

304.37-030 Standards for insurance holding company system -- Factors to be considered -- Prohibited transactions.

- (1) Material transactions by registered insurers with their affiliates shall be subject to the following standards:
 - (a) The terms shall be fair and reasonable;
 - (b) Agreements for cost sharing services and management shall include provisions as required by administrative regulations promulgated by the commissioner;
 - (c) Charges or fees for services performed shall be reasonable;
 - (d) Expenses incurred and payment received shall be allocated to the insurer in conformity with consistently applied accounting practices;
 - (e) The books, accounts, and records of each party shall be maintained to clearly and accurately disclose the precise nature and details of the transactions; and
 - (f) The insurer's surplus as regards policyholders, following any dividends or distributions to shareholder affiliates, shall be reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs.
- (2) (a) The following transactions involving a domestic insurer and any person in its insurance holding company system, including amendments or modifications of affiliate agreements previously filed pursuant to this subsection, which are subject to any materiality standards contained in this subsection, shall not be entered into unless the insurer has notified the commissioner in writing of its intention to enter into the transaction at least thirty (30) days prior to the transaction, or a shorter period as the commissioner may permit, and the commissioner has not disapproved it within that time. The notice for amendments or modifications shall include the reasons for the change and the financial impact on the domestic insurer. Informal notice shall be reported, within thirty (30) days after a termination of a previously filed agreement, to the commissioner for determination of the type of filing required, if any:
 1. Sales, purchases, exchanges, loans, or extensions of credit, guarantees, or investments, if the transactions are equal to or exceed, with respect to non-life insurers, the lesser of three percent (3%) of the insurer's admitted assets or twenty-five percent (25%) of surplus as regards policyholders, or with respect to life insurers, three percent (3%) of the insurer's admitted assets, each as of December 31 next preceding;
 2. Loans or extensions of credit to any person who is not an affiliate, if the insurer makes the loans or extensions of credit with the agreement or understanding that the proceeds of the transactions, in whole or in substantial part, are to be used to make loans or extensions of credit to, to purchase assets of, or to make investments in, any affiliate of the insurer making the loans or extensions of credit if the transactions are equal to or exceed, with respect to non-life insurers, the lesser of three percent (3%) of the insurer's admitted assets or twenty-five percent (25%) of surplus as

regards policyholders, or, with respect to life insurers, three percent (3%) of the insurer's admitted assets, each as of December 31 next preceding;

3. Reinsurance agreements or modifications including:
 - a. All reinsurance pooling agreements; and
 - b. Agreements in which the reinsurance premium or a change in the insurer's liabilities, or the projected reinsurance premium or a change in the insurer's liability in any of the next three (3) years, equals or exceeds five percent (5%) of the insurer's surplus as regards policyholders, as of December 31 next preceding, including those agreements which may require as consideration the transfer of assets from an insurer to a nonaffiliate, if an agreement or understanding exists between the insurer and nonaffiliate that any portion of the assets will be transferred to one (1) or more affiliates of the insurer;
 4. All management agreements, service contracts, and all cost sharing arrangements;
 5. Guarantees when made by a domestic insurer; provided, however, that a guarantee which is quantifiable as to amount is not subject to the notice requirements of this paragraph unless it exceeds the lesser of one-half of one percent (0.5%) of the insurer's admitted assets or ten percent (10%) of surplus, regarding policyholders as of the thirty-first day of December of the preceding year. All guarantees which are not quantifiable as to amount shall be subject to the notice requirements of this paragraph;
 6. Direct or indirect acquisitions or investments in a person that controls the insurer or in an affiliate of the insurer in an amount which, together with its present holding in investments, exceeds two and one-half percent (2.5%) of the insurer's surplus to policyholders. Direct or indirect acquisitions or investments in subsidiaries acquired pursuant to KRS 304.37-110, authorized under this subtitle, or in nonsubsidiary insurance affiliates that are subject to the provisions of this subtitle are exempt from this requirement; and
 7. Any material transactions, specified by regulation, which the commissioner determines may adversely affect the interests of the insurer's policyholders.
- (b) This subsection shall not authorize or permit any transactions which, in the case of an insurer not a member of the same holding company system, would be otherwise contrary to law.
 - (c) A domestic insurer shall not enter into transactions which are part of a plan or series of like transactions with persons within the holding company system if the purpose of those separate transactions is to avoid the statutory threshold amount and thus avoid the review that would otherwise occur. If the commissioner determines that the separate transactions were entered into over any twelve (12) month period for avoidance purposes, the commissioner may exercise his or her authority under KRS 304.99-151.

