

2890

2013-2014 Regular Sessions

I N S E N A T E

January 24, 2013

Introduced by Sen. SEWARD -- read twice and ordered printed, and when printed to be committed to the Committee on Insurance

AN ACT to amend the insurance law, in relation to the foreign investments of insurance companies

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. Paragraph 7 of subsection (a) of section 1405 of the insurance law, subparagraph (C) as amended by chapter 60 of the laws of 2008
2 and subparagraph (D) as amended by chapter 162 of the laws of 1999, is
3 amended to read as follows:

4 (7) Foreign investments. (A) Canadian investments substantially of the
5 same types as those eligible for investment under paragraphs one through
6 six of this subsection, provided that, after giving effect to any
7 investment made under this subparagraph, the aggregate amount of investments
8 made under this subparagraph and then held by such insurer shall
9 not exceed ten percent of the insurer's admitted assets, except where a
10 greater amount is permitted under subparagraph (B) below (in which case
11 the provisions of this subparagraph shall not be applicable).

12 (B) In the case of any domestic insurer that is authorized to do business
13 in a foreign country or possession of the United States of America
14 or that has outstanding insurance, annuity or reinsurance contracts on
15 lives or risks resident or located in such foreign country or
16 possession, investments in such foreign country or possession that are
17 substantially of the same types as those eligible for investment under
18 paragraphs one through six of this subsection; provided that, except
19 where a greater amount is permitted under subparagraph (A) above, after
20 giving effect to any investment in such foreign country or possession
21 made under this subparagraph, the aggregate amount of cash in the
22 currency of such foreign country or possession and of investments in
23 such foreign country or possession made under this subparagraph and then
24 held by such insurer shall not exceed one and one-half times the amount
25

EXPLANATION--Matter in *ITALICS* (underscored) is new; matter in brackets [] is old law to be omitted.

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1 of such insurer's reserves and other obligations under such contracts or
2 the amount which such insurer is required by law to invest in such coun-
3 try or possession, whichever shall be greater.

4 (C) Investments in foreign countries, in addition to Canadian invest-
5 ments and investments permitted by subparagraph (B) of this paragraph,
6 that are substantially of the same types as those eligible for invest-
7 ment under paragraphs one through six of this subsection, provided that,
8 after giving effect to any investment made under this subparagraph, the
9 aggregate amount of investments qualified under this subparagraph and
10 then held by such insurer shall not exceed [sixteen] TWENTY percent of
11 the insurer's admitted assets; and

12 (i) the issuer or obligor is (I) a jurisdiction, which is rated in one
13 of the four highest rating categories by an independent, nationally
14 recognized United States rating agency, (II) any political subdivision
15 or other governmental unit of any such jurisdiction, or any agency or
16 instrumentality of any such jurisdiction, political subdivision or other
17 governmental unit or (III) an institution which is organized under the
18 laws of any such jurisdiction or, in the case of such paragraphs three
19 and four of this subsection, the real property is located in any such
20 jurisdiction; and

21 (ii) [if the investment is denominated in any currency other than
22 United States dollars, the investment is effectively hedged, substan-
23 tially in its entirety, against the United States dollar:

24 (I) for an insurer that has an approved derivative use plan under
25 section one thousand four hundred ten of this article, pursuant to
26 contracts or agreements entered into under and in accordance with that
27 derivative use plan and subject to the counterparty exposure limits
28 thereunder; or

29 (II) for any other insurer, pursuant to contracts or agreements which
30 are: (aa) issued by or traded on a securities exchange or board of trade
31 regulated under the laws of the United States or Canada or a province
32 thereof or (bb) entered into with: (aaa) a United States banking insti-
33 tution which has assets in excess of five billion dollars and which has
34 obligations outstanding, or has a parent corporation which has obli-
35 gations outstanding, which are rated in one of the two highest rating
36 categories by an independent, nationally recognized, United States
37 rating agency; (bbb) a broker-dealer registered with the Securities and
38 Exchange Commission which has net capital in excess of two hundred fifty
39 million dollars; or

