

DISTRICT OF COLUMBIA
OFFICIAL CODE

TITLE 31.
INSURANCE AND SECURITIES.

CHAPTER 21.
STANDARDS TO IDENTIFY INSURANCE
COMPANIES DEEMED TO BE IN HAZARDOUS
FINANCIAL CONDITION.

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§ 31-2101. STANDARDS FOR DETERMINING INSURANCE COMPANIES IN HAZARDOUS FINANCIAL CONDITION.

(a) In order to determine whether the continued operation of any insurer transacting an insurance business in the District of Columbia might be deemed to be hazardous to the policyholders, creditors, or the general public, the Mayor may consider the following standards, either singly or in combination of 2 or more:

- (1) Adverse findings reported in financial condition and market conduct examination reports;
- (2) The National Association of Insurance Commissioners Insurance Regulatory Information System and its related reports;
- (3) The ratios of commission expense, general insurance expense, policy benefits, and reserve increases as to annual premium and net investment income which could lead to an impairment of capital and surplus;
- (4) The insurer's asset portfolio, when viewed in light of current economic conditions, is not of sufficient value, liquidity, or diversity to assure the company's ability to meet its outstanding obligations as they mature;
- (5) The ability of an assuming reinsurer to perform and whether the insurer's reinsurance program provides sufficient protection for the company's remaining surplus after taking into account the insurer's cash flow and the classes of business written as well as the financial condition of the assuming reinsurer;
- (6) The insurer's operating loss in the last 12-month period or any shorter period of time, including, but not limited to, net capital gain or loss, change in nonadmitted assets, and cash dividends paid to shareholders, is greater than 50% of the insurer's remaining surplus as regards policyholders in excess of the minimum required;
- (7) Whether any affiliate, subsidiary, or reinsurer is insolvent, threatened with insolvency, or delinquent in payment of its monetary or other obligation;
- (8) Contingent liabilities, pledges, or guaranties which, either individually or collectively, involve a total amount which in the opinion of the Mayor may affect the solvency of the insurer;
- (9) Whether any controlling person of an insurer is delinquent in the transmitting to, or payment of, net premiums to such an insurer;
- (10) The age and collectibility of receivables;
- (11) Whether the management of an insurer, including officers, directors, or any other person who directly or indirectly controls the operation of the insurer, fails to possess and demonstrate the competence, fitness, and reputation deemed necessary to serve the insurer in such a position;
- (12) Whether management of an insurer has failed to respond to inquiries relative to the condition of the insurer or has furnished false and misleading information concerning an inquiry;
- (13) Whether management of an insurer either has filed any false or misleading sworn financial statement, has released any false or misleading financial statement to lending institutions or to the general public, has made a false or misleading entry, or has omitted an entry of material amount in the books of the insurer;
- (14) Whether the insurer has grown so rapidly and to such an extent that it lacks adequate financial and administrative capacity to meet its obligations in a timely manner; or
- (15) Whether the company has experienced or will experience in the foreseeable future cash flow or liquidity problems.

(b) For the purposes of making a determination of an insurer's financial condition under this chapter, the Mayor may:

- (1) Disregard any credit or amount receivable resulting from transactions with a reinsurer which is insolvent, impaired, or otherwise subject to a delinquency proceeding;
- (2) Make appropriate adjustments to asset values attributable to investments in or transactions with parents, subsidiaries, or affiliates;
- (3) Refuse to recognize the stated value of accounts receivable if the ability to collect receivables is highly speculative in view of the age of the account or the financial condition of the debtor; and
- (4) Increase the insurer's liability in an amount equal to any contingent liability, pledge, or guarantee not otherwise included if there is a substantial risk that the insurer will be called upon to meet the obligation undertaken within the next 12-month period.

(Oct. 21, 1993, D.C. Law 10-43, § 2, 40 DCR 6023.)

HISTORICAL AND STATUTORY NOTES

Prior Codifications

1981 Ed., § 35-3501.

Legislative History of Laws

Law 10-43, the "Standards to Identify Insurance Companies Deemed to Be in Hazardous Financial Condition Act of 1993," was introduced in Council and assigned Bill No. 10-130, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on June 29, 1993, and July 13, 1993, respectively. Signed by the Mayor on August 4, 1993, it was assigned Act No. 10-78 and transmitted to both Houses of Congress for its review. D.C. Law 10-43 became effective on October 21, 1993.

Delegation of Authority

Delegation of authority pursuant to D.C. Law 10-43, the Standards to Identify Insurance Companies Deemed to Be in Hazardous Financial Condition Act of 1993: See Mayor's Order 94-54, March 7, 1994 (41 DCR 1433).

