

PROTECTING PENNSYLVANIA'S INVESTMENTS ACT - ENACTMENT

Act of Jul. 2, 2010, P.L. 266, No. 44

Cl. 71

AN ACT

Providing for divestiture by the State Treasurer, the State Employees' Retirement System and the Public School Employees' Retirement System of investments in companies doing business in Iran and Sudan.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. Short title.

This act shall be known and may be cited as the Protecting Pennsylvania's Investments Act.

Section 2. Definitions.

The following words and phrases when used in this act shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"Alternative investments." An investment in a private equity fund, private debt fund, venture fund, real estate fund, hedge fund or absolute return fund.

"Board." As defined in section 102 of the act of February 1, 1974 (P.L.34, No.15), known as the Pennsylvania Municipal Retirement Law, 24 Pa.C.S. § 8102 (relating to definitions) or 71 Pa.C.S. § 5102 (relating to definitions).

"Business activities." Owning or controlling property or assets located in, having employees or facilities located in, providing goods or services to, having distribution agreements with, issuing credit or loans to, purchasing bonds or commercial paper issued by, investing in or having equity ties to or with Iran, Sudan or any company domiciled in Iran or Sudan.

"Company." Any sole proprietorship, organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, limited liability company or other entity or business association that exists for the purpose of making a profit.

"Direct holdings." All securities of a company that are held directly by the public fund.

"Foreign company." Any entity which is not organized under the laws of the United States.

"Government of Iran." The government of Iran and its instrumentalities and companies owned or controlled by the government of Iran.

"Government of Sudan." The government in Khartoum, Sudan, which 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 the National Unity Government agreed upon in the Comprehensive Peace Agreement for Sudan. The term does not include the regional government of southern Sudan.

"Inactive business activities." The continued holding or renewal of rights to property previously operated for the

purpose of generating revenues but not presently deployed for that purpose.

"Indemnatee." Each current or former board member, duly appointed designee of a board member, officer, employee, including, without limitation, the attorneys in the Office of Chief Counsel that serve a public fund, agent, research firm or investment manager of a public fund who was or is a party to, or is threatened to be made a party to or is otherwise involved in any proceeding by reason of the fact that the person is or was a board member, designee of a board member, officer, employee, agent, research firm or investment manager of a public fund.

"Indirect holdings." All securities held in an account or fund such as a mutual fund managed by one or more persons not employed by a public fund, in which the public fund owns shares or interests together with other investors.

"Iran." The Islamic Republic of Iran.

"List of State Sponsors of Terrorism." The list of countries designated by the United States Secretary of State as having repeatedly provided support for acts of international terrorism as reported annually in Country Reports on Terrorism under section 140 of the Foreign Relations Authorization Act, Fiscal Years 1988 and 1989 (Public Law 100-24, 26 U.S.C. § 2656(f)).

"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 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.

"Military equipment." Weapons, arms, military supplies and equipment that may be used readily for military purposes, including, but not limited to, radar systems or military-grade transport vehicles. This term shall also include supplies or services sold or provided directly or indirectly to any force actively participating in armed conflict in Sudan.

"Mineral extraction activities." Include 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 by providing supplies or services in support of such activities.

"Oil-related activities." The term includes all of the following:

- (1) Development of petroleum or natural gas resources of Iran or Sudan. This paragraph does not include the mere sale of gasoline and related consumer products.
- (2) Owning rights to oil or natural gas blocks.
- (3) Exporting, extracting, producing, refining, processing, exploring for, transporting, selling or trading oil or natural gas.
- (4) Constructing, maintaining or operating any pipeline, refinery, liquefaction facility or other oil or natural gas

infrastructure.

(5) Facilitating activities referred to in paragraph (1), (2), (3) or (4), including by supplying services in support of the activities.

"Power production activities." Business activities that involve a project commissioned by the National Electricity Corporation (NEC) of Sudan or other similar government of Sudan entity 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 by providing supplies or services in support of such activities.

"Proceeding." Any threatened, pending or completed action, suit or proceeding, including, without limitation, an action, suit or proceeding by or in the right of a public fund, relating to compliance with any investment limitations imposed by statute, whether civil, criminal, administrative, investigative or through arbitration.

