

COMMONWEALTH AUTOMOBILE REINSURERS PLAN OF OPERATION

ARTICLE I STRUCTURE AND GOVERNANCE

Massachusetts law guarantees the availability of motor vehicle insurance coverage to all qualified applicants who are unable to obtain such coverage through the voluntary market. To implement this mandate without imposing an undue hardship upon any insurance company or applicant and to create an atmosphere conducive to the efficient operation of the automobile insurance market, while safeguarding the consumer interests, an Association entitled Commonwealth Automobile Reinsurers (hereinafter CAR), is hereby created. This Plan is its charter and constitution.

The administration of CAR shall be vested in a Governing Committee under the supervision of the Commissioner of Insurance. The Governing Committee shall consist of thirteen individuals appointed by the Commissioner to terms of six years; six members to be from insurance companies participating in the Plan and one additional representative from a domestic insurer in the Commonwealth whose annual motor vehicle policy premium amounts to twenty million dollars or less and unaffiliated with any other insurance company and six members to be from the associations of insurance producers. Effective as of July 1, 1982, the Governing Committee shall consist of: three members from insurance companies participating in the Plan and two members from associations of insurance producers appointed for terms of six years; two members from insurance companies participating in the Plan and two members from associations of insurance producers appointed for terms of four years; and two members from insurance companies participating in the Plan and two members from associations of insurance producers appointed for terms of two years.

The provisions of Chapter 241 of the Acts of 1983 shall not be construed so as to alter or amend the terms of the present Governing Committee Members. As of July 1, 1984, one of the producer representatives shall be a producer who writes private passenger automobile insurance exclusively through a Servicing Carrier assigned pursuant to the provisions of the Plan. In the event that a company represented on the Governing Committee decreases its book of automobile business in the Commonwealth by more than ten percent from the previous calendar year, as determined by the Commissioner, the member representing such company shall cease to be a member of the committee and a new company and a member thereof shall be appointed to complete the former member's unexpired term. Not more than one insurer in a group under the same management shall serve on the committee at the same time. In making Governing Committee appointments, the Commissioner shall consider, among other things, whether the member companies and producers are fairly represented.

Meetings of the Governing Committee of the Plan shall be conducted in accordance with the provisions of Section 11A1/2 of Chapter 30A, of the Massachusetts General Laws. Meetings may be called by the Chairman, by written petition of four committee members, or by the Commissioner. Notice of such meetings shall be given by the Chairman to all committee members and the Commissioner.

The Governing Committee shall appoint a president, who shall serve as the full-time salaried administrator of CAR, and such other officers as it finds necessary for the proper operation of CAR. All appointments of officers shall be subject to approval by the Commissioner.

The Governing Committee shall prepare, in accordance with Article X of this Plan, Rules concerning the duties of officers, their terms of service, and their salaries.

CAR shall employ such staff and legal counsel as it finds necessary to carry out its functions. To assure that no conflict of interest prevents CAR's officers, staff, and legal counsel from performing their duties in the public interest, no officer or staff member may receive compensation from any other source and no counsel representing CAR may represent any member insurance company or association of insurance companies or producers unless these prohibitions are waived by three-fourths (3/4) consent of the members of the Governing Committee and the Commissioner. The Governing Committee shall prepare in accordance with Article X of this Plan, Rules providing for the indemnification against personal liability of individuals serving as members of the Governing Committee, other committees or as officers and staff of CAR

The law requires that all insurance companies licensed to issue motor vehicle insurance in the Commonwealth must become members of CAR and shall abide by this Plan and CAR Rules of Operation. Member Companies shall be financially responsible for all losses and expenses incurred by CAR. The Governing Committee shall prepare, in accordance with Article X of this Plan, Rules providing for the fair and equitable distribution of those losses and expenses through the assessment of Member Companies. The Plan shall provide that the allocation of premiums, losses and expenses among companies for all policies issued during the first year of operation of the Plan shall be based on the total number of risks written by each company during the calendar year nineteen hundred and eighty-two, excluding risks written through designated producers. Adjustment and consideration may be given to those companies that, due to percentage of business ceded during the base year, fall at either extreme as a result of this method of

allocating premiums, losses and expenses under this Plan. For policy years thereafter, the allocation shall be based on a method so that no company materially or substantially reduces its percentage of participation by reducing its writings, nor shall any company have their participation materially or substantially increased because of the action of other companies. Each Member Company shall report to CAR such information as the Governing Committee may reasonably require. In all instances, the services provided to risks insured by Servicing Carriers of this Plan shall be of identical kind and quality as those services provided to risks insured in the voluntary market.

