

CHAPTER 2014-134

Committee Substitute for Committee Substitute for House Bill No. 811

An act relating to foreign investments; amending s. 215.47, F.S.; revising the percentage of investments that the State Board of Administration may invest in foreign securities; amending s. 215.473, F.S.; revising and providing definitions with respect to requirements that the board divest securities in which public moneys are invested in certain companies doing specified types of business in or with Sudan or Iran; revising exclusions from the divestment requirements; conforming cross-references; creating s. 624.449, F.S.; requiring a domestic insurer to provide a list of investments that it has in companies on the State Board of Administration's lists of scrutinized companies with activities in Sudan or in Iran's petroleum energy sector; providing for severability; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsection (20) of section 215.47, Florida Statutes, is amended to read:

215.47 Investments; authorized securities; loan of securities.—Subject to the limitations and conditions of the State Constitution or of the trust agreement relating to a trust fund, moneys available for investments under ss. 215.44-215.53 may be invested as follows:

(20) Notwithstanding the provisions in subsection (5) limiting such investments to 25 percent of any fund, the board may invest up to 50 ~~no more than 35~~ percent of any fund in corporate obligations and securities of any kind of a foreign corporation or a foreign commercial entity having its principal office located in any country other than the United States or its possessions or territories, not including United States dollar-denominated securities listed and traded on a United States exchange that are a part of the ordinary investment strategy of the board.

Section 2. Subsections (1) and (2), paragraph (e) of subsection (3), and subsection (5) of section 215.473, Florida Statutes, are amended to read:

215.473 Divestiture by the State Board of Administration; Sudan; Iran.

(1) DEFINITIONS.—As used in this section ~~aet~~, the term:

(a) “Active business operations” means all business operations that are not inactive business operations.

(b) “Business operations” means engaging in commerce in any form in Sudan or Iran, including, but not limited to, acquiring, developing, maintaining, owning, selling, possessing, leasing, or operating equipment,

facilities, personnel, products, services, personal property, real property, or any other apparatus of business or commerce.

(c) “Company” means ~~a any~~ sole proprietorship, organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, limited liability company, or other entity or business association, including all wholly owned subsidiaries, majority-owned subsidiaries, parent companies, or affiliates of such entities or business associations, that exists for the purpose of making profit.

(d) “Complicit” means taking actions during any preceding 20-month period which have directly supported or promoted the genocidal campaign in Darfur, including, ~~but not limited to,~~ preventing Darfur’s victimized population from communicating with each other; encouraging Sudanese citizens to speak out against an internationally approved security force for Darfur; actively working to deny, cover up, or alter the record on human rights abuses in Darfur; or other similar actions.

(e) “Direct holdings” in a company means all securities of that company that are held directly by the public fund or in an account or fund in which the public fund owns all shares or interests.

(f) “Government of Iran” means the government of Iran, its instrumentalities, and companies owned or controlled by the government of Iran.

(g) “Government of South Sudan” means the Republic of South Sudan, that has its capital in Juba, South Sudan.

~~(h)(g)~~ “Government of Sudan” means the Republic of the Sudan that has its capital government in Khartoum, Sudan, ~~that is led by the National Congress Party, formerly known as the National Islamic Front, or any successor government formed on or after October 13, 2006, including the coalition National Unity Government agreed upon in the Comprehensive Peace Agreement for Sudan, and does not include the regional government of southern Sudan.~~

~~(i)(h)~~ “Inactive business operations” means the mere continued holding or renewal of rights to property previously operated for the purpose of generating revenues but not presently deployed for such purpose.

~~(j)(i)~~ “Indirect holdings” in a company means all securities of that company that are held in a commingled an account or fund or other collective investment, such as a mutual fund, managed by one or more persons ~~not employed by the public fund~~, in which the public fund owns shares or interests together with other investors not subject to ~~the provisions of this section~~ aet.

~~(k)(j)~~ “Iran” means the Islamic Republic of Iran.

