and may be carried as admitted assets;

(4) employ or retain such persons as are necessary or proper to handle the financial transactions of the corporation, and to perform such other functions as become necessary or proper under this article;

(5) with the approval of the superintendent, negotiate and contract with any liquidator, rehabilitator, conservator or ancillary receiver to carry out the powers and duties of the corporation;

(6) take such legal action as may be necessary to avoid payment of improper claims;

(7) exercise, for the purposes of this article and to the extent approved by the superintendent, the powers of a domestic life insurance company, but in no case may the corporation issue insurance policies or annuity contracts other than those issued to perform the contractual obligations of the impaired or insolvent insurer;

(8) fund a resolution facility established pursuant to section seven thousand seven hundred nineteen of this article; and

(9) exercise all powers necessary or convenient for the purposes of this article.

§ 7709. Assessments. (a) For the purpose of providing the funds necessary to carry out the powers and duties of the corporation, the

board of directors shall assess the member insurers, separately for each account, at such time and for such amounts as the board finds necessary in accordance with the provisions of paragraph three of subsection (c) of this section. Assessments shall be due on the date set by the board which shall be not less than thirty days nor more than sixty days after prior written notice to the member insurers. Assessments shall accrue interest at the maximum rate allowed by subdivision one of section 5-501 of the general obligations law on and after the due date.

(b) There shall be three classes of assessments, as follows:

(1) Class A assessments shall be made for the purpose of meeting administrative costs and other general expenses.

(2) Class B assessments shall be made to the extent necessary to carry out the powers and duties of the corporation under section seven thousand seven hundred eight of this article with regard to an impaired or insolvent domestic insurer.

(3) Class C assessments shall be made to the extent necessary to carry out the powers and duties of the corporation under section seven thousand seven hundred eight of this article with regard to an impaired or insolvent foreign or alien insurer.

(c) (1) The amount of any class A assessment shall be determined by the board and may be made on a non pro rata basis. Such assessment shall be credited against future impairment or insolvency assessments. The maximum such assessment against any member insurer in any calendar year shall be determined, in accordance with the table set forth below, on the basis of its admitted assets as shown on its annual statement required by this chapter for the year next preceding the date of such assessment:

Companies with Admitted Assets of	Maximum Assessment
Up to \$50,000,000	\$200
\$50,000,000 to \$1,000,000,000	\$1000
\$1,000,000,000 or more	\$2000

(2) The amount of any class B or class C assessment shall be allocated for assessment purposes among the accounts in the proportion that the premiums received by the impaired or insolvent insurer on the policies or contracts covered by each account for the last calendar year preceding the assessment in which the impaired or insolvent insurer received premiums bears to the premiums received by such insurer for such calendar year on all covered policies. Class B and class C assessments against member insurers for each account shall be in the proportion that the premiums received on business in this state by each assessed member insurer on policies covered by each account for the three calendar years preceding the assessment bears to such premiums received on business in this state for such calendar years by all assessed member insurers.

(3) Assessments for funds to meet the requirements of the corporation with respect to an impaired or insolvent insurer shall be made within a reasonable time after deemed necessary by the superintendent to implement the purposes of this article. Classification of assessment under subsection (b) of this section and computation of assessments under this subsection shall be made with a reasonable degree of accuracy, recognizing that exact determinations may not always be possible.

(d) The corporation may abate or defer, in whole or in part, the assessment of a member insurer if, in the opinion of the board, payment of the assessment would endanger the ability of the member insurer to fulfill its contractual obligations. In the event an assessment against a member insurer is abated, or deferred in whole or in part, the amount by which such assessment is abated or deferred may be assessed against the other member insurers in a manner consistent with the basis for assessments set forth in this section.

(e) (1) with respect to a member insurer that is a domestic insurer and is subject to an order of rehabilitation under article seventy-four of this chapter as of March first, two thousand twelve, the total assessment against all member insurers for impairments and insolvencies, less the amount of refunds (not including interest) to member insurers pursuant to subsection (f) of this section, shall be five hundred fifty-eight million dollars; provided, however, that such five hundred fifty-eight million dollar total shall be subject to reduction in an amount, if any, determined by the superintendent, on a date not earlier than twelve months after the entry of an order of liquidation with respect to such domestic insurer, to be not needed for the corporation to be able to pay its obligations and reasonable expenses in connection with the liquidation of such domestic insurer, but in no event shall such reduction exceed fifty-eight million dollars.