Miscellaneous Notes

Mayor authorized to issue rules: Section 5 of D.C. Law 10-43 provided that the Mayor shall, pursuant to subchapter I of Chapter 15 of Title 1 [subchapter I of Chapter 5 of Title 2, 2001 Ed.], issue rules to implement the provisions of this chapter.

§ 31-2102. CORRECTIVE ACTIONS.

(a) If the Mayor determines that the continued operation of the insurer licensed to transact business in the District of Columbia may be hazardous to the policyholders or the general public, the Mayor may, upon his or her determination, issue an order requiring the insurer to:

- (1) Reduce the total amount of present and potential liability for policy benefits by reinsurance;
- (2) Reduce, suspend, or limit the volume of business being accepted or renewed;
- (3) Reduce general insurance and commission expenses by specified methods;
- (4) Increase the insurer's capital and surplus;
- (5) Suspend or limit the declaration and payment of dividend by an insurer to its stockholders or to its policyholders;
- (6) File reports in a form acceptable to the Mayor concerning the market value of an insurer's assets;
- (7) Limit or withdraw from certain investments or discontinue certain investment practices to the extent the Mayor deems necessary;
- (8) Document the adequacy of premium rates in relation to the risks insured; or
- (9) File, in addition to regular annual statements, interim financial reports on the form adopted by the National Association of Insurance Commissioners or on a form promulgated by the Mayor.

(b) If the insurer is a foreign insurer, the Mayor's order under subsection (a) of this section may be limited to the extent provided by statute.

(c) Any insurer subject to an order under subsection (a) of this section may request a hearing to review that order. The notice of hearing shall be served upon the insurer pursuant to § 2-509. The notice of hearing shall state the time and place of hearing, and the conduct, condition, or ground upon which the Mayor based the order. Unless mutually agreed between the Mayor and the insurer, the hearing shall occur not

less than 10 days nor more than 30 days after notice is served and shall be held in the District of Columbia. The Mayor shall hold all hearings under this section privately, unless the insurer requests a public hearing, in which case the hearing shall be public.

(d) The procedures and remedies set forth in this chapter do not in any way supercede or limit the authority of the Commissioner of Insurance and Securities to take over a company or to revoke or suspend its certificate of authority pursuant to Chapter 11 of this title, Chapter 25 of this title, or Chapter 43 of this title.

(Oct. 21, 1993, D.C. Law 10-43, § 3, 40 DCR 6023; Apr. 26, 1994, D.C. Law 10-103, § 7(a), 41 DCR 1005; May 21, 1997, D.C. Law 11-268, § 10(ee), 44 DCR 1730.)

HISTORICAL AND STATUTORY NOTES

Prior Codifications

1981 Ed., § 35-3502.

Temporary Amendments of Section

For temporary (225 day) amendment of section, see § 7(a) of Insurance Omnibus Temporary Amendment Act of 1993 (D.C. Law 10-76, March 17, 1994, law notification 41 DCR 1626).

Legislative History of Laws

For legislative history of D.C. Law 10-43, see Historical and Statutory Notes following § 31-2101.

Law 10-103, the "Insurance Omnibus Amendment Act of 1994," was introduced in Council and assigned Bill No. 10-394, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on January 4, 1994, and February 1, 1994, respectively. Signed by the Mayor on February 17, 1994, it was assigned Act No. 10-191 and transmitted to both Houses of Congress for its review. D.C. Law 10-103 became effective on April 26, 1994.

Law 11-268, the "Department of Insurance and Securities Regulation Establishment Act of 1996," was introduced in Council and assigned Bill No. 11- 415, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on November 7, 1996, and December 3, 1996, respectively. Signed by the Mayor on December 30, 1996, it was assigned Act No. 11-524 and transmitted to both Houses of Congress for its review. D.C. Law 11-268 became effective on May 21, 1997.

§ 31-2103. JUDICIAL REVIEW.

Any order or decision of the Mayor shall be subject to review in accordance with § 2-510, at the request of any person suffering a legal wrong or whose interests are adversely affected or aggrieved by the order or decision of the Mayor.

(Oct. 21, 1993, D.C. Law 10-43, § 4, 40 DCR 6023.)

HISTORICAL AND STATUTORY NOTES

Prior Codifications

1981 Ed., § 35-3503.

Legislative History of Laws

For legislative history of D.C. Law 10-43, see Historical and Statutory Notes following § 31-2101.