40 (ccc) any other banking institution which has assets in excess of five
41 billion dollars and which has obligations outstanding, or has a parent
42 corporation which has obligations outstanding, which are rated in one of
43 the two highest rating categories by an independent, nationally recog-
44 nized, United States rating agency and which is organized under the laws
45 of a jurisdiction which is rated in one of the two highest rating cate-
46 gories by an independent, nationally recognized, United States rating
47 agency; and

48 (iii) provided that] an insurer shall not make any investment in any
49 foreign country pursuant to this subparagraph, if such investment,
50 together with all other investments in the same foreign country so made
51 and then held by such insurer, would exceed [six] SEVEN percent of the
52 insurer's admitted assets.

53 (D) In addition to the foreign investments permitted under the preced-
54 ing subparagraphs of this paragraph, foreign investments that are
55 substantially of the same types as those eligible for investment under
56 paragraphs one through six of this subsection, provided that, after

1 giving effect to any investment made under this subparagraph, the aggregate amount of investments made under this subparagraph and then held by
2 such insurer shall not exceed [four] SIX percent of the insurer's admitted assets, and provided further that an insurer shall not make any
3 investment in any foreign country pursuant to this subparagraph, if such
4 investment, together with all other investments in the same foreign
5 country so made and then held by such insurer, would exceed [two] FOUR
6 percent of the insurer's admitted assets.

7
8 (E) ANY INVESTMENT MAY BE DENOMINATED IN A CURRENCY OTHER THAN UNITED
9 STATES DOLLARS, PROVIDED THAT THE AGGREGATE AMOUNT OF ALL SUCH INVEST-
10 MENTS (OTHER THAN INVESTMENTS MADE PURSUANT TO SUBPARAGRAPH (A) OF THIS
11 PARAGRAPH) THAT ARE NOT EFFECTIVELY HEDGED, SUBSTANTIALLY IN THEIR
12 ENTIRETY, AGAINST THE UNITED STATES DOLLAR, REDUCED, ON A CURRENCY BY
13 CURRENCY BASIS, BY THE AMOUNT OF FOREIGN-CURRENCY DENOMINATED INSURANCE
14 LIABILITIES MAY NOT EXCEED SIX PERCENT OF THE INSURER'S ADMITTED ASSETS.
15 AN INVESTMENT SHALL BE DEEMED TO BE EFFECTIVELY HEDGED, SUBSTANTIALLY IN
16 ITS ENTIRETY, IF IT HAS BEEN HEDGED:

17
18 (I) FOR AN INSURER THAT HAS AN APPROVED DERIVATIVE USE PLAN UNDER
19 SECTION ONE THOUSAND FOUR HUNDRED TEN OF THIS ARTICLE, PURSUANT TO
20 CONTRACTS OR AGREEMENTS ENTERED INTO UNDER AND IN ACCORDANCE WITH THAT
21 DERIVATIVE USE PLAN AND SUBJECT TO THE COUNTERPARTY EXPOSURE LIMITS
22 THEREUNDER; OR

23 (II) FOR ANY OTHER INSURER, PURSUANT TO CONTRACTS OR AGREEMENTS
24 (DERIVATIVE TRANSACTIONS) WHICH ARE: (AA) CLEARED THROUGH A QUALIFIED
25 CLEARINGHOUSE OR TRADED ON OR THROUGH A QUALIFIED EXCHANGE PROVIDING
26 CLEARING SERVICES OR (BB) ENTERED INTO WITH A "QUALIFIED COUNTERPARTY"
27 AS THAT TERM IS DEFINED PURSUANT TO SUBSECTION (F) OF SECTION ONE THOU-
28 SAND FOUR HUNDRED TEN OF THIS ARTICLE.

29 S 2. This act shall take effect immediately.