(2) The total of all assessments upon a member insurer for each account shall not in any one calendar year exceed two percent of such insurer's premiums received in this state during the calendar year preceding the assessment on the policies covered by the account. If the maximum assessment, together with the other assets of the corporation in either account, does not provide in any one year in either account an amount sufficient to carry out the responsibilities of the corporation, the necessary additional funds shall be assessed as soon thereafter as permitted by this article.

(f) The board may, by an equitable method as established in the plan of operation, refund to member insurers, by retirement of certificates of contribution in proportion to the contribution of each insurer to that account, the amount by which the assets of the account exceed the amount the board finds necessary to carry out during the coming year the obligations of the corporation with regard to that account, including assets accruing from net realized capital gains and income from

investments. A reasonable amount may be retained in any account to provide funds for the continuing expenses of the corporation and for future losses if refunds are impractical.

(g) It shall be proper for any member insurer, in determining its premium rates and policy owner dividends as to any kind of insurance within the scope of this article, to consider the amount reasonably necessary to meet its assessment obligations under this article with respect to insurers which have become impaired or insolvent.

(h) The corporation shall issue to each insurer paying an assessment under this article, other than a class A assessment, a certificate of contribution, in a form prescribed by the superintendent, for the amount of the assessment so paid. All outstanding certificates shall be of equal dignity and priority irrespective of amounts or dates of issue. A certificate of contribution may be shown by the insurer in its financial statement as an asset in such form and for such amount, if any, and period of time as the superintendent may approve.

§ 7710. Plan of operation. (a) (1) The corporation shall submit to the superintendent a plan of operation and any amendments thereto necessary or suitable to assure the fair, reasonable and equitable administration of the corporation. The plan of operation and any amendments thereto shall become effective upon approval in writing by the superintendent.

(2) If the corporation fails to submit a suitable plan of operation within one hundred eighty days following the effective date of this article or if at any time thereafter the corporation fails to submit suitable amendments to the plan, the superintendent shall, after notice and hearing, adopt and promulgate such reasonable rules as are necessary or advisable to effectuate the provisions of this article. Such rules shall continue in force until modified by the superintendent or superseded by a plan submitted by the corporation and approved by the superintendent.

(b) All member insurers shall comply with the plan of operation.

(c) The plan of operation shall constitute the bylaws of the corporation and shall, in addition to requirements enumerated elsewhere in this article:

(1) Establish procedures for handling the assets of the corporation.

(2) Establish the amount and method of reimbursing members of the board of directors under section seven thousand seven hundred seven of this article.

(3) Establish regular places and times for meetings of the board of directors.

(4) Establish procedures for records to be kept of all financial transactions of the corporation, its agents and the board of directors.

(5) Establish the procedures whereby selections for the board of directors will be made and submitted to the superintendent.

(6) Establish any additional procedures for assessments under section

seven thousand seven hundred nine of this article.

(7) Contain such additional provisions as the superintendent or corporation may deem necessary or proper for the execution of the powers and duties of the corporation.

(d) The plan of operation may provide that any or all powers and duties of the corporation, except those under sections seven thousand seven hundred eight and seven thousand seven hundred nine of this article, are delegated to a corporation, association or other organization which performs or will perform functions similar to those of the corporation, or its equivalent, in two or more states. Such a corporation, association or organization shall be reimbursed for any payments made on behalf of the corporation and shall be paid for its performance of any function of the corporation. A delegation under this subsection shall take effect only with the approval of both the board of directors and the superintendent, and may be made only to a corporation, association or organization which extends protection not substantially less favorable and effective than that provided by this article.

§ 7711. Powers of the superintendent and the board of directors. In addition to the duties and powers enumerated elsewhere in this chapter:

(a) The superintendent may suspend or revoke, after notice and hearing, the certificate of authority to transact insurance in this state of any member insurer which fails to pay an assessment when due or fails to comply with the plan of operation. As an alternative the superintendent may levy a penalty to be paid to the people of this state, after notice and hearing, on any member insurer which fails to pay an assessment when due. Such penalty shall not exceed five percent of the unpaid assessment per month, but no penalty shall be less than one hundred dollars per month.

