

(S. B. 1352)

(No. 49-2024)

(Approved February 19, 2024)

AN ACT

To amend Sections 61.010 and 61.260, add a new Section 61.035 to Act No. 77 of June 19, 1957, as amended, known as the “Insurance Code of Puerto Rico,” in order to clarify the purpose and scope of the International Insurers and Reinsurers Act of Puerto Rico; clarify the terms under which an international insurer or reinsurer may transact insurance or reinsurance risks resident, located, or to be performed in the United States; establish the obligation of the Office of the Insurance Commissioner to develop the International Insurance Center; and for other related purposes.

STATEMENT OF MOTIVES

The International Insurers and Reinsurers Act of Puerto Rico, Act No. 399-2004, (hereinafter, “the IIC Act”), which was incorporated in the Insurance Code of Puerto Rico as Chapter 61, is one of the most important tools employed in recent years to promote Puerto Rico’s economic development through the insurance industry. The express purpose of said Act was to “establish the legal basis to develop Puerto Rico as an International Insurance Center, through which insurers and reinsurers shall export and import insurance and services related to the insurance industry.” *See*, Section 61.010 of the Insurance Code.

Since their inception, the International Insurance Center and the IIC Act have been important pillars of the economic platforms of all government administrations and an essential part of Puerto Rico’s public policy on insurance and economic development. Insurance Commissioners such as Ramón Cruz Colón (Governor Luis Fortuño Buset’s administration) and Angela Wayne (Governor Alejandro García Padilla’s administration) together with the staff of the OIC and

the Department of Economic Development and Commerce, conducted important promotional tours in the United States and foreign countries geared at promoting the International Insurance Center and the IIC Act. As a result of these efforts, Puerto Rico currently has thirty-two (32) authorized international insurers and reinsurers under the ICC Act, all of which chose Puerto Rico as their jurisdiction of domicile, over other important insurance centers such as Bermuda, Barbados, Cayman Islands, London, and the United States. Considering that there are thirty-three (33) domestic insurers in Puerto Rico, international insurers authorized under the ICC Act practically constitute half of the insurance industry in Puerto Rico.

The purpose of the National Association of Insurance Commissioners (NAIC) is to assist the insurance commissioners of the member states and jurisdictions to oversee and more effectively regulate the insurance industry and protect consumers. NAIC is governed by the chief insurance regulators from the 50 states of the United States and other member jurisdictions.

For the first time in its history, the Office of the Insurance Commissioner (OIC) became a NAIC accredited regulator in 2012, upon showing that it met NAIC's oversight standards, and that Puerto Rico had the legislative and regulatory framework (including the IIC Act) required by NAIC. In 2017, five (5) years after the initial accreditation, NAIC conducted an extensive review of OIC, which it passed successfully.

In September 2021, the Insurance Commissioner, through Circular Letter CC-2021-1992-D, notified OIC regulated entities that it had lost NAIC accreditation. Even though it did not state the reasons for the loss of accreditation, at an oversight hearing held before the Committee on Banking, Insurance, and Consumer Affairs of the House of Representatives of Puerto Rico, the Commissioner stated that the loss of accreditation was due to two factors: (1) the OIC's inability to properly oversee a complex transaction involving insureds in

multiple states of the union; and (2) OIC officials' inability to properly communicate with the Insurance Commissioners of other states.

In accordance with Senate Resolution 612 ("S.R. 612"), the Committee on Ways and Means, Federal Affairs, and the Financial Oversight Board of the Senate of Puerto Rico undertook the task of conducting, inter alia, an investigation on the reasons for the OIC's loss of NAIC accreditation, the measures taken to achieve reaccreditation, and the impact on the insurance industry.

The Committee's investigation revealed that, in its effort to achieve reaccreditation with NAIC, the OIC took actions that were contrary to IIC Act, Rule 80 of the Insurance Code Regulation, and the 18-year plus public policy on the development of the International Insurance Center, by intending to prohibit, by regulations, international insurers from writing insurance in the United States. In addition to constituting an unlawful conduct by the OIC, it is a serious violation of the separation of powers principle, because the Legislative Assembly, with the consent of the Governor, is the one responsible for determining whether a statute should be amended to change the established public policy.

The OIC engaged in such conduct out of concern for the impact that international insurers underwriting insurance in the United States could have on the OIC's review by NAIC.

This Legislative Assembly is aware of the benefits that NAIC accreditation provides to the insurance industry. However, it is also aware of the importance of the international insurers and reinsurers' sector, and how closing its doors to international insurers and reinsurers after having invited them to establish in the Puerto Rico would tarnish the Island's reputation.

