

Rule I-A Investigation Procedures

Dossier 5266, July 3, 1995

Section 1 - Purpose

The broad investigative powers vested in the Commissioner of Insurance, and the corresponding obligation to facilitate an investigation that Section 2.160 of the Puerto Rico Insurance Code de, 26 L.P.R.A. sec. 216, imposes on the parties being investigated, are of vital importance for the proper performance of the Commissioner has to enforce the provisions of the Code, and to obtain any information that will allow for an effective administration of such legislation. This Rule is therefore adopted for the purpose of defining, elucidating, and regulating the rights and obligations of those may be subject to investigations carried out by the Commissioner of Insurance. This rule shall prevail with regard to any other provisions in the current Rule I governing investigation procedures. This rule will be interpreted liberally for the purpose of enforcing its provisions.

Section 2 - Definitions

The following terms will have the meanings set forth below, except that any other meaning may clearly be derived from the text of any section of this rule:

- (1) "Commissioner" - means the Commissioner of Insurance of the Commonwealth of Puerto Rico.
- (2) "Field Investigations" - the investigations carried out by order of the Commissioner outside the Office of the Commissioner of Insurance.
- (3) "Meetings" - an act at which one or more of the parties or any person related to the investigation, along with an official of the Office of the Commissioner of Insurance, clarify and elucidate given aspects of an investigation.
- (4) "Production of Documents" - a request to show or submit documents.
- (5) "Interviews" - procedure through which the person being investigated appears before an official of the Office of the Commissioner of Insurance a to set forth the person's points of view, position, allegations, evidence, whether oral or written, regarding the matter under investigation.
- (6) "Examinations" - Investigations carried out on the operations, transactions, accounts and capital of a person under investigation, whether regarding a particular matter in order to determine compliance with the provisions of the Puerto Rico Insurance Code, or to determine the financial situation of the person under investigation.

Section 3 – Types of Investigation

In the performance of the ministerial duties of the Commissioner, routine and ordinary investigations will be carried out as required by the Puerto Rico Insurance Code. At the Commissioner's discretion, such other investigations as may be deemed necessary may be carried out, whether on the initiative of the Commissioner or at the request of a party.

Section 4 – Scope of the Investigations

The Commissioner may carry out the investigations and inspections deemed advisable in order to ensure compliance with the provisions of the Puerto Rico Insurance Code and its Regulations, the Orders and Resolutions issued by the Commissioner and regarding any other matter related to insurance. The Commissioner will also carry out such investigations as may be necessary to obtain all the information that will be useful for administration of the legal and regulatory provisions the Commissioner is charged with enforcing, and any other information that may be relevant to the matter under investigation. The investigation may be extended to entities that have or have had any relation with insurance.

Section 5 – Methods or Mechanisms for Investigations

In the exercise of the Commissioner's powers, the Commissioner may carry out such interventions, investigations and inspections as may be deemed warranted, using the following mechanisms:

- (1) Requests for information submitted by:
 - (a) written requests
 - (b) orders
 - (c) communications
 - (d) subpoenas
 - (e) any other written means
- (2) Field Investigations
- (3) Meetings
- (4) Production of Documents
- (5) Interviews
- (6) Examinations
- (7) Any other method that the Commissioner of Insurance may deem appropriate

Section 6 – Access to Documents – Cooperation

Any person who is investigated must cooperate fully with the investigation being carried out by the Commissioner, in the exercise of the Commissioner's powers, and to such effect shall respond to the investigative mechanisms set forth in Section 5, and comply with the obligations imposed Section 2.160, *supra*. It will be deemed that the following acts obstruct or hinder the investigative power of the Commissioner:

- (1) Not allowing entrance to the offices of the person under investigation.
- (2) Not allowing free access to the documents under the person's custody related to the subject of the investigation.
- (3) Offering incomplete or fragmentary documentation for examination or in an imprecise or excessive manner.
- (4) Failing to instruct employees or subordinates regarding the obligation to cooperate fully with the investigation.
- (5) Proffering excuses or reasons for not allowing access to the documents that there is no authorization to do so.
- (6) Failing to respond to requests for information that have been submitted or not responding during the time stipulated for doing so.
- (7) Failing to attend meetings to which invitations have been made or failing to respond to subpoenas.
- (8) Delaying, encumbering or complicating the investigation.
- (9) Failing to provide the necessary facilities and cooperation to carry out the investigation.
- (10) Displaying an attitude, conduct or behavior tending or resulting in a threatening act, threats, intimidation or pressure that delays, hinders, obstructs, frustrates or prevents the conclusion or culmination of the investigation.
- (11) Displaying an attitude, conduct or behavior that delays, hinders or obstructs or prevents the conclusion or culmination of the investigation.
- (12) Submitting arguments that are patently frivolous and lacking any merit to contest the investigation.
- (13) Any other act or omission that frustrates the investigation.

