

40-2b04. Investments in foreign jurisdictions and currencies; definitions. (a) As used in this section:

(1) "Business entity" means a sole proprietorship, corporation, limited liability company, association, partnership, joint-stock company, joint venture, mutual fund, trust, joint tenancy or other similar form of business organization, whether organized for-profit or not-for-profit.

(2) "Domestic jurisdiction" means the United States, Canada, and a state or political subdivision of the United States or Canada.

(3) "Foreign currency" means a currency other than that of the United States or Canada.

(4) "Foreign investment" means an investment in a foreign jurisdiction or in an asset domiciled in a foreign jurisdiction. An investment shall not be deemed to be foreign if the issuing business entity, qualified primary credit source or qualified guarantor is a domestic jurisdiction or a business entity domiciled in a domestic jurisdiction, unless:

(A) The issuing business entity is a shell business entity; and

(B) the investment is not assumed, accepted, guaranteed or insured or otherwise backed by a domestic jurisdiction or a business entity, that is not a shell business entity, domiciled in a domestic jurisdiction.

(5) "Foreign jurisdiction" means a jurisdiction outside of the United States or Canada.

(6) "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.

(7) "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.

(8) "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 business entity domiciled in a foreign jurisdiction.

(9) "SVO" means the securities valuation office of the National Association of Insurance Commissioners or any successor office established by the National Association of Insurance Commissioners.

(b) Any life insurance company organized under any law of this state may invest, by loans or otherwise, with the direction or approval of a majority of its board of directors or authorized committee thereof, any of its funds, or any part thereof, in foreign investments of the same types as those that an insurer is permitted to acquire under K.S.A. 40-2b01, 40-2b02, 40-2b03, 40-2b05, 40-2b06, 40-2b07, 40-2b24, 40-2b26, 40-2b27 and 40-2b28 and K.S.A. 40-2b29, and amendments thereto, if:

(1) The aggregate amount of foreign investments then held by the insurer does not exceed 20% of its admitted assets; and

(2) the aggregate amount of foreign investments then held by the insurer in a single foreign jurisdiction does not exceed 10% of its admitted assets for jurisdictions that have a sovereign debt rating of SVO 1, or 3% of its admitted assets for all other jurisdictions.

(c) Any life insurance company organized under any law of this state may invest, by loans or otherwise, with the direction or approval of a majority of its board of directors or authorized committee thereof, any of its funds, or any part thereof, in investments of the same types as those that an insurer is permitted to acquire under K.S.A. 40-2b01, 40-2b02, 40-2b03, 40-2b05, 40-2b06, 40-2b07, 40-2b24, 40-2b26, 40-2b27 and 40-2b28 and K.S.A. 40-2b29, and amendments thereto, which are denominated in foreign currencies, whether or not they are foreign investments acquired under subsection (b), if:

(1) The aggregate amount of investments then held by the insurer denominated in foreign currencies does not exceed 10% of its admitted assets; and

(2) the aggregate amount of investments then held by the insurer denominated in the foreign currency of a single foreign jurisdiction does not exceed 10% of its admitted assets for jurisdictions that have a sovereign debt rating of SVO 1, or 3% of its admitted assets for all other jurisdictions.

(d) Notwithstanding the provisions of K.S.A. 40-2b13 and amendments thereto, the insurer's total foreign investments and investments denominated in foreign currencies shall not exceed the limitations set forth in subsections (b) and (c).

(e) The investment limitations in subsections (b) and (c) computed on the basis of an insurer's admitted assets shall relate to the amount as shown on the insurer's last annual report as filed with the commissioner of insurance or a more recent quarterly financial statement as filed with the commissioner, on a form prescribed by the National Association of Insurance Commissioners, within 45 days following the end of the calendar quarter to which the interim statement pertains.

(f) Investments acquired under this section shall be aggregated with investments of the same types made under K.S.A. 40-2b01, 40-2b02, 40-2b03, 40-2b05, 40-2b06, 40-2b07, 40-2b24, 40-2b26, 40-2b27 and 40-2b28 and K.S.A. 40-2b29, and amendments thereto, and in a similar manner, for purposes of determining compliance with the limits, if any, contained in the other sections.

History: L. 1972, ch. 179, § 4; L. 1987, ch. 160, § 7; L. 1996, ch. 35, § 1; July 1.