(b) Any action of the board of directors or the corporation may be appealed to the superintendent by any member insurer if such appeal is taken within thirty days of the action being appealed. Any final action or order of the superintendent shall be subject to judicial review in a court of competent jurisdiction.

(c) Upon the request of the superintendent, the board of directors shall render advice and make recommendations to the superintendent concerning any matter affecting his duties and responsibilities regarding the financial condition of member companies and companies seeking admission to transact insurance business in this state.

(d) The board of directors shall establish a panel of advisors, consisting of representatives of at least thirteen member insurers not serving on the board of directors, knowledgeable as to the life and health insurance business to provide it with information tending to indicate that any member insurer or company seeking to do any insurance business in this state is or may be in danger of becoming an impaired or insolvent insurer; persons serving on the panel of advisors shall be

deemed agents of the corporation for purposes of section seven thousand seven hundred sixteen of this article. The board of directors may, upon majority vote, make reports and recommendations to the superintendent upon any matter germane to the solvency, liquidation, rehabilitation or conservation of any member insurer or germane to the solvency of any company seeking to do an insurance business in this state. Such reports and recommendations shall not be considered public documents. Nothing in this article shall be deemed to limit the ability of a member of the panel of advisors or any other person from reporting information germane to the solvency of a member insurer or company seeking to do an insurance business in this state to the superintendent or other lawful authority or the corporation.

(e) It shall be the duty of the board of directors, upon majority vote, to notify the superintendent of any information indicating any member insurer may be an impaired or insolvent insurer.

(f) The board of directors may, upon majority vote, make recommendations to the superintendent for the detection and prevention of insolvencies.

(g) The board of directors shall, at the conclusion of any insurer insolvency in which the corporation was obligated to pay covered claims, prepare a report to the superintendent containing such information as it may have in its possession bearing on the history and causes of such insolvency. The corporation shall cooperate with the boards of directors of guaranty associations or corporations in other states in preparing a report on the history and causes for insolvency of a particular insurer, and may adopt by reference any report prepared by such other associations or corporations.

§ 7712. Credits for assessments paid. (a) The superintendent shall annually, within six months following the close of each calendar year, furnish to the commissioner of taxation and finance and the director of the division of the budget a statement of operations for the life insurance guaranty corporation and the life insurance company guaranty corporation of New York. Such statement shall show the assessments, less any refunds or reimbursements thereof, paid by each insurance company pursuant to the provisions of article seventy-five or section seven thousand seven hundred nine of this article, for the purposes of meeting the requirements of this chapter. Each statement, starting with the statement furnished in the year nineteen hundred eighty-six and ending with the statement furnished in the year two thousand, shall show the annual activity for every year commencing from nineteen hundred eighty-five through the most recently completed year. Each statement furnished in each year after the year two thousand shall reflect such assessments paid during the preceding fifteen calendar years. The superintendent shall also furnish a copy of such statement to each such insurance company.

(b) The maximum authorized credit for each company in respect of the assessments paid during the most recent calendar year covered by such statement shall be as follows:

(1) if the sum of the net assessments paid by all companies in the period reported on in the statement of operations required to be furnished by the superintendent pursuant to the provisions of subsection (a) of this section is less than one hundred million dollars, no such credits shall be authorized;

(2) (A) if the sum of such net assessments exceeds one hundred million dollars, the maximum authorized credit for each company with respect to net assessments paid by such company in any year shall be the excess, if any, of (i) over (ii), where (i) is the sum of such company's tentative cross-over year credit and its tentative credits for subsequent years, both as determined pursuant to subparagraphs (B) and (C) of this paragraph, and (ii) is the sum of the maximum credits theretofore authorized for the years covered by such statement, to and including the most recently completed year, determined with reference to the periods covered by all prior such statements.

(B) Such company's tentative cross-over year credit shall be eighty per centum of the product of (i) and (ii), where (i) is the sum of assessments paid by such company during the cross-over year, and (ii) is a fraction, the numerator of which is the excess over one hundred million dollars of the sum of net assessments paid by all companies during such period and the denominator of which is the sum of net assessments paid by such companies during the cross-over year. For purposes of this paragraph, the cross-over year is the first year during the period covered by such statement in which the net assessments paid by all companies during such period exceeded one hundred million dollars in whole or in part.