~~(l)(k)~~ “Marginalized populations of Sudan” include, but are not limited to, the portion of the population in the Darfur region that has been genocidally

victimized; the portion of the population of South ~~southern~~ Sudan victimized by Sudan’s north-south civil war; the Beja, Rashidiya, and other similarly underserved groups of eastern Sudan; the Nubian and other similarly underserved groups in Sudan’s Abyei, Southern Blue Nile, and Nuba Mountain regions; and the Amri, Hamadab, Manasir, and other similarly underserved groups of northern Sudan.

~~(m)~~(t) “Military equipment” means weapons, arms, military supplies, and equipment that may readily be used for military purposes, including, but not limited to, radar systems, military-grade transport vehicles, or supplies or services sold or provided directly or indirectly to any force actively participating in armed conflict in Sudan.

~~(n)~~(m) “Mineral-extraction activities” include the exploring, extracting, processing, transporting, or wholesale selling or trading of elemental minerals or associated metal alloys or oxides (ore), including gold, copper, chromium, chromite, diamonds, iron, iron ore, silver, tungsten, uranium, and zinc, as well as facilitating such activities, including providing supplies or services in support of such activities.

~~(o)~~(n) “Oil-related activities” include, but are not limited to, owning rights to oil blocks; exporting, extracting, producing, refining, processing, exploring for, transporting, selling, or trading of oil; constructing, maintaining, or operating a pipeline, refinery, or other oil-field infrastructure; and facilitating such activities, including providing supplies or services in support of such activities, except that the mere retail sale of gasoline and related consumer products is not considered an oil-related activity.

~~(p)~~(o) “Petroleum resources” means petroleum, petroleum byproducts, or natural gas.

~~(q)~~(p) “Power-production activities” means a ~~any~~ business operation that involves a project commissioned by the National Electricity Corporation (NEC) of Sudan or other similar entity of the government of Sudan whose purpose is to facilitate power generation and delivery, including, but not limited to, establishing power-generating plants or hydroelectric dams, selling or installing components for the project, providing service contracts related to the installation or maintenance of the project, as well as facilitating such activities, including providing supplies or services in support of such activities.

~~(r)~~(q) “Public fund” means all funds, assets, trustee, and other designates under the State Board of Administration pursuant to chapter 121.

~~(s)~~(r) “Scrutinized active business operations” means active business operations that result ~~have resulted~~ in a company becoming a scrutinized company.

~~(t)~~(s) “Scrutinized business operations” means business operations that result ~~have resulted~~ in a company becoming a scrutinized company.

(u)(t) “Scrutinized company” means ~~a any~~ company that meets any of the following criteria:

1. The company has business operations that involve contracts with or provision of supplies or services to the government of Sudan, companies in which the government of Sudan has ~~a any~~ direct or indirect equity share, consortiums or projects commissioned by the government of Sudan, or companies involved in consortiums or projects commissioned by the government of Sudan, and:

a. More than 10 percent of the company’s revenues or assets linked to Sudan involve oil-related activities or mineral-extraction activities; less than 75 percent of the company’s revenues or assets linked to Sudan involve contracts with or provision of oil-related or mineral-extracting products or services to the ~~regional~~ government of South ~~southern~~ Sudan ~~or a project or consortium created exclusively by that regional government~~; and the company has failed to take substantial action; or

b. More than 10 percent of the company’s revenues or assets linked to Sudan involve power-production activities; less than 75 percent of the company’s power-production activities include projects whose intent is to provide power or electricity to the marginalized populations of Sudan; and the company has failed to take substantial action.

2. The company is complicit in the Darfur genocide.

3. The company supplies military equipment within Sudan, unless it clearly shows that the military equipment cannot be used to facilitate offensive military actions in Sudan or the company implements rigorous and verifiable safeguards to prevent use of that equipment by forces actively participating in armed conflict. Examples of safeguards include post-sale tracking of such equipment by the company, certification from a reputable and objective third party that such equipment is not being used by a party participating in armed conflict in Sudan, or sale of such equipment solely to the ~~regional~~ government of South ~~southern~~ Sudan or any internationally recognized peacekeeping force or humanitarian organization.