ARTICLE II MANUAL RULES, RATES AND FORMS

All automobile insurance policies, binders, checks, and usual and customary correspondence shall be issued in the name of the Servicing Carrier and shall be the same as used for voluntary business, unless otherwise specifically exempted by the Commissioner of Insurance, upon the request of the Servicing Carrier.

All such policies shall be standard policies as prescribed by the Commissioner. No policy shall be issued in excess of the limitations established in the Rules of Operation of CAR

All policies insured through the Plan shall be rated in accordance with the manual of classifications, rules and rates, and rating plans filed by or on behalf of the Plan under the provisions of Chapter 175A, of the Massachusetts General Laws. The Rules of Operation shall include guidelines for Installment Payment Plans to be offered by Servicing Carriers.

Each risk insured through the Plan shall be subject to the provisions of the Safe Driver Insurance Plan established by the Commissioner

pursuant to the provisions of Section 113B, of Chapter 175, of the Massachusetts General Laws, in the same manner as risks who are not insured in the Plan.

The premium charges filed by or on behalf of the Plan shall provide that such premium charges for any risks, other than those rated in accordance with rates filed by CAR and approved by the Commissioner of Insurance, shall not exceed the premium charges which would be used by each such risk's Servicing Carrier for that risk if such risk were not insured in the Plan.

The Governing Committee shall establish, subject to the approval of the Commissioner of Insurance, such forms as may be required by the Rules of Operation to be used by Servicing Carriers on behalf of CAR

ARTICLE III SPECIAL INVESTIGATIVE UNIT

CAR shall establish a Special Investigative Unit to monitor the effectiveness of Servicing Carrier's fraud control efforts and upon request provide assistance to Member Companies.

ARTICLE IV SERVICING CARRIER SPECIAL INVESTIGATIVE UNIT

In conjunction with the Rules adopted in accordance with Article X, every Servicing Carrier shall establish a Special Investigative Unit and procedures to investigate suspicious or questionable motor vehicle insurance claims for the purpose of eliminating fraud.

Special Investigative Units so established shall be organized and operated to investigate claims for both policies issued through CAR and policies which are issued on a voluntary basis by Servicing Carriers. A claim shall not be investigated by such a unit solely on the basis that such claim arises from a policy issued through

CAR. The Governing Committee shall adopt Rules, in accordance with Article X, regarding the imposition of penalties on Servicing Carriers for failure to properly investigate suspected cases of fraudulent claims reported under policies issued through CAR

ARTICLE V SERVICING CARRIERS AND PRODUCERS

The Governing Committee shall appoint every Member of CAR as a Servicing Carrier. Servicing Carriers shall meet the eligibility requirements established by the Rules adopted in accordance with Article X. A Member may be excused from its Servicing Carrier responsibilities for Exclusive Representative Producer business if the Member executes an agreement with another entity for handling its share of private passenger and/or commercial motor vehicle Exclusive Representative Producer business. The agreement must be reviewed and approved by CAR in accordance with the Rules adopted in accordance with Article X. In accordance with the requirements of the Massachusetts General Laws, Chapter 175, Section 113H, Representative Producers shall immediately certify and Servicing Carriers shall issue a motor vehicle insurance policy upon the request of any applicant. Nothing in this paragraph shall be construed to affect the rights of any Servicing Carrier to enter into any contractual agreement for the purpose of servicing the Servicing Carrier's voluntary or voluntary ceded business.