(C) Such company's tentative credit for each year subsequent to the cross-over year shall be eighty per centum of the net assessments paid by such company during such year.

(3) For the purposes of this section, net assessments means gross assessments, less any recoveries or reimbursements, paid during the period covered by the most recent statement of operations furnished by the superintendent pursuant to the provisions of subsection (a) of this section.

§ 7713. Miscellaneous provisions. (a) Nothing in this article shall be construed to reduce the liability for unpaid assessments of the insureds of an impaired or insolvent insurer operating under a plan with assessment liability.

(b) The corporation shall maintain records of all negotiations and meetings in which the corporation or its representatives are involved to discuss the activities of the corporation in carrying out its powers and duties under section seven thousand seven hundred eight of this article,

except to the extent otherwise provided by or pursuant to the plan of operation. Records of such negotiations or meetings shall be made public only upon the termination of a liquidation, rehabilitation or conservation proceeding involving the impaired or insolvent insurer, upon the termination of the impairment or insolvency of the insurer, or upon the order of a court of competent jurisdiction. Nothing in this subsection shall limit the duty of the corporation to render a report of its activities under section seven thousand seven hundred fourteen of this article.

(c) (1) During an article seventy-four rehabilitation proceeding, assets of the impaired or insolvent insurer which are determined by the superintendent to be currently available may be used to continue all covered policies, and pay all contractual obligations, of the impaired or insolvent insurer that would otherwise be covered by the corporation under section seven thousand seven hundred eight of this article. The corporation shall, subsequent to the termination of the article seventy-four rehabilitation proceeding and within a reasonable time after the commencement of a liquidation proceeding under article seventy-four of this chapter reimburse the estate of the impaired or insolvent insurer for such portion of the amount of assets so used to the extent necessary to pay class one, two and three claims pursuant to paragraph one, two or three of subsection (a) of section seven thousand four hundred thirty-five of this chapter. The corporation shall have a claim against the estate of the impaired or insolvent insurer equal to the full amount of such reimbursement, consistent with the provisions of paragraph four of subsection (a) of section seven thousand four hundred thirty-five of this chapter.

(2) During an article seventy-four rehabilitation proceeding, assets of the impaired or insolvent insurer which are determined by the superintendent to be currently available may be used to continue covered policies, and pay contractual obligations, of the impaired or insolvent insurer, other than the covered policies and contractual obligations that are covered by the corporation under section seven thousand seven hundred eight of this article, if a corporation, association or other organization which performs or will perform functions similar to those of the corporation enters into an agreement satisfactory to the superintendent prior to such use of such assets to repay the amount of such assets subsequent to the termination of the article seventy-four rehabilitation proceeding and within a reasonable time after the commencement of a liquidation proceeding under article seventy-four of this chapter.

(d) In addition to the duties and powers enumerated elsewhere in this chapter, and subject to the limitations and exclusions contained in this and other sections of this chapter, upon the commencement of a proceeding under article seventy-four of this chapter with respect to any impaired or insolvent domestic insurer, the superintendent may

request and receive from the corporation, and the corporation shall lend to the superintendent upon such request, an amount not to exceed five hundred thousand dollars as determined by the superintendent to be necessary on an emergency basis for use by the superintendent, as liquidator or rehabilitator, in the administration of the affairs of such impaired or insolvent insurer. To the extent it deems necessary or appropriate to carry out its duties under this section, the corporation may borrow such amount in accordance with subsection (h) of section seven thousand seven hundred eight of this article and may assess member insurers for the purpose of repaying such borrowing. Such assessments against each member insurer shall be in the proportion that the premiums received by such insurer on business in this state in all accounts for the calendar year preceding the assessment bear to such premiums received on business in this state in all accounts for such calendar year by all assessable member insurers. The corporation shall have a claim against the estate of such impaired or insolvent insurer equal to the amount loaned to the superintendent in accordance with this subsection, together with interest thereon at the maximum rate allowed by subdivision one of section 5-501 of the general obligations law, and such claim shall be treated as a class one claim under section seven thousand four hundred thirty-five of this chapter.

(e) The corporation shall have a claim against the impaired or insolvent insurer for all amounts expended by the corporation for the purposes of carrying out its obligations under this article.

