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INSURANCE CODE - INS

DIVISION 1. GENERAL RULES GOVERNING INSURANCE [100 - 1879.8] (*Division 1 enacted by Stats. 1935, Ch. 145.*)

PART 2. THE BUSINESS OF INSURANCE [680 - 1879.8] (*Part 2 enacted by Stats. 1935, Ch. 145.*)

CHAPTER 2. Incorporated Insurers [1140 - 1260] (*Chapter 2 enacted by Stats. 1935, Ch. 145.*)

ARTICLE 6. Foreign Investments [1240 - 1242] (*Article 6 enacted by Stats. 1935, Ch. 145.*)

1240. The following definitions shall apply in this article:

- (a) "Foreign currency" means a currency other than that of the United States.
- (b) "Foreign investment" means an investment in a foreign jurisdiction, or an investment in a person, real estate, or asset domiciled in a foreign jurisdiction, that is substantially of the same kind, class, and investment grade as those eligible for investment under this code, other than under Section 1210 or 1241. An investment shall not be a foreign investment if the issuing person, qualified primary credit source, or qualified guarantor is a domestic jurisdiction or a person domiciled in a domestic jurisdiction, unless both of the following apply:
 - (1) The issuing person is a shell business entity.
 - (2) The investment is not assumed, accepted, guaranteed, or insured or otherwise backed by a domestic jurisdiction or a person, that is not a shell business entity, domiciled in a domestic jurisdiction.
- (c) For purposes of subdivision (b), the following definitions apply:
 - (1) "Shell business entity" means a business entity having no economic substance, except as a vehicle for owning interests in assets issued, owned, or previously owned by a person domiciled in a foreign jurisdiction.
 - (2) "Qualified guarantor" means a guarantor against which an insurer has a direct claim for full and timely payment, evidenced by a contractual right for which an enforcement action can be brought in a domestic jurisdiction.
 - (3) "Qualified primary credit source" means the credit source to which an insurer looks for payment as to an investment and against which an insurer has a direct claim for full and timely payment, evidenced by a contractual right for which an enforcement action can be brought in a domestic jurisdiction.
- (d) "Foreign jurisdiction" means a jurisdiction other than the United States or any of its political subdivisions.

(*Repealed and added by Stats. 2008, Ch. 129, Sec. 3. Effective January 1, 2009.*)

1241. (a) Subject to the limitation in Section 1242, and except for those foreign investments permitted under Section 1192.95, a domestic insurer may acquire foreign investments of substantially the same type as those that an insurer is permitted to acquire pursuant to this code, if, as a result of the acquisition and after giving effect to the investment, both of the following apply:

- (1) The aggregate amount of foreign investments then held by the insurer does not exceed:
 - (A) Twenty percent of admitted assets, for an insurer with admitted assets equal to or in excess of five hundred million dollars (\$500,000,000).
 - (B) Five percent of admitted assets, for an insurer with admitted assets less than five hundred million dollars (\$500,000,000).
- (2) The aggregate amount of foreign investments then held by the insurer in a single foreign jurisdiction does not exceed:
 - (A) Ten percent of admitted assets, for any foreign jurisdiction that has a sovereign debt rating of SVO 1.

(B) Three percent of admitted assets, for any foreign jurisdiction that has a sovereign debt rating lower than SVO 1.

(b) Subject to the limitations of Section 1242, an insurer may acquire investments denominated in foreign currencies, whether or not they are foreign investments acquired under subdivision (a) of this section, or additional foreign currency exposure as a result of the termination or expiration of a hedging transaction as defined in Section 1211 with respect to investments denominated in a foreign currency, if the following requirements are met:

(1) The aggregate amount of investments then held by an insurer under this subdivision denominated in foreign currencies does not exceed:

(A) Ten percent of admitted assets, for an insurer described in subparagraph (A) of paragraph (1) of subdivision (a).

(B) Three percent of admitted assets, for an insurer described in subparagraph (B) of paragraph (1) of subdivision (a).

