

IC 5-10.2-9

Chapter 9. Sudan Divestment

IC 5-10.2-9-0.3

General assembly findings

Sec. 0.3. The general assembly finds the following:

- (1) Mandatory divestment by the funds of the funds' holdings in certain companies is a measure that should be employed only under extraordinary circumstances.
- (2) The Congress and President of the United States have declared that genocide is occurring in the Darfur region of Sudan.
- (3) The Sudan crisis represents the first time the government of the United States has labeled ongoing atrocities a genocide.
- (4) The situation in Sudan is unique and constitutes the extraordinary circumstances necessary for mandatory divestment by the funds of the funds' holdings in scrutinized companies with active business operations in Sudan.

As added by P.L.220-2011, SEC.75.

IC 5-10.2-9-1

"Active business operations"

Sec. 1. As used in this chapter, "active business operations" means all business operations that are not inactive business operations.

As added by P.L.149-2007, SEC.3.

IC 5-10.2-9-2

"Board"

Sec. 2. As used in this chapter, "board" refers to the board of trustees of the Indiana public retirement system established by IC 5-10.5-3-1.

As added by P.L.149-2007, SEC.3. Amended by P.L.23-2011, SEC.11.

IC 5-10.2-9-3

"Business operations"

Sec. 3. As used in this chapter, "business operations" means engaging in any commerce in any form in Sudan.

As added by P.L.149-2007, SEC.3.

IC 5-10.2-9-4

"Company"

Sec. 4. (a) As used in this chapter, "company" means any of the following:

- (1) A sole proprietorship.
- (2) An organization.
- (3) An association.
- (4) A corporation.
- (5) A partnership.
- (6) A joint venture.

- (7) A limited partnership.
- (8) A limited liability partnership.
- (9) A limited liability company.
- (10) A business association.

(b) The term includes all wholly owned subsidiaries, majority owned subsidiaries, parent companies, and affiliates of such entities or business associations that exist for profit making purposes.

As added by P.L.149-2007, SEC.3.

IC 5-10.2-9-5

"Complicit in Darfur genocide"

Sec. 5. For purposes of this chapter, a company is "complicit in the Darfur genocide" if the company took any actions during the preceding twenty (20) month period that directly support or promote the genocidal campaign in the Darfur region of Sudan, including any of the following:

- (1) Preventing Darfur's victimized population from communicating with each other.
- (2) Encouraging Sudanese citizens to speak out against an internationally approved security force in Darfur.
- (3) Actively working to deny, cover up, or alter the record on human rights abuses in Darfur.

As added by P.L.149-2007, SEC.3.

IC 5-10.2-9-6

"Cost of divestment"

Sec. 6. As used in this chapter, "cost of divestment" means the sum of the following:

- (1) The costs associated with the sale, redemption, divestment, or withdrawal of an investment.
- (2) The costs associated with the acquisition and maintenance of a replacement investment.
- (3) A cost not described in subdivision (1) or (2) that is incurred by the fund in connection with a divestment transaction.

As added by P.L.149-2007, SEC.3.

IC 5-10.2-9-7

"Direct holdings"

Sec. 7. As used in this chapter, "direct holdings" means all securities of a company held directly by the fund or in an account in which the fund owns all shares or interests.

As added by P.L.149-2007, SEC.3.

IC 5-10.2-9-8

"Fund"

Sec. 8. As used in this chapter, "fund" refers to the following:

- (1) The Indiana state teachers' retirement fund.
- (2) The public employees' retirement fund.

As added by P.L.149-2007, SEC.3.

IC 5-10.2-9-9**"Government of Sudan"**

Sec. 9. (a) As used in this chapter, "government of Sudan" refers to the government in Khartoum, Sudan, that is led by the National Congress Party (formally known as the National Islamic Front) or any successor government formed on or after October 13, 2006, including the coalition National Unity Government agreed upon in the Comprehensive Peace Agreement for Sudan.

(b) The term does not include the regional government of southern Sudan.