Section 7 –Compulsory Testimony

Any person who is being investigated has the obligation to appear, testify and submit evidence with regard to the investigation that is being carried out, if so requested. For this purpose, the person under investigation, on testifying shall have the rights provided in Section 2.210 of the Puerto Rico Insurance Code, 26 L.P.R.A. sec. 221 and section 6.3 of Public Law 170, *supra*, as provided for persons under investigation.

Section 8 – Contesting an Investigation

- (1) An investigation may only be contested for one of the following reasons:
 - (a) that the request for information is clearly unreasonable, or
 - (b) that the request for information exceeds the authority of the Commissioner because it is not within the scope of the investigation, as defined in Section 4 of this Rule, or it is in no way related to the areas of interest set forth in the laws administered by the Commissioner.
- (2) Any objection to the investigation must be submitted in writing and state the specific grounds for the objection. Once the duly supported objection is submitted, the objection will be considered using the adjudicatory procedure provided in the Uniform Administrative Procedures Act and the regulations of said Act.
- (3) Any unsupported objection will be deemed not to have been received. Any objection on frivolous grounds or grounds that carry no weight and lac any merit whatsoever will be rejected outright.

Section 9 –Investigative Reports

The Commissioner will draft a report on each investigation. Each and every document containing results of the investigation will be considered to be the investigation report, whether they are letters, orders or any other kind of document. The report will state that the person under investigation has the right to respond and object to the report, and will specify the time limits for such.

A written report will not be required In the case of statistical studies, studies related to legislation and regulation, and incidental investigations of lesser importance, where there is no imputation.

Section 10 – Notification of Reports

All reports shall be notified to the person under investigation.

All persons under investigation will have the right to submit objections, arguments or comments related to the report, within twenty (20) days of the notification of the report, except that, with due justification, the Commissioner deems it necessary to shorten such period of time.

Section 11 – Objections to the Report

Answers or objections to the report must be made in writing, specifying the issues and grounds for the objection, in a precise, clear, and complete form.

Section 12 – Terms

In calculation any statute of limitation under this Rule, an order of the Commissioner of Insurance, the Puerto Rico Insurance Code or its Regulations, or any applicable statute, the day on which the act or event occurs will not be counted as the first day of the limitation. The last day of the term so calculated will be included, unless it is a Saturday, Sunday or legal holiday. When the statute of limitations or the period of time granted is less than five (5) days, Saturdays, Sundays, or legal holidays during the period will be excluded from the calculation. A half-day holiday will be considered as though it were a full day.

In the event that a report, document, fine, motion or any other applicable legal document is submitted in compliance with any term established by any provision of law, or by regulation, order or request,, it shall be deemed that such has been filed on the date it is physically received at the Office of the Commissioner of Insurance or, if mailed, the date indicated on the cancellation stamp.

Section 13 – Penalties

In accordance with the investigative powers conferred by the Puerto Rico Insurance Code al Commissioner, and the duty of any person under investigation to have all of the requested information available, it shall be considered that failure to comply with nay provision of this Rule is a violation of Section 2.160, *supra*, and as such, will result in the imposition of administrative fines as provided for such in the Code.

Section 14 –Finding of Unconstitutionality or Illegality

If a court of competent jurisdiction should find any part of this Rule to be unconstitutional or illegal, the constitutionality or validity of the remaining provisions will not be affected.

Section 15 - Qualifying Clause

This Rule will prevail over any regulatory provisions that were previously approved.

Section 16 - Effective Date

The provisions of this Rule will enter into effect five (5) days after the Commissioner publishes a notice in a newspaper of general circulation in Puerto Rico, once a week for two consecutive weeks, which it is advised that the Rule has been approved.

Any investigative action or procedure that may be pending at the time that this Rule enters into effect will be carried out according to the provisions of this Rule, provided that there is no material prejudice to the parties involved or under investigation.