

THE INSURANCE CODE OF 1956 (EXCERPT)

Act 218 of 1956

500.432 Trust agreement and amendments; authentication; withdrawal of approval; form; hearing; modifications or variations; contents and provisions of trust agreement; withdrawal of trustee assets in another state; notice; examination by commissioner; effect of refusal or neglect to comply with subsection (8); review.

Sec. 432. (1) The trust agreement and all amendments to the trust agreement shall be authenticated in a form and manner prescribed by the commissioner and shall not be effective unless approved by the commissioner upon a finding of all of the following:

(a) That the trust agreement or its amendments are sufficient in form and in conformity with law.

(b) That the trustee or trustees are eligible to be trustees.

(c) That the trust agreement is adequate to protect the interests of the beneficiaries of the trust.

(2) If at any time the commissioner finds after reasonable notice and hearing that the trust agreement no longer meets the requirements of subsection (1), the commissioner may withdraw approval of the trust agreement. The withdrawal of approval shall be in the form of a final order or decision and shall clearly set forth the findings and the reasons for the withdrawal of approval. A hearing under this subsection is not subject to the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, being sections 24.201 to 24.328 of the Michigan Compiled Laws.

(3) The commissioner may from time to time approve modifications of or variations in any trust agreement that in the commissioner's judgment are not prejudicial to the interests of the people of this state or the United States and of policyholders and claimants of the U.S. branch.

(4) The trust agreement shall contain all of the following:

(a) The vesting of legal title to trustee assets in a trustee and its lawfully appointed successors.

(b) A requirement that, except with the approval of the commissioner for assets held in custodial or similar accounts, all assets deposited in the trust shall be continuously kept within the United States.

(c) Provisions for substitution of a new trustee in case of a vacancy subject to the commissioner's approval.

(d) A requirement that the trustee shall continuously maintain a record at all times sufficient to identify the trust's assets.

(e) A requirement that the trustee assets shall consist of cash or investments eligible for investment of the funds of domestic insurers and accrued interest on those assets if collectible by the trustee.

(f) A requirement that the trust shall be for the exclusive benefit, security, and protection of the policyholders and claimants of the U.S. branch and that it shall be maintained as long as there is outstanding any liability of the alien insurer arising out of its insurance transactions in the United States.

(g) A provision that no withdrawals of assets, other than income as specified in subsection (5), shall be made or permitted by the trustee without the commissioner's approval except to do the following:

(i) Substitute other assets permitted by law and at least equal in value and quality to those withdrawn, upon the specific written direction of the United States manager when duly empowered and acting pursuant to either general or specific written authority previously given or delegated by the board of directors. Substituted assets are of the same quality if, for securities, they are rated "BBB" or above by Moody's or Standard & Poor's or are rated category 1 or 2 by the national association of insurance commissioners or, for other assets, are not in arrears, were acquired by the alien insurer in an arm's length transaction from an unaffiliated third party within 30 days prior to the substitution and, for interests in mortgages, the mortgages comply with section 942.

(ii) If the income of the trust is not paid over as specified in subsection (5), pay liabilities of the insurer to a policyholder or in satisfaction of a contractual provision in a policy, provided that the total trustee assets are not thereby less than the amount required to be maintained pursuant to section 431c.

(iii) Transfer assets to an official liquidator or rehabilitator pursuant to an order of a court of competent jurisdiction.

(h) A provision that withdrawals of assets shall be made or permitted by the trustee only with the commissioner's approval and only if a deposit is required by law in any state for the security or benefit of all policyholders, or policyholders and claimants, of the U.S. branch in the United States.

(5) The trust agreement may provide that income, earnings, dividends, or interest accumulations of the fund's assets may be paid over to the United States manager of the U.S. branch upon request, provided that the total trustee assets are not thereby less than the amount required to be maintained pursuant to section 431c.

(6) Upon withdrawal of trustee assets deposited in another state in which the insurer is authorized to do business, it is sufficient if the trust agreement requires similar written approval of the insurance supervising official of that state in lieu of approval by the commissioner provided that the total trustee assets are not

thereby less than the amount required to be maintained pursuant to section 431c.

(7) For all withdrawals, the U.S. branch shall give the commissioner at least 15 days' prior notice in writing of the nature and extent of the proposed withdrawal. For a withdrawal due to overfunding, it shall be considered that the commissioner has approved the withdrawal in either of the following cases:

(a) The commissioner has not responded to the request in any manner within 15 days after receipt of the notice.

(b) After the U.S. branch has replied to any request by the commissioner for further information concerning the proposed withdrawal, the commissioner does not respond further in any manner within 15 days after receipt of the reply.

(8) The commissioner may make examinations from time to time of the trustee assets of any authorized U.S. branch and may require the trustee to file a statement, in such form as the commissioner may prescribe, certifying the trust fund's assets and amount.

(9) Refusal or neglect of any trustee to comply with the requirements of subsection (8) is grounds for injunctive relief and other remedies including suspension, limitation, or revocation of the insurer's license, liquidation of its U.S. branch, or the trustee's removal. If removal occurs prior to the appointment of a new trustee, the trustee assets shall be deposited with the commissioner or as the commissioner directs. Failure of any trustee to comply with the other requirements of this section is grounds for suspension, limitation, or revocation of the insurer's license or the liquidation of its U.S. branch.

(10) Within 90 days after the effective date of this section, the commissioner shall inform each U.S. branch that the trust agreement in force on that date to which the U.S. branch is party is subject to review by the commissioner and the approximate date of the review. Following the review, the commissioner shall inform the relevant U.S. branch in a written notice of any deficiencies in its trust agreements. The U.S. branch shall amend or replace its trust agreement in accordance with this amendatory act within 30 days after receiving the notice from the commissioner.

History: Add. 1994, Act 227, Imd. Eff. June 27, 1994.

Compiler's note: Former MCL 500.432, which pertained to the continuation of certificate of authority, was repealed by Act 360 of 1972, Imd. Eff. Jan. 9, 1973.

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