(2) The aggregate amount of investments then held by an insurer under this subdivision denominated in the foreign currency of a single foreign jurisdiction does not exceed:

(A) Ten percent of admitted assets, for an insurer described in subparagraph (A) of paragraph (1) of subdivision (a) for a foreign jurisdiction that has a sovereign debt rating of SVO 1 or 3 percent of admitted assets as to any other foreign jurisdiction.

(B) Three percent of admitted assets, for an insurer described in subparagraph (B) of paragraph (1) of subdivision (a).

(3) An investment shall not be considered denominated in a foreign currency if the acquiring insurer enters into one or more contracts in transactions permitted under Section 1211 and the business entity counterparty agrees under the contract or contracts to exchange all payments made on the foreign currency denominated investment for United States currency at a rate that effectively insulates the investment cashflows against future changes in currency exchange rates during the period the contract or contracts are in effect.

(c) In addition to investments permitted under subdivisions (a) and (b), a domestic insurer that is authorized to do business in a foreign jurisdiction, and that has outstanding insurance, annuity, or reinsurance contracts on lives or risks resident or located in that foreign jurisdiction and denominated in the foreign currency of that jurisdiction may acquire foreign investments respecting that jurisdiction, subject to the limitations of Section 1242. However, investments made under this subdivision in obligations of foreign governments, their political subdivisions, and government-sponsored enterprises shall not be subject to the limitations of Section 1242 if those investments carry an SVO rating of 1 or 2. The aggregate amount of investments acquired by the insurer shall not exceed the greater of the following:

(1) The amount that the insurer is required by the law of the foreign jurisdiction to invest in the foreign jurisdiction.

(2) One hundred fifteen percent of the amount of the insurer's reserves, net of reinsurance and other obligations under the contracts.

(d) In addition to investments permitted under subdivisions (a) and (b), an insurer that is not authorized to do business in a foreign jurisdiction, but that has outstanding insurance, annuity, or reinsurance contracts on lives or risks resident or located in that foreign jurisdiction and denominated in the foreign currency of that jurisdiction may acquire foreign investments respecting that jurisdiction, and may acquire investments denominated in the currency of that jurisdiction subject to the limitations of Section 1242. However, investments made under this subdivision in obligations of foreign governments, their political subdivisions, and government-sponsored enterprises shall not be subject to the limitations of Section 1242 if those investments carry an SVO rating of 1 or 2. The aggregate amount of investments acquired by the insurer shall not exceed 105 percent of the amount of the insurer's reserves, net of reinsurance and other obligations under the contracts on lives or risks resident or located in the foreign jurisdiction.

(e) The investments acquired under this section shall be subject to Sections 1200, 1201, and 1202.

(f) Nothing in this section shall in any way restrict or limit Canadian investments otherwise permitted by this code. Canadian investments acquired under other sections of this code shall not be considered foreign investments for purposes of the limitations set forth in this section.

(g) Investments made pursuant to Section 1192.9 in investment companies shall be governed by this article to the extent specified in Section 1192.9.

(Repealed and added by Stats. 2008, Ch. 129, Sec. 5. Effective January 1, 2009.)

1241.1. (a) No domestic insurer shall acquire any investment respecting a foreign jurisdiction, or any investment denominated in the currency of that foreign jurisdiction, if that jurisdiction is designated as a state sponsor of terrorism by the United States Secretary of State pursuant to Section 6(j) of the Export Administration Act, Section 40 of the Arms Export Control Act, and Section 620A of the Foreign Assistance Act.

(b) If any investment made pursuant to Section 1241 later becomes prohibited by this section, that investment shall not be retained as an investment made pursuant to this code.

(Repealed and added by Stats. 2008, Ch. 129, Sec. 7. Effective January 1, 2009.)

1241.2. (a) The Legislature finds and declares all of the following:

(1) The federal Securities and Exchange Commission has determined that business activities in foreign states sponsoring terrorism, such as Iran, that are subject to sanctions by the United States may materially harm the share value of foreign companies. Shares in these foreign companies may be held in the portfolio of insurance companies issuing policies to California consumers.

