

DIVESTMENT FROM TERROR ACT (EXCERPT)
Act 234 of 2008

129.294 Scrutinized companies; assembly into list; modification; procedure to be adhered to by fiduciary.

Sec. 4.

(1) At the end of the 90-day period or by the first meeting of the fiduciary following the 90-day period described in section 3, the fiduciary shall assemble all scrutinized companies identified into a scrutinized companies list.

(2) The fiduciary shall update the scrutinized companies list described in subsection (1) on a quarterly basis based on evolving information from, among other sources, those sources listed in section 3. However, if a fiduciary receives credible information that shows that a scrutinized company was wrongfully identified as a scrutinized company, the fiduciary shall immediately modify the scrutinized company list to remove the name of the scrutinized company.

(3) The fiduciary shall adhere to the following procedure for companies on the scrutinized companies list described in subsection (1):

(a) The fiduciary shall immediately determine the companies on the scrutinized companies list in which the fiduciary oversees pursuant to its responsibilities as described in section 2(e).

(b) For each company identified in subdivision (a) with only inactive business operations, the fiduciary shall send a written notice informing the company of this section and encourage the company to continue to refrain from initiating active business operations in a state sponsor of terror until it is able to avoid scrutinized business operations and further encourage the company to engage in substantial humanitarian operations in the country. The fiduciary shall continue the correspondence on a semiannual basis.

(c) For each company newly identified in subdivision (a) with active business operations, the fiduciary shall send a written notice informing the company of its scrutinized company status and that it may become subject to divestment by the fiduciary. The notice shall offer the company the opportunity to clarify its state sponsor of terror-related activities and shall encourage the company, within 90 days, to either cease its scrutinized business operations or convert such operations to inactive business operations in order to avoid qualifying for divestment by the fiduciary.

(d) If, within 90 days following the fiduciary's first engagement with a company, that company ceases scrutinized business operations, the company shall be removed from the scrutinized companies list and this act shall cease to apply to it unless it resumes scrutinized business operations. If, within 9 months following the fiduciary's first engagement, the company converts its scrutinized active business operations to inactive business operations, the company shall not be subject to this act.

(e) If, after 90 days following the fiduciary's first engagement with a company, if the company has not developed and announced a plan to convert its active business operations to inactive business operations, and only while the company continues to have scrutinized active business operations, the fiduciary shall sell, redeem, divest, or withdraw all publicly traded securities of the company, according to the following schedule:

(i) At least 50% of the assets shall be removed from the fiduciary's assets under management within 9 months after the company's most recent appearance on the scrutinized companies list.

(ii) 100% of the assets shall be removed from the fiduciary's assets under management within 15 months after the company's most recent appearance on the scrutinized companies list.

(f) Except as provided in subdivision (g), at no time shall the fiduciary acquire securities of companies on the scrutinized companies list that have active business operations.

(g) Subdivisions (e) and (f) shall not apply to indirect holdings in actively managed investment funds. For purposes of this section, actively managed investment funds include private equity funds and publicly traded funds. Before the fiduciary invests in a new private equity fund that is not in the fiduciary's portfolio as of the effective date of this act, the fiduciary shall perform due diligence to prevent investment in any private equity fund in violation of this act. The fiduciary is not required to identify holdings in private equity funds or submit engagement letters to those funds. If the manager of a publicly traded, actively managed fund that is in the fiduciary's portfolio on the effective date of this act creates a similar publicly traded, actively managed fund with indirect holdings devoid of identified scrutinized companies with scrutinized active business operations as defined in this act, the fiduciary is not required to, but is strongly encouraged to, replace all applicable investments with investments in the similar fund in an expedited time frame consistent with prudent investment standards.

History: 2008, Act 234, Imd. Eff. July 17, 2008