As added by P.L.149-2007, SEC.3.

IC 5-10.2-9-10**"Inactive business operations"**

Sec. 10. As used in this chapter, "inactive business operations" means the mere continued holding or renewal of rights to property previously operated to generate revenues but not presently deployed for such purpose.

As added by P.L.149-2007, SEC.3.

IC 5-10.2-9-11**"Indirect holdings"**

Sec. 11. As used in this chapter, "indirect holdings" means all securities of a company:

- (1) held in an account or a fund; and
- (2) managed by one (1) or more persons not employed by the fund, in which the fund owns shares or interests together with other investors not subject to this chapter.

As added by P.L.149-2007, SEC.3.

IC 5-10.2-9-12**"Marginalized populations of Sudan"**

Sec. 12. As used in this chapter, "marginalized populations of Sudan" includes the following:

- (1) The part of the population in the Darfur region that has been genocidally victimized.
- (2) The part of the population of southern Sudan victimized by Sudan's north-south civil war.
- (3) The Beja, Rashidiya, and other similarly underserved groups of eastern Sudan.
- (4) The Nubian and other similarly underserved groups in Sudan's Abyei, southern Blue Nile, and Nuba mountain regions.
- (5) The Amri, Hamadab, Manasir, and other similarly underserved groups of northern Sudan.

As added by P.L.149-2007, SEC.3.

IC 5-10.2-9-13**"Military equipment"**

Sec. 13. (a) As used in this chapter, "military equipment" means weapons, arms, or military defense supplies provided directly or

indirectly to any force actively participating in the conflict in Sudan. The term includes any equipment that readily may be used for military purposes, including:

- (1) radar systems; or
- (2) military grade transport vehicles.

(b) The term does not include weapons, arms, or military defense supplies sold to peacekeeping forces that may be dispatched to Sudan by the United Nations or the African Union.

As added by P.L.149-2007, SEC.3.

IC 5-10.2-9-14

"Mineral extraction activities"

Sec. 14. (a) As used in this chapter, "mineral extraction activities" means the exploration, extraction, processing, transporting, or wholesale sale of elemental minerals or associated metals or oxides, including:

- (1) gold;
- (2) copper;
- (3) chromium;
- (4) chromite;
- (5) diamonds;
- (6) iron;
- (7) iron ore;
- (8) silver;
- (9) tungsten;
- (10) uranium; and
- (11) zinc.

(b) The term includes the facilitation of mineral extraction activities, including the provision of supplies or services in support of mineral extraction activities.

As added by P.L.149-2007, SEC.3.

IC 5-10.2-9-15

"Oil related activities"

Sec. 15. (a) As used in this chapter, "oil related activities" includes:

- (1) the export of oil;
- (2) the extraction of or production of oil;
- (3) the exploration for oil;
- (4) the ownership of rights to oil blocks;
- (5) the refining or processing of oil;
- (6) the transportation of oil;
- (7) the selling or trading of oil; or
- (8) the construction or maintenance of a pipeline, a refinery, or another oil field infrastructure.

(b) The term includes the facilitation of oil related activities, including the provision of supplies or services in support of oil related activities. The mere retail sale of gasoline and related consumer products is not considered an oil related activity.

As added by P.L.149-2007, SEC.3.

IC 5-10.2-9-16

"Power production activities"

Sec. 16. As used in this chapter, "power production activities" means any business operation that involves a project commissioned by the National Electricity Corporation of Sudan or other similar entity of the government of Sudan whose purpose is to facilitate power generation and delivery. The term includes the following:

- (1) Establishing power generating plants or hydroelectric dams.
- (2) Selling or installing components for power generating plants or hydroelectric dams.
- (3) Providing service contracts related to the installation or maintenance of power generating plants or hydroelectric dams.
- (4) Facilitating power production activities, including providing supplies or services in support of power production activities.

As added by P.L.149-2007, SEC.3.

IC 5-10.2-9-17

"Research firm"

Sec. 17. As used in this chapter, "research firm" means a reputable, neutral third party research firm not controlled by the fund.