(2) Publicly traded companies in the United States are substantially restricted in doing business in or with foreign states, such as Iran, that the United States Department of State has identified as sponsoring terrorism.

(3) Identifying companies with business activities in foreign states, such as Iran, that sponsor terrorism and ensuring that those investments are financially sound is an important public policy priority.

(4) It is the government of Iran, and not the people of Iran, that is responsible for Iran's support of terrorism and that commits egregious violations of human rights under which its own citizens are required to live.

(b) As used in this section, the following definitions shall apply:

(1) "Business operations" means maintaining, selling, or leasing equipment, facilities, personnel, or any other apparatus of business or commerce in Iran, including the ownership or possession of real or personal property located in Iran.

(2) "Company" means a sole proprietorship, organization, association, corporation, partnership, venture, or other entity, its subsidiary or affiliate that exists for profitmaking purposes or to otherwise secure economic advantage. "Company" also means a company owned or controlled, either directly or indirectly, by the government of Iran, that is established or organized under the laws of or has its principal place of business in the Islamic Republic of Iran.

(3) "Government of Iran" means the government of Iran or its instrumentalities or political subdivisions. "Government of Iran" also means an individual, company, or public agency located in Iran that provides material or financial support to the Islamic Republic of Iran.

(4) "Invest" or "investment" means the purchase, ownership, or control of stock of a company, association, or corporation, the capital stock of a mutual water company or corporation, bonds issued by the government or a political subdivision of Iran, corporate bonds or other debt instruments issued by a company, or the commitment of funds or other assets to a company, including a loan or extension of credit to that company.

(5) "Iran" means the Islamic Republic of Iran or a territory under the administration or control of Iran.

(c) (1) Investments by a domestic insurer included on the list of companies by the Department of General Services pursuant to subdivision (b) of Section 2203 of the Public Contract Code shall be treated as nonadmitted assets. Utilization of this list by a domestic insurer to review its investments shall be deemed automatic compliance by the department.

(2) On or before June 30, 2013, and annually thereafter, the insurer shall determine what investments it has in companies included on the Department of General Services list.

(d) The insurer shall provide the department, on an annual basis, a list of investments the insurer has in companies included on the Department of General Services list described in subdivision (c), including, but not limited to, the issuer, by name, of the stock, bonds, securities, and other evidence of indebtedness.

(e) If the insurer sells or transfers all of its investments in companies included on the Department of General Services list described in subdivision (c), this section shall not apply to that insurer.

(f) This section shall cease to be operative if both of the following apply:

(1) Iran is removed from the United States Department of State's list of countries that have been determined to repeatedly provide support for acts of international terrorism.

(2) Pursuant to the appropriate federal statute, the President of the United States determines and certifies to the appropriate committee of the Congress of the United States that Iran has ceased its efforts to design, develop, manufacture, or acquire a nuclear explosive device or related materials and technology.

(g) The provisions of this section are severable. If any provision of this section or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

(Added by Stats. 2012, Ch. 479, Sec. 1. (AB 2160) Effective January 1, 2013. Conditionally inoperative as provided in subd. (f).)

1242. (a) (1) Except as otherwise specified in Section 1241, a domestic insurer shall not acquire directly or indirectly through an investment subsidiary, an investment under Section 1241 if, as a result of and after giving effect to the investment, the insurer would hold more than 3 percent of its admitted assets in investments of all kinds issued, assumed, accepted, insured, or guaranteed by a single person, or 5 percent of its admitted assets in investments in the voting securities of a depository institution or any company that controls the institution.

(2) The 3 percent limitation in paragraph (1) shall not apply to the aggregate amounts insured by a single financial guaranty insurer with the highest generic rating issued by a nationally recognized statistical rating organization.

(b) A domestic insurer shall not acquire, directly or indirectly through an investment subsidiary, an investment under Section 1241 if, as a result of and after giving effect to the investment, the insurer's aggregate medium and lower grade investments do not comply with the limitations of Section 1196.1.

(Added by Stats. 2008, Ch. 129, Sec. 8. Effective January 1, 2009.)