

October 17, 1958

SUBJECT: INSURANCE

TO ALL FOREIGN AND ALIEN INSURERS AUTHORIZED TO TRANSACT BUSINESS IN THE STATE OF NEW YORK:

Interpretation of Section 90 relating to Investments of Foreign and Alien Insurers

I

Pursuant to subdivision 1 of Section 90 of the Insurance Law, the Superintendent of Insurance may refuse a new or renewal license to any foreign insurer if he finds that its investments do not comply in substance with the investment requirements and limitations imposed by the Insurance Law upon like domestic insurers hereafter organized to do the same kind or kinds of insurance business.

The amendment to subdivision 1 of Section 90, as added by Chapter 981 of the Laws of 1958, reads as follows:

"For the purposes of this subsection, the investments of a foreign insurer shall be deemed to comply in substance with the investment requirements and limitations imposed by this chapter upon like domestic insurers hereafter organized to do the same kind or kinds of insurance business if, after disallowing as admitted assets in whole or in part any of its investments which do not comply with such investment requirements and limitations, the superintendent finds that the resulting surplus to policyholders of such foreign insurer would not be reduced below an amount which is reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs; but in no event below an amount equal to the minimum surplus to policyholders required on organization of a domestic insurer to do the same kind or kinds of insurance business." (Emphasis added)

Since the hearing held in this office on Friday, June 20, 1958 regarding the captioned subject, the Department has given considerable thought to the suggestions made by members of industry and has studied the need for interpretation of the provisions of Section 90 of the New York Insurance Law as amended at the last session of the New York State Legislature.

As a result of this hearing and study, the phrase "after disallowing as admitted assets in whole or in part any of its investments which do not comply with such investment requirements and limitations" in the above quoted amendment is hereby interpreted as including within its meaning that the sum of (a) and (b), below, shall be disallowed as admitted assets:

(a) Individual investments which do not comply with the qualifying investment requirements or limitations prescribed in Sections 80, 81, 82, 83, 84 and 85; provided, however, that the Superintendent of Insurance, in his discretion, may allow in part any investment which exceeds in amount the applicable limitations prescribed in Sections 81, 82, 83, 84 or 85.

(b) The aggregate amounts invested in classes of securities or types of investments to the extent such amounts exceed the aggregate limitations prescribed in Sections 80, 81, 83, 84, 85, 86 and 87.

II

Subdivision 2 of Section 90, as amended by Chapter 981 of the Laws of 1958, is hereby interpreted as meaning that the general deposits and trustee assets of an alien insurer shall be disallowed in whole or in part for the purposes of compliance with this subdivision in accordance with the interpretation above applicable to subdivision 1.

III

Subdivision 3 of Section 90, as added by Chapter 981 of the Laws of 1958, which reads: "Nothing in this section shall be construed to relieve any foreign or alien insurer from compliance with any other provision of this chapter", is hereby interpreted as including within its meaning that:

- (a) the applicability of the amendments to subdivisions 1 and 2 of Section 90 are to be confined to compliance with the licensing requirements relative to investments and financial qualifications;
- (b) other restrictions and prohibitions in the Insurance Law applicable to foreign and alien insurers, including those imposed by Section 40 (subdivision 6), Section 42 (subdivisions 2, 3, 4 and 5), and Section 193 (subdivision 2), remain in full force and effect; and
- (c) in the interest of maintaining the public policy of this State, as declared in Section 42 (subdivisions 3, 4 and 5) and Section 193 (subdivision 2), a foreign or alien life insurer will not have complied with the prohibitions imposed by such statutory provisions in hereafter acquiring through stock ownership the control of another corporation, whether it be engaged in the insurance business or other kinds of business that is not necessarily or properly incidental to the kind or kinds of insurance business which such insurer is licensed to do in this State and a foreign or alien insurer which is licensed to do fire and marine or casualty and surety kinds of insurance business will not have complied with the prohibitions imposed by Section 42 (subdivisions 3, 4 and 5), except as otherwise permitted by Sections 85 and 86, in hereafter acquiring by stock ownership the control of another corporation that is engaged in a business which is not necessarily or properly incidental to the kind or kinds of insurance business which such, insurer is licensed to do in this State.*

* As affected by *Connecticut General Life Insurance Co. v. Superintendent of Insurance*, 10 NY2d 42, 217 S2d 39 (1961).

Please acknowledge receipt of this letter.

[SIGNATURE]

Superintendent of Insurance