

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

500.4725 SPFC; duty to ensure contracts fulfill certain requirements.

Sec. 4725.

In fulfilling its function, the SPFC shall adhere to the following and, to the extent of its powers, shall ensure that contracts obligating other parties to perform certain functions incident to its operations are substantively and materially consistent with all of the following:

(a) The assets of an SPFC shall be preserved and administered by or on behalf of the SPFC to satisfy the liabilities and obligations of the SPFC incident to the SPFC contract with the counterparty, the issuance of preferred securities, or the insurance securitization and other related agreements.

(b) Assets held by an SPFC in trust shall be valued at their fair value.

(c) The proceeds from the sale of SPFC securities pursuant to the insurance securitization shall be deposited with the trustee to the extent required to secure the obligations of the SPFC under the SPFC contract as provided by this chapter and shall be held or invested by the trustee pursuant to section 4727 and an asset management agreement, if any.

(d) Assets of the SPFC, other than those held in trust for the counterparty, and income on trust assets received by the SPFC may be used to pay interest or other consideration on any SPFC securities or other securities or outstanding debt or payments on preferred securities or other obligation of the SPFC. Nothing in this chapter shall be construed or interpreted to prevent an SPFC from entering into a swap agreement or other asset management transaction that has the effect of hedging or guaranteeing the fixed or floating interest rate returns paid on the assets in trust or required for the securities issued by the SPFC generated from or other consideration or payment flows in the transaction.

(e) In the SPFC insurance securitization, the contracts or other relating documentation shall contain provisions identifying the SPFC.

(f) Unless otherwise approved by the commissioner, an SPFC shall not do any of the following:

(i) Issue or otherwise administer primary insurance policies.

(ii) Enter into an SPFC contract with a person that is not licensed or otherwise authorized to transact the business of insurance or reinsurance in at least its state or country of domicile.

(iii) Assume or retain exposure to insurance or reinsurance losses for its own account that is not funded by proceeds from an SPFC insurance securitization that meets the provisions of this chapter. However, the SPFC may wholly or partially reinsure or retrocede the risks assumed to a third party reinsurer.

(g) An SPFC shall not do any of the following:

(i) Have any direct obligation to the policyholders or reinsureds of the counterparty.

(ii) Lend or otherwise invest, or place in custody, trust, or under management any of its assets with, or to borrow money or receive a loan from, other than by issuance of the securities pursuant to an insurance securitization, or advance from, anyone convicted of a felony, anyone who is untrustworthy or of known bad character, or anyone convicted of a criminal offense involving the conversion or misappropriation of fiduciary funds or insurance accounts, theft, deceit, fraud, misrepresentation, or corruption.

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