

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

500.4721 SPFC contracts; agreements with affiliated companies and third parties; contents of contract; withdrawal of assets or income from trust and transfer to SPFC; approval from counterparty.

Sec. 4721. (1) An SPFC, at any given time, may enter into and effectuate an SPFC contract with a counterparty, provided that the SPFC contract meets all of the following:

(a) Complies with the plan of operation submitted to the commissioner.

(b) Obligates the SPFC to indemnify the counterparty for losses.

(c) Provides that contingent obligations of the SPFC under the SPFC contract are securitized through an SPFC insurance securitization and are funded and secured with assets held in trust for the benefit of the counterparty pursuant to this chapter and under agreements contemplated by this chapter and that are invested in a manner that meet the criteria under section 4727.

(2) An SPFC may enter into agreements with affiliated companies and third parties and conduct business necessary to fulfill its obligations and administrative duties incidental to the insurance securitization and the SPFC contract. The agreements may include management and administrative services agreements and other allocation and cost sharing agreements, or swap and asset management agreements, or both, or agreements for other contemplated types of transactions provided in section 4719.

(3) An SPFC contract shall contain all of the following:

(a) A requirement for the SPFC to enter into a trust agreement specifying what recoverables or reserves, or both, the agreement is to cover and to establish a trust account for the benefit of the counterparty.

(b) A stipulation that assets deposited in the trust account shall be valued according to their current fair value and shall consist only of permitted investments.

(c) A requirement for the SPFC, before depositing assets with the trustee, to execute assignments, endorsements in blank, or to transfer legal title to the trustee of all shares, obligations, or any other assets requiring assignments, in order that the counterparty, or the trustee upon the direction of the counterparty, may negotiate whenever necessary the assets without consent or signature from the SPFC or another entity.

(d) A requirement that all settlements of account between the counterparty and the SPFC be made in cash or its equivalent.

(e) A stipulation that the SPFC and the counterparty agree that the assets in the trust account, established pursuant to the SPFC contract, are under the control of the counterparty and may be withdrawn by the counterparty at any time, notwithstanding any other provisions in the SPFC contract, and shall be utilized and applied by the counterparty or any successor by operation of law of the counterparty, including, subject to the provisions of section 4741, but without further limitation, any liquidator, rehabilitator, receiver, or conservator of the counterparty, without diminution because of insolvency on the part of the counterparty or the SPFC, only for the following purposes:

(i) To transfer all of the assets into 1 or more trust accounts for the benefit of the counterparty pursuant to the terms of the SPFC contract and in compliance with this chapter.

(ii) To pay any other incurred and paid amounts that the counterparty claims are due pursuant to the terms of the SPFC contract and in compliance with this chapter.

(4) The SPFC contract may contain provisions that give the SPFC the right to seek approval from the counterparty to withdraw from the trust all or part of the assets, or income from them, contained in the trust and to transfer the assets to the SPFC, provided that at the time of the withdrawal, the SPFC shall replace the withdrawn assets, excluding any income withdrawn, with other assets having a fair value equal to the fair value of the assets withdrawn and that meet the provisions of section 4727; and after the withdrawals and transfer, the fair value of the assets in trust securing the obligations of the SPFC under the SPFC contract is no less than an amount needed to satisfy the funded requirement of the SPFC contract. The counterparty shall be the sole judge as to the application of these provisions but shall not unreasonably nor arbitrarily withhold its approval.

History: Add. 2008, Act 29, Imd. Eff. Mar. 13, 2008.

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