4. The company has business operations that involve contracts with or provision of supplies or services to the government of Iran, companies in which the government of Iran has any direct or indirect equity share, consortiums, or projects commissioned by the government of Iran, or companies involved in consortiums or projects commissioned by the government of Iran and:

a. More than 10 percent of the company’s total revenues or assets are linked to Iran and involve oil-related activities or mineral-extraction activities,~~;~~ and the company has failed to take substantial action; or

b. The company has, with actual knowledge, on or after August 5, 1996, made an investment of \$20 million or more, or any combination of

investments of at least \$10 million each, which in the aggregate equals or exceeds \$20 million in any 12-month period, and which directly or significantly contributes to the enhancement of Iran's ability to develop the petroleum resources of Iran.

(v)(tt) "Social-development company" means a company whose primary purpose in Sudan is to provide humanitarian goods or services, including medicine or medical equipment; agricultural supplies or infrastructure; educational opportunities; journalism-related activities; information or information materials; spiritual-related activities; services of a purely clerical or reporting nature; food, clothing, or general consumer goods that are unrelated to oil-related activities; mineral-extraction activities; or power-production activities.

(w)(v) "Substantial action specific to Iran" means adopting, publicizing, and implementing a formal plan to cease scrutinized business operations within 1 year and to refrain from any such new business operations.

(x)(w) "Substantial action specific to Sudan" means adopting, publicizing, and implementing a formal plan to cease scrutinized business operations within 1 year and to refrain from any such new business operations; undertaking humanitarian efforts in conjunction with an international organization, the government of Sudan, the regional government of South ~~southern~~ Sudan, or a nonprofit entity evaluated and certified by an independent third party to be substantially in a relationship to the company's Sudan business operations and of benefit to one or more marginalized populations of Sudan; or, through engagement with the government of Sudan, materially improving conditions for the genocidally victimized population in Darfur.

(2) IDENTIFICATION OF COMPANIES.—

(a) Within 90 days after ~~June 8, 2007~~ the effective date of this act, the public fund shall make its best efforts to identify all scrutinized companies in which the public fund has direct or indirect holdings or could possibly have such holdings in the future. Such efforts include:

1. Reviewing and relying, as appropriate in the public fund's judgment, on publicly available information regarding companies having business operations in Sudan, including information provided by nonprofit organizations, research firms, international organizations, and government entities;

2. Contacting asset managers contracted by the public fund which ~~that~~ invest in companies having business operations in Sudan; or

3. Contacting other institutional investors that have divested from or engaged with companies that have business operations in Sudan.

4. Reviewing the laws of the United States regarding the levels of business activity that would cause application of sanctions for companies

conducting business or investing in countries that are designated state sponsors of terror.

(b) By the first meeting of the public fund following the 90-day period described in paragraph (a), the public fund shall assemble all scrutinized companies that fit criteria specified in subparagraphs (1)(u)1., 2., and 3. ~~(1)(t)1., 2., and 3.~~ into a “Scrutinized Companies with Activities in Sudan List” and shall assemble all scrutinized companies that fit criteria specified in subparagraph (1)(u)4. ~~(1)(t)4.~~ into a “Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List.”

(c) The public fund shall update and make publicly available quarterly the Scrutinized Companies with Activities in Sudan List and the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List based on evolving information from, among other sources, those listed in paragraph (a).