NAIC conducts its accreditation process based on the protocol established in the *Financial Regulation Standards and Accreditation Program* manual ("Accreditation Manual").

NAIC's accreditation manual expressly provides that in the evaluation of multi-state insurers, for the purposes of Part A Standards, every state's domestic insurer licensed and/or organized under its captive or special purpose vehicle statutes or any other similar statutory construct, shall be excluded.

The IIC Act is, in fact, a special law which created an international insurer and reinsurer category different and separate from domestic insurers organized under Chapters 28 and 29 and authorized under Chapter 3 of the Insurance Code, whose rules are different from those applicable to multi-state insurers under the standards of the National Association of Insurance Commissioners (NAIC). According to NAIC's own standards, international insurers organized or authorized under the IIC Act shall not be considered by NAIC in any OIC accreditation process nor be an obstacle for OIC to maintain such accreditation.

In view of the foregoing, the purpose of this Act is to clearly provide that the IIC Act is a special law different and separate from the law applicable to traditional domestic insurers, and to further clarify that international insurers authorized under the IIC Act may do business in the United States and other jurisdictions, as long as they comply with said Act and the applicable laws of said jurisdictions.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF PUERTO RICO:

Section 1.- Section 61.010 of Act No. 77 of June 19, 1957, as amended, is hereby amended to read as follows:

“Section 61.010.- Purpose.

This Chapter shall be known as the ‘International Insurers and Reinsurers Act of Puerto Rico,’ which purpose is the establishment of the legal basis to develop Puerto Rico as an International Insurance Center, through which insurers and reinsurers shall export and import insurance and services related to the insurance industry. These entities shall provide insurance and consulting services in the United States and other international markets and to captive entities, while

entities engaged in the business of reinsurance and surplus lines shall provide insurance and services in and outside of Puerto Rico.

This Chapter is established under a special law that creates a category of international insurers and reinsurers different and separate from domestic insurers organized under Chapters 28 and 29 and authorized under Chapter 3 of this Code, and subject to different rules from those applicable to multi-state insurers under the standards of the National Association of Insurance Commissioners (NAIC). Except in the case of the branches referred to in Section 61.180 of this Code, international insurers and reinsurers organized or authorized under this Chapter shall have the Commonwealth of Puerto Rico as their domicile, but shall not be considered insurers constituted in Puerto Rico for the purposes of the corresponding definition in Section 3.010 of this Code, and the provisions of this Code applicable to insurers so defined in Section 3.010 shall not apply to them.”

Section 2.- A new Section 61.035 is hereby added to Act No. 77 of June 19, 1957, as amended, to read as follows:

“Section 61.035.-Different Statutory Treatment; Reciprocity

For being subject to a different statutory treatment from that applicable to domestic insurers authorized under Chapter 3 of this Code, an international insurer or reinsurer may not request reciprocal treatment in any state or territory of the United States for licensing or reinsurance credit purposes, relying on the fact that Puerto Rico’s legal and regulatory provisions applicable to such international insurer or reinsurer are substantially similar to those of that state or territory.

Nothing in this Chapter shall be construed to prevent an international insurer or reinsurer from transacting direct insurance or reinsuring risks resident, located, or to be performed in any state or territory of the United States, or in any other foreign jurisdiction; provided, that the international insurer or reinsurer complies with the rules of said state, territory, or jurisdiction or with any federal rules

applicable to the transaction of direct insurance or reinsurance including, but not limited to, any rules applicable to insurance or reinsurance written by non-admitted insurers or reinsurers in said state, territory, or jurisdiction.”

Section 3.- Section 61.260 of Act No. 77 of June 19, 1957, as amended, is hereby amended to read as follows:

“Section 61.260.- Powers and Responsibilities of the Commissioner.

(1) ...

...

(7) The Commissioner shall be responsible for maintaining, protecting, and giving priority to the development and growth of the International Insurance Center. Likewise, the Commissioner shall be responsible for submitting to the Legislative Assembly, on or before June 30 of each year, an annual report on the efforts made by the Office of the Insurance Commissioner to discharge said responsibility. The report shall include, but shall not be limited to: (a) a list of the projects conceptualized and carried out during the year for the development of the International Insurance Center and the status of each project; (b) a list of possible legislative or regulatory initiatives that may have an impact on the International Insurance Center; (c) statistics on new international insurers and reinsurers’ applications for authorization; (d) any legislative, regulatory, or public policy matters that may have an impact on the International Insurance Center; and (e) any other matter or conflict that may have an impact on the development of the International Insurance Center.”

Section 4.- This Act shall take effect upon its approval.