"Public fund." Any of the following:

(1) The State Employees' Retirement Fund established pursuant to 71 Pa.C.S. Pt. XXV (relating to retirement for State employees and officers).

(2) The Public School Employees' Retirement Fund established pursuant to 24 Pa.C.S. Pt. IV (relating to retirement for school employees).

(3) The Pennsylvania Municipal Retirement Fund.

(4) Any Commonwealth fund of which the State Treasurer is the custodian.

"Scrutinized business activities." Business activities that have resulted in a company becoming a scrutinized company.

"Scrutinized company." Any of the following:

(1) Any foreign company that has:

(i) invested at least \$20,000,000 in oil-related activities in Iran in any 12-month period since August 5, 1996;

(ii) supplied military equipment to the government of Iran within the 12-month period prior to the effective date of this section; or

(iii) knowingly and intentionally violated the United States export controls with respect to Iran during the 12-month period prior to the effective date of this section.

(2) Any foreign company that meets the criteria set forth either in subparagraph (i) or (ii):

(i) The company has business activities that involve contracts with or provision of supplies or services to the government of Sudan, companies in which the government of Sudan has any direct equity share, government of Sudan-commissioned consortiums or projects, or companies involved in government of Sudan-commissioned consortiums or projects; and

(A) more than 10% of the company's revenue or assets linked to Sudan involve oil-related activities

or mineral extraction activities; less than 75% 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 southern Sudan or a project or consortium created exclusively by that regional government; and the company has failed to take substantial action specific to Sudan; or

(B) more than 10% of the company's revenues or assets linked to Sudan involve power production activities; less than 75% 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 specific to Sudan.

(ii) 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, for example, through 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 southern Sudan or any internationally recognized peacekeeping force or humanitarian organization.

The term does not include a foreign company that is a social development company.

"Social development company." A company whose primary purpose in Iran or 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.

"Substantial action specific to Iran." Adopting, publicizing and implementing a formal plan to cease scrutinized business activities within one year and to refrain from any such new business activities in Iran.

"Substantial action specific to Sudan." Adopting, publicizing and implementing a formal plan to cease scrutinized business activities within one year and to refrain from any such new business activities; undertaking significant humanitarian efforts in conjunction with an international organization, the government of Sudan, the regional government of southern Sudan or a nonprofit entity and evaluated and certified by an independent third party to be substantial in relationship to the company's Sudan business activities 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.

"Sudan." The Democratic Republic of Sudan.

Section 3. Identification of companies.

(a) Best effort.--Within 90 days after the effective date of this section, a public fund shall make its best effort to identify all scrutinized companies in which the public fund has direct holdings. A public fund shall review, as appropriate in the public fund's judgment, publicly available information regarding foreign companies that have scrutinized business activities, including information provided by nonprofit organizations, research firms, international organizations and government entities.

(b) Assembly.--By the first meeting of a public fund following the time period under subsection (a), the public fund shall assemble all scrutinized companies that fit the criteria specified in paragraph (1) of the definition of "scrutinized company" into a Scrutinized Companies with Activities in Iran List and shall assemble all scrutinized companies that fit criteria specified in paragraph (2) of the definition of "scrutinized company" into a Scrutinized Companies with Activities in Sudan List.

Section 4. Required actions.

(a) Procedure.--A public fund shall adhere to the procedures under this section for determining companies on its Scrutinized Companies with Activities in Iran List and Scrutinized Companies with Activities in Sudan List that qualify for divestment.

(b) Engagement.--

(1) For each company on a public fund's Scrutinized Companies with Activities in Iran List or Scrutinized Companies with Activities in Sudan List in which the public fund has direct holdings, the public fund shall send a written notice informing the company of its scrutinized company status and specify the business activities which have resulted in this determination and that it may become subject to divestment by the public fund. The notice must inform the company of the opportunity to clarify its scrutinized business activities and encourage the company, within 180 days of the date of receipt of the notice, to cease its scrutinized business activities in Iran, Sudan or both or convert the activities to inactive business activities in order to avoid qualifying for divestment by the public fund. The notice shall be sent no later than 120 days after the effective date of this section.

