

WHEREAS, this Order therefore provides a definition for “*surplus lines insurer*” and “*surplus lines broker*” and establishes standards (per the referenced changes herein, which will be incorporated into Title 22, Chapter 27 of the Virgin Islands Code by the enactment of the proposed amendments to Chapter 27) for placing surplus lines coverage in the Territory; and

WHEREAS, there is an increase in the number of eligible surplus lines insurers in the Territory, and equally, there is, in Year 2020, the onset of a transition from admitted insurer status to surplus lines insurer status by the Territory’s leading property and casualty insurer; and

WHEREAS, to foster the continued growth and development of the Territory’s surplus lines market, certain provisions of the Territory’s surplus lines law must be amended to ensure that surplus lines business conducted in the U.S. Virgin Islands is in compliance with applicable provisions of the federal Dodd-Frank Wall Street Reform and Consumer Protection Act (“the Dodd-Frank Act”, specifically the “*Nonadmitted and Reinsurance Reform Act of 2010*”, known as NRRA); and

WHEREAS, NRRA provides that the placement of surplus lines coverage and the payment of premium taxes shall be subject to the statutory and regulatory requirements solely of the insured’s Home State; and

WHEREAS, the Commissioner through this Order has adopted NRRA, which includes the Home State requirements; and

WHEREAS, Section 653(a)(2), which at present, reads: “*the insurance must not be procurable, after diligent effort has been made to do so from among a majority of the insurers authorized to transact that kind of insurance in this territory...*”, is a provision in the Territory’s surplus lines law that must be amended because it places an unreasonable burden on a surplus lines broker by requiring the surplus lines broker to first search for the requested coverage from a *majority* of admitted insurers, when there are hundreds of admitted insurers in the Territory; and

WHEREAS, accordingly, an amendment to Section 653(a)(2) would require that a diligent search for homeowner’s insurance and other types of personal lines insurance products which are permissible to export to the surplus lines market, be made with only *two* authorized admitted insurers prior to placing the coverage with an eligible surplus lines insurer. (Note: Pursuant to Title 20, Section 707 of the Virgin Islands Code, compulsory automobile liability insurance must be provided by an admitted insurer and may not be exported to the surplus lines market.) This amendment would also require that there be *one* diligent search requirement before a request for small commercial property and casualty insurance coverage is placed with an

eligible surplus lines insurer in the Territory, when the annual premium is less than \$35,000, and thirdly, that there shall be *no* diligent search requirement with an admitted insurer prior to placement of a request for large commercial property and casualty insurance coverage with an eligible surplus lines insurer when the annual premium is in excess of \$35,000; and

WHEREAS, Section 654 mandates that there be an endorsement of a surplus lines contract to include the name of the surplus lines broker and stamped wording to read, "*This contract is registered and delivered as a surplus lines coverage under the Insurance Code of the Virgin Islands*". Going forward, the endorsement shall also include the language, "*It is not covered by the Virgin Islands Guaranty Fund established pursuant to Title 33, Chapter 111, Section 3061 of the Virgin Islands Code, which only protects an insured in the event of the insolvency of an admitted insurer*", to give written notice to consumers who purchase coverage in the Territory's surplus lines market, that such coverage, in the event of an insolvency, is not protected by the Guaranty Fund; and

WHEREAS, Section 662 requires a surplus lines broker to remit to the Division of Banking, Insurance and Financial Regulation ("Division") on or before the first day of February, May, August and November of each year, five percent (5%) premium taxes on the quarterly premiums of surplus lines insurance transacted by him on risks located in the Territory. All premium taxes collected under Section 662 shall be deposited into the Insurance Guaranty Fund, notwithstanding the fact that in accordance with Section 652(a)(2), "*in the event of the insolvency of an unauthorized insurer, losses will not be paid by the Virgin Islands Guaranty Fund*".

NOW THEREFORE, the premises having been fully considered and pursuant to the authority granted to the Commissioner of Insurance in accordance with Title 22, Chapter 3, Section 51 of the Virgin Islands Code, it is hereby:

ORDERED that Title 22, Chapter 27 of the Virgin Islands Code shall be known as "*The U.S. Virgin Islands Unauthorized and Surplus Lines Insurer Act*"; and

FURTHER ORDERED that an "*Eligible Surplus Lines Insurer*" in the Territory means an unauthorized insurer which in accordance with Section 659 of this Chapter, has been deemed eligible by the Commissioner of Insurance through the Division to issue insurance coverage; and