Every qualified licensed agent/broker, shall be appointed to at least one Servicing Carrier by CAR in accordance with the Rules adopted in accordance with Article X. Every licensed agent/broker who is employed by or is an exclusive agent for a member who has been appointed a Servicing Carrier and is not operating through the American Agency System shall apply and be assigned that Servicing Carrier by the Governing Committee. The Governing

Committee or the Commissioner in order to assure reasonable access to a variety of company types through CAR, may require any licensed agent/broker, in accordance with the Rules adopted under Article X, to file an application for appointment as a Representative Producer.

In order to ensure an orderly transition from the existing Plan, licensed agents and brokers shall be assigned, as far as is practicable, to a Servicing Carrier through whom such agent or broker is currently writing a substantial portion of his private passenger automobile business and such carrier shall service such agent and broker under substantially the same contractual terms and conditions governing a normal agency relationship and may not endorse or declare that the policy is underwritten by the Plan.

The Governing Committee shall prepare, in accordance with Article X of this Plan, Rules providing for the payment of a commission to independent insurance agents or brokers on business insured through the Plan which shall be stated in the filing of rates as a percentage equal to the average percentage commission paid for risks not insured through the Plan to agents by companies which do business through independent insurance agents pursuant to the so-called American Agency System.

Servicing Carriers and Producers, appointed in accordance with this Article, shall provide the same level and type of service to policies issued through CAR as they provide to policies issued voluntarily. Such Servicing Carriers and Producers shall also have such other responsibilities and obligations as may be established by law, other Articles of this Plan, and Rules adopted in accordance with Article X.

**ARTICLE VI
CREDIT PROVISIONS**

To control the size of the population of the Plan, the Rules established in accordance with Article X annually provide for territorial and classification credits for those companies voluntarily writing private passenger automobile

Insurance within those territories and classifications that would otherwise be disproportionately represented in the Plan. The size of the credits shall be such as to enhance the prospects that no classification or territory is disproportionately represented in the Plan.

The allowance of such credits shall be based upon each Member's statewide mix of business in such a manner that any Member Company accepting its fair share of business in all classes and territories shall not be penalized. No Member Company may receive credit for any risk insured through CAR

**ARTICLE VII
RECORDS AND REPORTS**

The books of account, records, reports and other documents of CAR shall be open and free for examination to the Insurance Commissioner and Members.

The books of account of CAR shall be audited at least every twelve months by a firm of independent certified public accountants designated by the Governing Committee.

**ARTICLE VIII
AUDITING OF MEMBERS**

CAR may audit the records of any Member relating to the subject matter of the Plan of Operation and may by Rule establish what policies, records, books of account, documents and related material it deems necessary to carry out its functions.

**ARTICLE IX
OTHER DUTIES OF THE
COMMONWEALTH AUTOMOBILE
REINSURERS**

CAR shall perform such other functions as the Governing Committee deems appropriate in order to promote the efficient operation of the motor

vehicle insurance market in the Commonwealth and to assure motor vehicle insurance is available to all qualified applicants.

ARTICLE X RULES

This Plan, as the charter and constitution for CAR, sets forth the framework in which CAR will conduct its affairs. A set of Rules of Operation must also be adopted to assure that CAR functions efficiently and at all times consistently with this Plan. These Rules of Operation shall be prepared by the Governing Committee or by the Commissioner as provided in this Article.

All Rules of Operation specifically required by this Plan and all others necessary for the efficient operation of CAR shall be prepared by the Governing Committee and submitted to the Commissioner for approval. A copy of the proposed Rules of Operation prepared by the Governing Committee shall be sent to each Member Company, each association of insurance Producers, the Public Protection Division of the Office of the Attorney General, and the Commissioner. The Commissioner shall hold a public hearing on a proposed Rule if a request for such a hearing is made by a Member Company, association of insurance producers, or the Attorney General within five days of that party's receipt of the proposed Rule. A Rule of Operation proposed by the Governing Committee shall be come effective either upon the approval of the Commissioner or upon the expiration of thirty days from the time of submission provided that no public hearing has been requested on the Rule and the Commissioner has not previously disapproved the Rule.