As added by P.L.149-2007, SEC.3.

IC 5-10.2-9-18

"Scrutinized company"

Sec. 18. (a) As used in this chapter, "scrutinized company" means a company that meets any of the following criteria:

- (1) Both of the following apply to the company:
 - (A) The company has business operations that involve contracts with or the provision of supplies or services to:
 - (i) the government of Sudan;
 - (ii) companies in which the government of Sudan has any direct or indirect equity share;
 - (iii) consortiums or projects commissioned by the government of Sudan; or
 - (iv) companies involved in consortiums or projects commissioned by the government of Sudan.
 - (B) Either:
 - (i) more than ten percent (10%) of the company's revenues or assets linked to Sudan involve oil related activities or mineral extraction activities, and less than seventy-five percent (75%) of the company's oil related or mineral extracting revenues or assets linked to Sudan involve contracts with the regional government of southern Sudan or a project or consortium created exclusively by the regional government, and the company has failed to take substantial action; or
 - (ii) more than ten percent (10%) of the company's revenues or assets linked to Sudan involve power production activities and less than seventy-five percent

(75%) of the company's power production activities include projects that are intended to provide power or electricity to the marginalized populations of Sudan, and the company has failed to take substantial action.

(2) The company is complicit in the Darfur genocide.

(3) The company supplies military equipment within Sudan, unless the company implements safeguards to prevent the use of the equipment by forces actively participating in armed conflict in Sudan. This subdivision does not apply to companies involved in the sale of military equipment solely to the regional government of southern Sudan or any internationally recognized peacekeeping force or humanitarian organization.

(b) The term does not include a social development company that is not complicit in the Darfur genocide.

As added by P.L.149-2007, SEC.3.

IC 5-10.2-9-19

"Social development company"

Sec. 19. As used in this chapter, "social development company" means a company whose primary purpose in Sudan is to provide humanitarian goods or services, including:

- (1) medicine or medical equipment;
- (2) agricultural supplies or infrastructure;
- (3) educational opportunities;
- (4) journalism related activities;
- (5) information or informational materials;
- (6) spiritual related activities;
- (7) services that are clerical or reporting in nature;
- (8) food;
- (9) clothing; or
- (10) general consumer goods that are unrelated to oil related activities, mineral extraction activities, or power production activities.

As added by P.L.149-2007, SEC.3.

IC 5-10.2-9-20

"Substantial action"

Sec. 20. As used in this chapter, "substantial action" means:

- (1) adopting, publicizing, and implementing a formal plan to cease scrutinized business operations within one (1) year and to refrain from any new business operations;
- (2) undertaking significant humanitarian efforts on behalf of one (1) or more marginalized populations of Sudan; or
- (3) materially improving conditions for the genocidally victimized population in Darfur through engagement with the government of Sudan.

As added by P.L.149-2007, SEC.3.

IC 5-10.2-9-21

Identification of scrutinized companies

Sec. 21. (a) Not later than March 30, 2008, each board shall make a good faith effort to identify all scrutinized companies in which the fund administered by the board has direct or indirect holdings.

(b) In carrying out its responsibilities under subsection (a), and at the board's discretion, each board may use existing research or contract with a research firm.

(c) A board or a research firm with which the board contracts under subsection (b) may take any of the following actions:

(1) Review publicly available information regarding companies with business operations in Sudan.

(2) Contact other institutional investors that invest in companies with business operations in Sudan.

(3) Contact asset managers contracted by the fund that invest in companies with business operations in Sudan.

(d) Not later than the first meeting of the board after March 30, 2008, each board shall compile the names of all scrutinized companies into a scrutinized company list and indicate whether each scrutinized company has active or inactive business operations in Sudan.

(e) Each board shall update its scrutinized company list at least on an annual basis based on evolving information from sources described in subsections (b) and (c).

As added by P.L.149-2007, SEC.3.