- (d) The commissioner, in reviewing transactions pursuant to this subsection, shall consider whether the transactions comply with the standards set forth in subsection (1) of this section and whether they may adversely affect the interests of policyholders.
 - (e) The commissioner shall be notified within thirty (30) days of any investment of the domestic insurer in any one (1) corporation if the total investment in the corporation by the insurance holding company exceeds ten percent (10%) of the corporation's voting securities.
- (3) (a) Notwithstanding the control of a domestic insurer by any person, the officers and directors of the insurer shall not be relieved of any obligation or liability to which they would otherwise be subject by law, and the insurer shall be managed so as to assure its separate operating identity consistent with this chapter.
- (b) Nothing in this section precludes a domestic insurer from having or sharing a common management or cooperative or joint use of personnel, property, or services with one (1) or more other persons under arrangements which meet the standards of subsection (1) of this section.
- (4) The following factors, among others, shall be considered in determining whether an insurer's surplus as regards policyholders is reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs:
- (a) The size of the insurer as measured by its assets, capital and surplus, reserves, premium writings, insurance in force, and other appropriate criteria;
 - (b) The extent to which the insurer's business is diversified among the several lines of insurance;
 - (c) The number and size of risks insured in each line of business;
 - (d) The extent of the geographical dispersion of the insurer's insured risks;
 - (e) The nature and extent of the insurer's reinsurance program;
 - (f) The quality, diversification, and liquidity of the insurer's investment portfolio;
 - (g) The recent past and projected future trend in the size of the insurer's surplus as regards policyholders;
 - (h) The surplus as regards policyholders maintained by other comparable insurers;
 - (i) The adequacy of the insurer's reserves; and
 - (j) The quality and liquidity of investments in subsidiaries. The commissioner may treat any investment as a disallowed asset for purposes of determining the adequacy of surplus as regards policyholders if in his or her judgment the investment warrants.
- (5) No insurer subject to registration under KRS 304.37-020 shall pay any extraordinary dividend or make any other extraordinary distribution to its stockholders until thirty (30) days after the commissioner has received notice of the declaration thereof and has not within the period disapproved the payment, or the commissioner shall have approved the payment within the thirty (30) day period. For purposes of this section, an extraordinary dividend or distribution is

any dividend or distribution which, together with other dividends or distribution made within the preceding twelve (12) months, exceeds the lesser of (a) ten percent (10%) of the insurer's surplus as regards policyholders as of December 31 next preceding, or (b) the net gain from operations of the insurer company, if the insurer is a life insurer, or the net income, if the insurer is not a life insurer, for the twelve (12) month period ending December 31 next preceding, but shall not include pro rata distribution of any class of the insurer's own securities. Notwithstanding any other provision of law, an insurer may declare an extraordinary dividend or distribution which is conditional upon the commissioner's approval thereof, and the declaration shall confer no rights upon stockholders until the commissioner has approved the payment of the dividend or distribution or until the commissioner has not disapproved the payment within the thirty (30) day period referred to in this section.

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History: Amended 2012 Ky. Acts ch. 74, sec. 15, effective July 12, 2012. -- Amended 2010 Ky. Acts ch. 24, sec. 1474, effective July 15, 2010. -- Amended 1996 Ky. Acts ch. 326, sec. 3, effective July 15, 1996. -- Amended 1992 Ky. Acts ch. 267, sec. 5, effective July 14, 1992. -- Created 1972 Ky. Acts ch. 52, sec. 3, effective June 16, 1972.