The Commissioner may, after due hearing for which notice has been given to all interested parties, including the Joint Committee on Insurance of the Massachusetts General Court,

promulgate any Rules specifically required by this Plan if the Governing Committee has not submitted such Rules in a timely manner or if those submitted by the Governing Committee have been disapproved. The Commissioner may, from time-to-time, request the Governing Committee to prepare and submit other Rules of Operation which he considers necessary for the efficient and equitable operation of CAR. Any such request shall be in writing and shall specify the nature of the rules to be submitted. If the Rules are not submitted within thirty days of the Commissioner's request or if those submitted have been disapproved, the Commissioner may promulgate, after due hearing for which notice has been given to all interested parties including the Joint Committee on Insurance of the Massachusetts General Court, such Rules as he deems necessary for the efficient and equitable operation of CAR.

If the Commissioner finds that immediate adoption of a Rule is necessary for the fair and equitable operation of CAR and that observance of the normal requirements for promulgation of Rules would be contrary to the public interest, the Commissioner may dispense with such requirements and promulgate the Rule as an Emergency Rule. An Emergency Rule shall not remain in effect for longer than ninety days.

The Commissioner shall periodically review the consequences of the application of all Rules of Operation. If it is found, after due consideration and investigation, that the application of any Rule of Operation is unfair, unreasonable, or inconsistent with public policy, the Commissioner may suspend that Rule prospectively for a period not to exceed ninety days. A public hearing shall be held within thirty days of any such suspension, after which the Commissioner may modify, amend, or disapprove the suspended Rule.

The Commissioner may examine from time-to-time the operation of CAR and the activities of its Member Companies in any manner he finds convenient and expedient. Based on such examinations and after due hearing, if the Commissioner finds any practice or activity of CAR or its Members to be unfair, unreasonable, or inconsistent with public policy, the Commissioner may issue a written order specifying in what respects the practice or activity has been found unacceptable and requiring the discontinuance of such practice or activity. If any Member Company is found to have caused an inequitable distribution of risks among other Member Companies, brokers, or agents, the Commissioner may assign to that company an appropriate share of the expenses and losses arising from those risks in excess of the share it would ordinarily bear under CAR's Rules of Operation.

Any person aggrieved by any unfair, unreasonable, or improper practice of a Member Company or CAR may file a complaint with the Commissioner. The Commissioner shall provide a hearing on each complaint filed. If complaints indicate that there exists a pattern of unfair, unreasonable, or improper practices involving two or more Member Companies, or that two or more persons are aggrieved by the same practice or pattern of practices, the Commissioner may provide a consolidated hearing. After consideration of the evidence presented at any such hearing, the Commissioner may issue appropriate orders which in the Commissioner's judgment will remedy any damage which may have resulted from the unfair, unreasonable, or improper practices and will assure that the unacceptable practices or pattern of practices is not repeated.

ARTICLE XI AMENDMENTS

The Governing Committee shall, whenever it finds it necessary for the proper operation of CAR or whenever requested by the Commissioner, file amendments to this Plan for the Commissioner's approval. A proposed amendment shall become effective either upon

the written approval of the Commissioner or upon the expiration of thirty days after filing, provided that the Commissioner has not previously disapproved the amendment in writing. If the Commissioner considers any proposed amendment unacceptable, he shall issue a notice indicating the basis of his opinion and fixing a date for a public hearing on the amendment. After the hearing, at which all parties directly interested in the amendment shall have an opportunity to be heard, the Commissioner may disapprove the proposed amendment.

If the Commissioner requests the submission of a proposed amendment and no such amendment has been filed by the Governing Committee and approved within sixty days of the Commissioner's request, the Commissioner may prepare and publish an amendment which he believes will help carry out the objectives of Massachusetts law and public policy. The Commissioner shall submit any amendment proposed in this matter to the Joint Committee on Insurance of the Massachusetts General Court at the time of its publication and shall schedule a public hearing on the amendment for not less than ten days after publication. After due hearing, the Commissioner may promulgate the published amendment, or any modification of that amendment, which, in the Commissioner's opinion, will promote the public interest and otherwise meet the requirements of the Massachusetts General Laws.

ARTICLE XII EFFECTIVE DATE

This Plan shall become effective January 1, 1984.