IC 5-10.2-9-22

Identification of holdings

Sec. 22. After a board creates or updates the scrutinized company list under section 21 of this chapter, the board shall immediately identify the companies on the scrutinized company list in which the fund administered by the board has direct or indirect holdings.

As added by P.L.149-2007, SEC.3.

IC 5-10.2-9-23

Notice to scrutinized company with inactive business operations

Sec. 23. (a) Each fund shall send to each scrutinized company:

(1) that is identified under section 22 of this chapter as one in which the fund has direct or indirect holdings; and

(2) that has only inactive business operations;

a written notice concerning the contents of this chapter and a statement encouraging the company to continue to refrain from initiating active business operations in Sudan until the company is able to avoid scrutinized business operations altogether.

(b) The fund shall continue to correspond on a semiannual basis with scrutinized companies in which the fund has direct or indirect holdings and that have only inactive business operations.

As added by P.L.149-2007, SEC.3.

IC 5-10.2-9-24

Notice to scrutinized company with active business operations

Sec. 24. (a) Each fund shall send to each scrutinized company:

- (1) that is identified under section 22 of this chapter as one in which the fund has direct or indirect holdings; and
 - (2) that has active business operations;
- a written notice concerning the contents of this chapter and a statement indicating that the fund's holdings in the company may become subject to divestment by the fund.
- (b) A notice sent under this section shall:
 - (1) offer the company the opportunity to clarify the company's Sudan related activities; and
 - (2) encourage the company, within ninety (90) days after the date of the written notice, to either:
 - (A) cease its scrutinized business operations; or
 - (B) convert the company's operations to inactive business operations in order to avoid divestment by the fund of the fund's holdings in the company.

As added by P.L.149-2007, SEC.3.

IC 5-10.2-9-25

Compliance by a scrutinized company

Sec. 25. (a) If, within ninety (90) days after a fund's first engagement with a company under section 24 of this chapter, the company ceases scrutinized business operations, the company shall be removed from the fund's scrutinized company list and the provisions of sections 26, 27, 28, and 29 of this chapter shall cease to apply to the company unless the company resumes scrutinized business operations.

(b) If, within ninety (90) days after a fund first engages with a company under section 24 of this chapter, the company converts its scrutinized active business operations to inactive business operations, the company shall be subject to the provisions of section 23 of this chapter.

As added by P.L.149-2007, SEC.3.

IC 5-10.2-9-26

Divestment; exemption for certain commingled funds

Sec. 26. (a) Except as provided in sections 28 and 29 of this chapter, if, after ninety (90) days after a fund's first engagement with a company under section 24 of this chapter, the company continues to have scrutinized active business operations, the fund shall sell, redeem, divest, or withdraw all publicly traded securities of the company that are held by the fund, as follows:

- (1) At least fifty percent (50%) of such assets shall be removed from the fund's assets under management within nine (9) months after the company's appearance on the scrutinized company list.
- (2) One hundred percent (100%) of such assets shall be removed from the fund's assets under management within fifteen (15) months after the company's appearance on the scrutinized company list.

(b) If a company that ceased scrutinized active business

operations following engagement under section 24 of this chapter resumes scrutinized active business operations, and only while the company continues to have active business operations, the company shall immediately be placed back on the scrutinized company list. A fund that has holdings in the company shall sell, redeem, divest, or withdraw all publicly traded securities of the company as provided in subsection (a) based on the date the company is placed back on the scrutinized company list. The fund shall send a written notice to the company indicating that the company was placed back on the scrutinized company list and is subject to divestment.

(c) A board is not required to divest the board's holdings in a passively managed commingled fund that includes a scrutinized company with active business operations in Sudan if the estimated cost of divestment of the commingled fund is greater than ten percent (10%) of the total value of the scrutinized companies with active business operations held in the commingled fund. The board shall include any commingled fund that includes a scrutinized company that is exempted from divestment under this subsection in the board's report submitted to the legislative council under section 31 of this chapter.

As added by P.L.149-2007, SEC.3.

