

RUSSIA AND BELARUS DIVESTITURE ACT - ENACTMENT

Act of Nov. 3, 2022, P.L. 1970, No. 132

Cl. 53

An Act

Providing for divestiture by the State Treasurer, the State Employees' Retirement System, the Public School Employees' Retirement System and the Pennsylvania Municipal Retirement System of investments in assets relating to Russia and Belarus.

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 Russia and Belarus Divestiture 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.

"Belarus." The Republic of Belarus.

"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).

"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, the government of Russia or the government of Belarus 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 Belarus." The government of Belarus and its political subdivisions and the instrumentalities and companies owned or controlled by the government of Belarus or its political subdivisions.

"Government of Russia." The government of Russia and its political subdivisions and the instrumentalities and companies owned or controlled by the government of Russia or its political subdivisions.

"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.

"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.

"Russia." The Russian Federation.

"Sanctioned Belarusian company." Any foreign company that has been sanctioned under the authority of Exec. Order No. 13405, 71 Fed. Reg. 35485 (June 16, 2006) or Exec. Order No. 14038, 86 Fed. Reg. 43905 (Aug. 9, 2021).

"Sanctioned Russian company." Any foreign company that has been sanctioned under the authority of Exec. Order No. 14024, 86 Fed. Reg. 20249 (Apr. 15, 2021), Exec. Order No. 14039, 86 Fed. Reg. 47205 (August 20, 2021) or Exec. Order No. 14066, 87 Fed. Reg. 13625 (March 8, 2022).

"Scrutinized company." A foreign company which is domiciled in or organized under the laws of Russia or Belarus. The term includes sanctioned Russian companies and sanctioned Belarusian companies.

Section 3. Identification.

Within 14 days of the effective date of this section and no less frequently than every seven days thereafter until June 30, 2023, and as frequently as deemed necessary by the State Treasurer or a board thereafter, a public fund shall make its best effort to identify all direct holdings, indirect holdings and alternative investments of sanctioned Russian companies, sanctioned Belarusian companies, scrutinized companies, the government of Russia and the government of Belarus.

Section 4. Divestment.

(a) Initial divestment of direct holdings.--To the extent permitted under Federal law, the public fund shall sell, redeem, divest or withdraw from its direct holdings all securities of sanctioned Russian companies, sanctioned Belarusian companies, the government of Russia and the government of Belarus.

(b) Subsequent divestment of direct holdings.--Upon the determination that a foreign company meets the criteria as a sanctioned Russian company or a sanctioned Belarusian company after the effective date of this section, to the extent permitted under Federal law, the public fund shall sell, redeem, divest or withdraw from its direct holdings all securities of sanctioned Russian companies and sanctioned Belarusian companies.

(c) Additional divestment.--Beginning on the effective date of this subsection, to the extent permitted under Federal law, a public fund shall sell, redeem, divest or withdraw from the following:

(1) Scrutinized companies, other than sanctioned Russian companies and sanctioned Belarusian companies, in which the public fund has direct holdings.

(2) Scrutinized companies in which the public fund has indirect holdings and alternative investments.

(3) Securities of the government of Russia and the government of Belarus in which the public fund has indirect holdings and alternative investments.

(d) Prohibition.--A public fund may not acquire direct holdings, indirect holdings or alternative investments of scrutinized companies, the government of Russia or the government of Belarus.

Section 5. Reporting.

(a) Report to Federal Government.--Within 30 days of the effective date of this section, administrators of a public fund shall file a written report to the United States Attorney General, the Treasurer of the United States and the Director of the Office of Foreign Assets Control of the United States Department of the Treasury detailing the requirements contained in this act. The administrators of public funds may file a joint report under this subsection.

(b) Duty of public fund.--A public fund shall, within three months of the effective date of this section and not less than once per year thereafter, 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 public funds may file a joint report under this subsection. The report shall be made available to the public.

(c) Contents.--The report under subsection (b) shall include all of the following:

(1) A list of all scrutinized companies in which the public fund has direct holdings, indirect holdings and alternative investments.

(2) All investments sold, redeemed, divested or withdrawn in compliance with section 4(a) and (b), 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, which shall be determined in accordance with section 9.

(3) All investments sold, redeemed, divested or withdrawn in compliance with section 4(c).

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

Section 6. Expiration.

A public fund shall have no obligations under this act with respect to foreign companies which are domiciled in or organized under the laws of Russia or Belarus, the government of Russia or the government of Belarus upon the occurrence of any of the following:

(1) Except for sanctioned Russian companies and sanctioned Belarusian companies, the company is no longer a foreign company which is domiciled in or organized under the laws of Russia or Belarus.

(2) The President or Congress of the United States, through executive order or legislation, 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) Compliance.--Except as otherwise provided under subsection (b), 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 20 Pa.C.S. § 7302 (relating to authorized investments; in general), 24 Pa.C.S. § 8521 (relating to management of fund and accounts), 71 Pa.C.S. § 5931 (relating to management of fund and accounts) and section 110 of the act of February 1, 1974 (P.L.34, No.15), known as the Pennsylvania Municipal Retirement Law, 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.

(b) Applicable standard.--Divestment under section 4(c) shall be made in accordance with any applicable fiduciary or prudent investing responsibilities as prescribed under 20 Pa.C.S. § 7302, 24 Pa.C.S. § 8521 and 71 Pa.C.S. § 5931, section 110 of the Pennsylvania Municipal Retirement Law 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 under 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 under 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 the public fund's 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 section 4(a) and (b) in the previous fiscal year. This paragraph shall only apply to net losses, costs and expenses incurred after the effective date of this section and relating to a first year after sale, redemption, divestiture or withdrawal under section 4(a) and (b). To the extent the public fund experiences net gains as a result of compliance with the provisions of section 4(a) and (b) 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 under paragraph (1). 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. Defined contribution plans and deferred compensation plans.

(a) State Employees' Defined Contribution Plan and Commonwealth's Deferred Compensation Plan.--The provisions and restrictions of this act shall not apply to the State Employees' Defined Contribution Plan established under 71 Pa.C.S. Pt. XXV (relating to retirement for State employees and officers), known as the State Employees' Retirement Code, the Commonwealth's Deferred Compensation Plan established under section VIII.2 of the act of March 30, 1811 (P.L.145, No.99), referred to as the Settlement of Public Accounts Act, or to the individual investment accounts or the funds and investments therein of the participants of the plans, but the State Employees' Retirement Board is authorized to offer to the participants of the plans investment vehicles that would be permitted under this act.

(b) School Employees' Defined Contribution Plan.--The provisions and restrictions of this act shall not apply to the School Employees' Defined Contribution Plan established under 24 Pa.C.S. Ch. 84 (relating to School Employees' Defined Contribution Plan) or to the individual investment accounts or the funds and investments therein of the participants of the plan, but the Public School Employees' Retirement Board is authorized to offer to the participants of the plan investment vehicles that would be permitted under this act.

Section 11. 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 12. Effective date.

This act shall take effect immediately.