(2) If, within 180 days of the date of receipt of a notice under paragraph (1), a company announces by public disclosure substantial action specific to Iran or substantial action specific to Sudan, the public fund may maintain its holdings, but the company shall remain on the Scrutinized Companies with Activities in Iran List or Scrutinized Companies with Activities in Sudan List pending completion of the companies' cessation of scrutinized business activities. Following completion of a company's cessation of scrutinized business activities, the public fund shall remove the company from its Scrutinized Companies with Activities in Iran List or Scrutinized Companies with Activities in Sudan List.

(c) Divestment.--

(1) If, after 180 days following the effective date of receipt of the notice under subsection (b)(1), a company has not announced by public disclosure substantial action specific to Iran, substantial action specific to Sudan or both as specified in the notice, or the public fund determines or becomes aware that the company continues to have scrutinized business activities, the public fund, within 26 months after the 180-day period, shall sell, redeem, divest or withdraw from its direct holdings all securities of the company.

(2) If a public fund determines or becomes aware that a company that ceased scrutinized business activities following engagement under subsection (b) has resumed the activities, the public fund shall send a written notice to the company under subsection (b), and the company shall be immediately placed onto the public fund's Scrutinized Companies with Activities in Iran List or Scrutinized Companies with Activities in Sudan List.

(3) A public fund shall monitor a scrutinized company that has announced by public disclosure substantial action specific to Iran, substantial action specific to Sudan or both. If, after one year the public fund determines or becomes aware that the company has not implemented the plan, within 26 months after the expiration of the one-year period, the public fund shall sell, redeem, divest or withdraw from its direct holdings all securities of the company.

(d) Prohibition.--A public fund may not acquire securities of a company on its Scrutinized Companies with Activities in Iran List or Scrutinized Companies with Activities in Sudan List.

(e) Excluded securities.--Nothing in this act shall apply to the public fund's holdings in alternative investments or indirect holdings.

Section 5. Reporting.

(a) Report to United States Attorney General.--Within 30 days of the passage of this act, administrators of the public fund shall file a written report to the United States Attorney General detailing the requirements contained in this act.

(b) Duty of public fund.--A public fund shall, within one year of assembly of its Scrutinized Companies with Activities in Iran List and Scrutinized Companies with Activities in Sudan List, provide a report to the Governor, the President pro tempore of the Senate, the Speaker of the House of Representatives and each member of the boards of the Pennsylvania Municipal Retirement System, the State Employees' Retirement System and Public School Employees' Retirement System. The report shall include the items required under subsection (c). The report shall be made available to the public.

(c) Contents.--The report under subsection (b) shall include the most recent Scrutinized Companies with Activities in Iran List and Scrutinized Companies with Activities in Sudan List and all of the following:

(1) A summary of correspondence with scrutinized companies engaged by the public fund under section 4.

(2) All investments sold, redeemed, divested or withdrawn in compliance with section 4(c), the costs and expenses of such transfers and a determination of net gain or loss on account of such transactions incurred in compliance with the provisions of this act.

(3) All prohibited investments under section 4(d).

(4) A list of all publicly traded securities held by the public fund.

(d) Update.--A public fund shall do all of the following:

(1) Annually update, based on evolving information under subsection (c), and make publicly available its Scrutinized Companies with Activities in Iran List and Scrutinized Companies with Activities in Sudan List.

(2) Provide a copy of the lists under paragraph (1), including updates, to all other public funds.

Section 6. Expiration.

(a) Recurrence of investment in Iran.--A public fund shall have no obligations under this act with respect to a company engaged in business activities in Iran upon the occurrence of any of the following:

(1) Iran does not appear on the List of State Sponsors of Terrorism.

(2) The President or Congress of the United States, through legislation or executive order, declares that mandatory divestment of the type provided for in this act interferes with the conduct of United States foreign policy.