(f) (1) Prior to the termination of any proceeding under article seventy-four of this chapter, the court may take into consideration the contributions of the respective parties, including the corporation, the shareholders and policyholders of the impaired or insolvent insurer, and any other party with a bona fide interest, in making an equitable distribution of the ownership rights of such impaired or insolvent insurer. In such a determination, consideration shall be given to the welfare of the policyholders of the continuing or successor insurer.

(2) No distribution to shareholders, if any, of an impaired or insolvent insurer shall be made, and no rehabilitation proceeding shall be terminated (except by a final order of liquidation), until and unless the total amount of valid claims of the corporation for all funds expended in carrying out its powers and duties under section seven thousand seven hundred eight of this article with respect to such insurer, together with interest thereon, have been fully recovered by the corporation or an arrangement satisfactory to the corporation has been made for their recovery. Such interest shall be at a rate which, in the opinion of the court, fairly compensates the corporation for the use of such funds, but in no event shall such rate be in excess of the maximum rate allowed by subdivision one of section 5-501 of the general obligations law at the time such funds were expended.

(g) (1) If an order for liquidation or rehabilitation of an insurer

domiciled in this state has been entered, the receiver appointed under such order shall have a right to recover on behalf of the insurer, from any parent corporation or holding company or person who otherwise controlled the insurer, the amount of distributions (other than distributions of shares of the same class of stock) paid by the insurer on its capital stock, made at any time during the five years preceding the petition for liquidation, conservation or rehabilitation, as the case may be, subject to the limitations of paragraphs two, three and four of this subsection.

(2) No such distribution shall be recoverable if the insurer shows that when paid, such distribution was reasonable and that the insurer did not know and could not reasonably have known that such distribution might adversely affect the ability of the insurer to fulfill its contractual obligations. Notice to the superintendent pursuant to subsection (a) of section four thousand two hundred seven of this chapter and the lack of a prior objection by the superintendent to such distributions shall not constitute evidence to support the showing of reasonableness which would prevent the recovery of such distribution.

(3) Any person who was a parent corporation or holding company or a person who otherwise controlled the insurer at the time such distributions were paid shall be liable up to the amount of distributions such persons received. Any person who was a parent corporation or holding company or a person who otherwise controlled the insurer at the time such distributions were declared shall be liable up to the amount of distributions he would have received if they had been paid immediately. If two or more persons are liable with respect to the same distribution, they shall be jointly and severally liable.

(4) The maximum amount recoverable under this subsection shall be the amount needed in excess of all other available assets of the impaired or insolvent insurer to pay the contractual obligations of the impaired or insolvent insurer and to reimburse the corporation for such payments and for all other claims the corporation may have pursuant to subsection (c) of this section.

(5) To the extent that any person liable under paragraph three of this subsection is insolvent or otherwise fails to pay claims due from it pursuant to such paragraph, its parent corporation or holding company or person who otherwise controlled it at the time the distribution was paid, shall be jointly and severally liable for any resulting deficiency in the amount recovered from such parent corporation or holding company or person who otherwise controlled it.

§ 7714. Examination of the corporation; annual report. The corporation shall be subject to examination and regulation by the superintendent. The corporation shall submit to the superintendent, not later than May first of each year, a financial report for the preceding calendar year in a form approved by the superintendent and a report of its activities

during the preceding calendar year.

§ 7715. Tax exemptions. The corporation shall be exempt from payment of all fees and all taxes levied by this state or any of its subdivisions, except taxes levied on real property.

§ 7716. Immunity and indemnification. No director, officer, agent or other representative of the corporation shall be individually liable to any person, firm or corporation, including the corporation, for any act or omission to act, or for any liability incurred or assumed, on behalf of the corporation or by virtue hereof. Any such liability so incurred or assumed shall be indemnified by the corporation. The expense of such indemnification shall be assessed against member insurers in a manner consistent with the method of assessment prescribed in paragraph two of subsection (c) of section seven thousand seven hundred nine of this article; no member company shall be subject to any liability except for assessment as herein provided.