FURTHER ORDERED that "*Surplus Lines Broker*" in the Territory means an individual licensed in accordance with the procedures set forth in Section 656 of this Chapter to solicit, negotiate, or procure insurance coverage with an unauthorized and surplus lines insurer, the insurance coverage of which cannot be procured from insurers admitted and licensed to do business in the Territory. Additionally, a surplus lines broker must comply with this Chapter's licensing, reporting and compliance requirements; and

FURTHER ORDERED that "*Home State*" in the Territory means, in accordance with NRRRA: (1) the state in which an insured maintains its principal place of business or, in the case of an individual, the individual's principal residence; or (2) if 100% of the insured risk is located out of the State, the State to which the greatest percentage of the insured's taxable premium for that insurance contract is allocated. If more than one insured from an affiliated group are named insureds on a single nonadmitted insurance contract, the term "home state" means the home state, as determined pursuant to the foregoing, of the member of the affiliated group that has the largest percentage of premium attributable to it under the insurance contract; and

FURTHER ORDERED that a *diligent search* for homeowner's insurance and other types of personal lines insurance products which are permissible to export to the surplus lines market, shall be made by a licensed surplus lines broker with only *two* authorized admitted insurers prior to placing the coverage with an eligible surplus lines insurer. (NOTE: Pursuant to Title 20, Section 707 of the Virgin Islands Code, compulsory automobile liability insurance must be provided by an admitted insurer and may not be exported to the surplus lines market.); and

FURTHER ORDERED that there shall be only *one* diligent search requirement before a request for small commercial property and casualty insurance coverage can be placed with an eligible surplus lines insurer in the Territory. There shall be *no* diligent search requirement with an admitted insurer prior to placement of a request for large commercial property and casualty insurance coverage with an eligible surplus lines insurer. Large commercial property and casualty insurance is defined as coverage with an annual premium in excess of \$35,000, while small commercial property and casualty insurance is defined as coverage with an annual premium less than \$35,000; and

FURTHER ORDERED that therefore, the language in Title 22, Chapter 27, Section 653(a)(2) of the Virgin Islands Code relating to a diligent search effort (requiring a search of a *majority* of the insurers authorized to transact that kind of business), shall no longer be applicable to conducting surplus lines business in the Territory; and

FURTHER ORDERED that every surplus lines insurer is required to submit to the Division, for reconciliation purposes and as part of the renewal review of surplus lines activity conducted in the Territory, an Annual Premiums Written Report segregated by its licensed surplus lines brokers. The Annual Premiums Written Report must include the:

- Insured's Name
- Policy Number
- Effective/Expiration Date of Policy
- Type of Risk
- Location of Risk/Address
- Premium Amount
- Coverage Amount/Exposure

FURTHER ORDERED that a consumer protection measure is necessary in this matter and henceforth, the endorsement of every surplus lines contract must be expanded to include the name of the surplus lines broker and stamped wording to read, *"This contract is registered and delivered as a surplus lines coverage under the Insurance Code of the Virgin Islands. It is not covered by the Virgin Islands Insurance Guaranty Fund established pursuant to Title 33, Chapter 111, Section 3061 of the Virgin Islands Code, which only protects an insured in the event of the insolvency of an admitted insurer"*; and

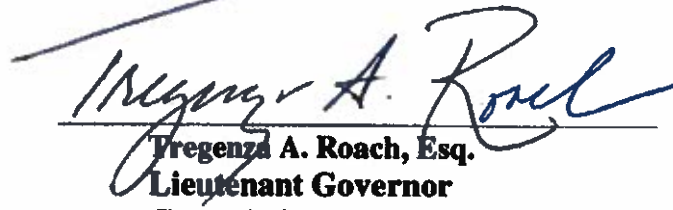
FURTHER ORDERED that there remains no requirement for insurance form or rate filings by surplus lines insurers seeking to conduct business in the Territory; and

FURTHER ORDERED that the Commissioner has adopted NRRA, which is incorporated in its entirety into the Dodd-Frank Act; and

FURTHER ORDERED that the requirements and standards set forth in this Order shall become effective on the date the Order is signed by the Commissioner of Insurance; and

FURTHER ORDERED that a copy of this Order shall be served by email or hand delivery to every eligible surplus lines insurer and licensed surplus lines broker authorized to conduct business in the U.S. Virgin Islands; additionally, a copy thereof shall be placed on the Office of the Lieutenant Governor, Division of Banking, Insurance and Financial Regulation's website at ltg.gov.vi.

Date: October 9, 2020



Tregenza A. Roach, Esq.
Lieutenant Governor
Commissioner of Insurance