(b) Recurrence of investment in Sudan.--A public fund shall have no obligations under this act with respect to a company engaged in business activities in Sudan upon the occurrence of any of the following:

(1) The President or Congress of the United States declares Darfur genocide has been halted for at least 12 months.

(2) Sudan does not appear on the list of State Sponsors of Terrorism.

(3) The President or Congress of the United States declares 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 under the Sudan Accountability and Divestment Act of 2007 (P.L. 110-174, 121 Stat. 2516).

(4) The President or Congress of the United States, through legislation or executive order, declares that mandatory divestment of the type provided for in this act interferes with the conduct of United States foreign policy.

Section 7. Conflict with other laws.

A public fund may perform any action necessary to comply with this act, notwithstanding the provisions of any other law, including, but not limited to, any fiduciary or prudent investing responsibilities as prescribed in 24 Pa.C.S. § 8521 (relating to management of fund and accounts) and 71 Pa.C.S. § 5931 (relating to management of fund and accounts) and any

obligations of a public fund with respect to choice of asset managers, investment funds or investments for the public fund's securities portfolios.

Section 8. Indemnification.

(a) General rule.--Each indemnitee shall be indemnified and held harmless by the Commonwealth for all good faith actions taken by the indemnitee and for all good faith failures to take action, regardless of the date of any such action or failure to take action, in connection with attempts to comply with any investment limitations imposed by statute against all expense, liability and loss, including, without limitation, attorney fees, judgments, fines, taxes, penalties and amounts paid or to be paid in settlements reasonably incurred or suffered by the indemnitee in connection with any proceeding.

(b) Advance payment.--The right to indemnification provided in this section shall include the right to have the expenses reasonably incurred by the indemnitee in defending any proceeding paid by the Commonwealth in advance of the final disposition of the proceeding upon the receipt by the Commonwealth of a written undertaking by the indemnitee to refund the amounts so advanced if it is ultimately determined that the indemnitee is not entitled to indemnification under this section.

(c) Persons entitled.--Indemnification pursuant to this section shall continue as to an indemnitee who has ceased to be a board member, designee of a board member, officer or employee of a public fund and shall inure to the benefit of such person's legal representatives, heirs, executors and administrators.

(d) Reimbursement to public funds.--To the extent that the Commonwealth does not make any indemnification payments, including any advancement of legal fees and expenses, within 30 days of demand therefor, a public fund shall make such payment and the Commonwealth shall reimburse the public fund.

(e) Construction.--The repeal, expiration or amendment of any provision of this section shall not limit the rights of any indemnitee to indemnification, including advancement of expenses, with respect to any action or failure to act occurring prior to the effective date of such repeal or amendment.

Section 9. Fund reimbursement.

The Commonwealth shall reimburse each public fund for their net losses, costs and expenses incurred as a result of compliance with the provisions of this act. The reimbursements shall occur in the following manner:

(1) The public fund shall submit to the Secretary of the Budget an itemization of the amount necessary to be appropriated by the General Assembly to reimburse the public fund for their net losses, costs and expenses incurred as a result of compliance with the provisions of this act in the previous fiscal year. To the extent the public fund experiences net gains as a result of compliance with the provisions of this act in a fiscal year, the net gains shall be used to offset any reported costs or expenses incurred by the public fund.

(2) In consultation with each public fund, the Secretary of the Budget shall annually establish a uniform method for

the determination of gains and losses. The method shall be used by each public fund in making a claim for reimbursement under this section. The budget submission shall be on a form and in a manner determined by the secretary of the budget, including net losses, along with an itemized accounting of all costs and expenses claimed by the public fund. Budget submission shall occur no later than November 1 following the fiscal year in which the net losses, costs and expenses were incurred.

(3) Upon appropriation by the General Assembly to provide for the obligations of the Commonwealth, the amount shall be paid by the State Treasurer through the Department of Revenue into the public fund within 90 days of receipt of the requisition presented by the public fund.

Section 10. Severability.

If any provision of this act or its application to any person or circumstances is held invalid, the invalidity shall not affect other provisions or applications of this act that can be given effect without the invalid provision or application.

Section 30. Effective date.

This act shall take effect immediately.