§ 7717. Stay of proceedings; reopening default judgments. All proceedings in which the impaired or insolvent insurer is a party in any court in this state shall be stayed sixty days from the date an order of liquidation, rehabilitation, or conservation is final to permit proper legal action by the corporation on any matters germane to its powers or duties. As to judgment under any decision, order, verdict or finding based on default the corporation may apply to have such judgment set aside by the same court that made such judgment and, if such application is granted in the court's discretion, the corporation shall be permitted to defend against such suit on the merits. The provisions of this section shall be in addition to any other provision provided by law.

§ 7718. Prohibited advertisement of the corporation in sale of insurance. No person, including an insurer, agent or affiliate of an insurer and no broker shall make, publish, disseminate, circulate or place before the public, or cause directly or indirectly, to be made, published, disseminated, circulated or placed before the public, in any newspaper, magazine or other publication, or in the form of a notice, circular, pamphlet, letter or poster, or over any radio station or television station, or in any other way, any advertisement, announcement or statement which uses the existence of the corporation for the purpose of sales, solicitation or inducement to purchase any form of insurance covered by this article, provided, however, that this section shall not apply to the corporation or any other entity which does not sell or solicit insurance, or to prohibit the furnishing of written information in a form prepared by the corporation and approved by the superintendent by a member insurer directly to a policyholder in response to a written request therefor.

§ 7719. Resolution facility. (a) The corporation may incorporate one or more not-for-profit corporations, known as a resolution facility, in connection with the liquidation of an insolvent domestic life insurance company under article seventy-four of this chapter for the purpose of administering and disposing of the business of the insolvent domestic life insurance company.

(b) To the extent that the provisions of the not-for-profit corporation law do not conflict with the provisions of this section or the plan of operation of the resolution facility hereunder, the not-for-profit corporation law shall apply to the resolution facility and the resolution facility shall be a non-charitable corporation pursuant to the not-for-profit corporation law. If an applicable provision of this section or the plan of operation of the resolution facility hereunder relates to a matter embraced in a provision of the not-for-profit corporation law but is not in conflict therewith, then both provisions shall apply. The corporation shall be a member of the resolution facility, and other persons, including the life insurance guaranty corporation continued under article seventy-five of this chapter and guaranty entities of other states, may become members of the resolution facility in accordance with the resolution facility's certificate of incorporation and plan of operation.

(c) In addition to its certificate of incorporation, a resolution facility shall submit to the superintendent a plan of operation, and amendments thereto, necessary or suitable to assure the fair, reasonable, and equitable administration of the resolution facility. The plan of operation, and any amendments thereto, shall become effective upon approval in writing by the superintendent. The plan of operation shall constitute the bylaws of the resolution facility.

(d) A resolution facility may:

(1) guarantee, assume, or reinsure, or cause to be guaranteed, assumed, or reinsured, the covered policies, or arrange for replacement by policies found by the superintendent to be substantially similar to the covered policies;

(2) exercise, for the purposes of this article and to the extent approved by the superintendent, the powers of a domestic life insurance company, but in no case may the resolution facility issue insurance policies, annuity contracts, funding agreements, or supplemental contracts other than those issued to perform the contractual obligations of the impaired or insolvent insurer;

(3) assure payment of the contractual obligations of the insolvent insurer; and

(4) provide such moneys, pledges, notes, guarantees, or other means as are reasonably necessary to discharge its duties.

(e) A resolution facility shall not be subject to any provisions of this chapter or the financial services law except:

(1) this section; and

(2) sections seven thousand seven hundred fourteen, seven thousand seven hundred fifteen, and seven thousand seven hundred sixteen of this article, which shall apply in the same manner as they apply to the corporation.

(f) Notwithstanding subsection (e) of this section, the superintendent may address to the resolution facility any inquiry in relation to its transactions or condition or any matter connected therewith pursuant to section three hundred eight of this chapter.

(g) (1) If the superintendent determines that the resolution facility is not administering and disposing of the business of an insolvent domestic life insurance company consistent with the resolution facility's certificate of incorporation, plan of operation, or this section, then the superintendent shall provide notice to the resolution facility and the resolution facility shall have thirty days to respond to the superintendent and cure the defect.

(2) If, after thirty days, the superintendent continues to believe that the resolution facility is not administering and disposing of the business of an insolvent domestic life insurance company consistent with the resolution facility's certificate of incorporation, plan of operation, or this section, then the superintendent may apply to the court for an order directing the resolution facility to correct the defect or take other appropriate actions.