(d) Notwithstanding the provisions of this section ~~aet~~, a social-development company that is not complicit in the Darfur genocide is not considered a scrutinized company under subparagraph (1)(u)1. ~~(1)(t)1.~~, subparagraph (1)(u)2. ~~(1)(t)2.~~, or subparagraph (1)(u)3. ~~(1)(t)3.~~

(3) **REQUIRED ACTIONS.**—The public fund shall adhere to the following procedure for assembling companies on the Scrutinized Companies with Activities in Sudan List and the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List:

(e) *Excluded securities.*—

1. Notwithstanding the provisions of this section ~~aet~~, paragraphs (b) and (c) do not apply to indirect holdings in actively managed investment funds. However, the public fund shall submit letters to the managers of such investment funds containing companies that have scrutinized active business operations requesting that they consider removing such companies from the fund or create a similar actively managed fund having indirect holdings devoid of such companies. If the manager creates a similar fund, the public fund shall replace all applicable investments with investments in the similar fund in an expedited timeframe consistent with prudent investing standards. For the purposes of this section, a private equity fund is deemed to be an actively managed investment fund.

2. Notwithstanding the provisions of this section, paragraphs (b) and (c) do not apply to exchange-traded funds.

(5) **EXPIRATION.**—This section ~~aet~~ expires upon the occurrence of all of the following:

(a) If any of the following occur, the public fund shall no longer scrutinize companies according to subparagraphs (1)(u)1., 2., and 3. ~~(1)(t)1., 2., and 3.~~ and shall no longer assemble the Scrutinized Companies with Activities in Sudan List, shall cease engagement and divestment of such companies, and

may reinvest in such companies ~~if as long as~~ such companies do not satisfy the criteria for inclusion in the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List:

1. The Congress or President of the United States, affirmatively and unambiguously states, by means including, but not limited to, legislation, executive order, or written certification from the President to Congress, that the Darfur genocide has been halted for at least 12 months;

2. The United States revokes all sanctions imposed against the government of Sudan;

3. The Congress or President of the United States affirmatively and unambiguously states, by means including, but not limited to, legislation, executive order, or written certification from the President to Congress, that the government of Sudan has honored its commitments to cease attacks on civilians, demobilize and demilitarize the Janjaweed and associated militias, grant free and unfettered access for deliveries of humanitarian assistance, and allow for the safe and voluntary return of refugees and internally displaced persons; or

4. The Congress or President of the United States affirmatively and unambiguously states, by means including, but not limited to, legislation, executive order, or written certification from the President to Congress, that mandatory divestment of the type provided for in this section ~~aet~~ interferes with the conduct of United States foreign policy.

(b) If any of the following occur, the public fund shall no longer scrutinize companies according to subparagraph ~~(1)(t)4.~~ (1)(u)4. and shall no longer assemble the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List and shall cease engagement, investment prohibitions, and divestment. The public fund may reinvest in such companies ~~if as long as~~ such companies do not satisfy the criteria for inclusion in the Scrutinized Companies with Activities in Sudan List:

1. The Congress or President of the United States affirmatively and unambiguously states, by means including, but not limited to, legislation, executive order, or written certification from the President to Congress, that the government of Iran has ceased to acquire weapons of mass destruction and support international terrorism;

2. The United States revokes all sanctions imposed against the government of Iran; or

3. The Congress or President of the United States affirmatively and unambiguously declares, by means including, but not limited to, legislation, executive order, or written certification from the President to Congress, that mandatory divestment of the type provided for in this section ~~aet~~ interferes with the conduct of United States foreign policy.

Section 3. Section 624.449, Florida Statutes, is created to read:

624.449 Insurer investment in foreign companies.—A domestic insurer shall provide to the office on an annual basis a list of investments that the insurer has in companies included on the “Scrutinized Companies with Activities in Sudan List” and the “Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List” compiled by the State Board of Administration pursuant to s. 215.473(2). The insurer’s list must include the name of the issuer and the stock, bond, security, and other evidence of indebtedness.

Section 4. If any provision of this act or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared severable.

Section 5. This act shall take effect July 1, 2014.

Approved by the Governor June 13, 2014.

Filed in Office Secretary of State June 13, 2014.