

THE INSURANCE CODE OF 1956 (EXCERPT)
Act 218 of 1956

500.1343 Ordinary shareholder dividends paid by domestic insurers; review by director; determination of reasonableness; factors; limiting or disallowing payment of shareholder dividends; declaration or payment from earned surplus; declaration of shareholder dividend by domestic insurer as member of insurance holding company system; extraordinary dividend or distribution to shareholders; hearing.

Sec. 1343.

(1) Each year the director shall review the ordinary shareholder dividends paid by domestic insurers to determine whether each insurer's surplus following those dividends is reasonable in relation to the insurer's outstanding liabilities and adequate to its needs so that it continues to comply with section 403. In conducting the review and making the determination, the director shall consider all of the following factors in addition to factors listed in section 436a:

(a) The adequacy of the level of surplus as regards policyholders remaining after the dividend payment or payments.

(b) The quality of the insurer's earnings and the extent to which the reported earnings include extraordinary items, such as surplus relief reinsurance transactions and reserve destrengthening.

(c) The quality and liquidity of investments in subsidiaries. The director may discount any of those investments or refuse to consider the investment as an asset for purposes of determining the adequacy of surplus as regards policyholders if the investment so warrants.

(2) If the director determines that an insurer's surplus as regards policyholders is not reasonable in relation to the insurer's outstanding liabilities and is not adequate to its financial needs so that the insurer will not continue to comply with section 403, the director shall limit or disallow the payment of shareholder dividends.

(3) Shareholder dividends shall be declared or paid only from earned surplus, unless the director approves the dividend before payment. The director shall consider whether the dividend will be paid from the insurer's net gain from operations if the insurer is a life insurer, or the insurer's net income if the insurer is not a life insurer, for the 12-month period ending December 31 of the immediately preceding year. For purposes of this subsection, earned surplus excludes surplus arising from unrealized capital gains or a revaluation of assets.

(4) A domestic insurer that is a member of an insurance holding company system and declares a shareholder dividend shall report the dividend to the director within 5 business days after declaring the dividend. The insurer shall not pay the dividend until 10 days after the director receives a report under this subsection.

(5) An insurer subject to registration under section 1324 shall not pay any extraordinary dividend or make any other extraordinary distribution to its shareholders until 30 days after the director has received notice of the declaration and has not disapproved or has approved the payment within that period. If the director, applying the criteria in subsection (1), determines that the insurer's surplus as regards policyholders is not reasonable in relation to the insurer's outstanding liabilities and is not adequate to its financial needs so that the insurer will not continue to comply with section 403, the director may, before the expiration of the 30-day period described in this subsection, enter an order prohibiting the payment of the dividend.

(6) An extraordinary dividend or distribution includes a dividend or distribution of cash or other property, whose fair market value plus the fair market value of other dividends or distributions made within the preceding 12 months exceeds the greater of 10% of the insurer's surplus as regards policyholders as of December 31 of the immediately preceding year, or the net gain from operations of the insurer, if the insurer is a life insurer, or the net income, if the insurer is not a life insurer, not including realized capital gains, for the 12-month period ending December 31 of the immediately preceding year, but shall not include pro rata distributions of any class of the insurer's own securities.

(7) Notwithstanding any other provision of law, an insurer may declare an extraordinary dividend or distribution that is conditional on the director's approval. The declaration does not confer rights on shareholders until the director has approved or has not disapproved the payment of the dividend or distribution within the 30-day period described in subsection (5).

(8) Notwithstanding subsections (5) through (7), a dividend shall not be declared and paid by an insurer to an affiliate if after the payment the insurer could not satisfy the standards described in section 403.

(9) An insurer aggrieved by the director's determination or order under this section is entitled to a contested case hearing under the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328. A hearing under this subsection must be held no later than 10 days after receipt of the insurer's request. The director's determination or order shall remain in effect except as modified by the director during the pendency of the hearing and until a final decision by the director. The director shall render a final decision within 30 days after the conclusion of the hearing.

History: Add. 1970, Act 136, Imd. Eff. July 29, 1970 ;-- Am. 1992, Act 182, Imd. Eff. Oct. 1, 1992 ;-- Am. 1994, Act 227, Imd. Eff. June 27, 1994 ;-- Am. 1994, Act 443, Imd. Eff. Jan. 10, 1995 ;-- Am. 1995, Act 219, Imd. Eff. Dec. 1, 1995 ;-- Am. 2015, Act 244, Imd. Eff. Dec.

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