IC 5-10.2-9-27

Acquisition of securities containing scrutinized companies

Sec. 27. Except as provided in sections 28 and 29 of this chapter, a fund shall not acquire securities of companies on the scrutinized company list that have active business operations.

As added by P.L.149-2007, SEC.3.

IC 5-10.2-9-28

Scrutinized company excluded from federal sanctions

Sec. 28. If the government of the United States affirmatively declares any company on the scrutinized company list with active business operations in Sudan to be excluded from any federal sanctions relating to Sudan, the company is not subject to divestment or investment prohibition under this chapter.

As added by P.L.149-2007, SEC.3.

IC 5-10.2-9-29

Exclusion of indirect holdings in actively managed investment funds

Sec. 29. Notwithstanding any provision to the contrary, sections 26 and 27 of this chapter do not apply to indirect holdings in actively managed investment funds. However, if a fund has indirect holdings in actively managed investment funds containing the securities of scrutinized companies with active business operations, the fund shall submit letters to the managers of the investment funds requesting that the managers remove the scrutinized companies with active business operations from the fund or create a similar actively managed fund with indirect holdings without scrutinized companies with active

business operations. If the manager creates a similar fund, the fund shall replace all applicable investments with investments in the similar fund in a period consistent with prudent investing standards. *As added by P.L.149-2007, SEC.3.*

IC 5-10.2-9-30

Exclusion of private equity funds

Sec. 30. This chapter does not apply to private equity funds. *As added by P.L.149-2007, SEC.3.*

IC 5-10.2-9-31

Report to legislative council

Sec. 31. (a) On or before November 1, 2007, and thereafter as directed by the legislative council, the board shall submit a report in an electronic format under IC 5-14-6 to the legislative council for distribution to the members of the general assembly.

(b) The report must include at least the following information, as of the date of the report:

- (1) A copy of the scrutinized company list.
- (2) A summary of correspondence with companies engaged by the fund under sections 23 and 24 of this chapter.
- (3) All investments sold, redeemed, divested, or withdrawn in compliance with section 26 of this chapter.
- (4) All commingled funds that are exempted from divestment under section 26 of this chapter.
- (5) All prohibited investments under section 27 of this chapter.
- (6) Any progress made under section 29 of this chapter.

As added by P.L.149-2007, SEC.3.

IC 5-10.2-9-32

Expiration of chapter

Sec. 32. This chapter expires on the earliest of the following:

- (1) Twelve (12) months after the date the government of Sudan halts the genocide in Darfur as determined by the Congress of the United States and the United States Department of State.
- (2) The date the United States revokes its current sanctions against the government of Sudan.
- (3) The date Congress or the President of the United States, through legislation or executive order, declares that mandatory divestment of the type provided for in this chapter interferes with the conduct of foreign policy for the United States.
- (4) The date Congress or the President of the United States declares that the government of Sudan:
 - (A) has honored its commitments to cease attacks on civilians;
 - (B) demobilizes and demilitarizes the Janjaweed and associated militias;
 - (C) grants free and unfettered access for deliveries of humanitarian assistance; and
 - (D) allows for the safe and voluntary return of refugees and

international displaced persons.
As added by P.L.149-2007, SEC.3.

IC 5-10.2-9-33

Exemption from conflicting statutory or common law obligations

Sec. 33. With respect to actions taken in compliance with this chapter, including all good faith determinations regarding companies on the scrutinized company list, the fund shall be exempt from any conflicting statutory or common law obligations, including any obligations with respect to choice of asset managers, investment funds, or investments for fund securities portfolios.

As added by P.L.149-2007, SEC.3.

IC 5-10.2-9-34

Cessation of divestment and reinvestment in scrutinized companies

Sec. 34. (a) Notwithstanding any provision to the contrary, the fund shall be permitted to cease divesting and to reinvest in certain scrutinized companies on the scrutinized company list with active business operations in Sudan if evidence shows that the value for all assets under management by the fund becomes equal to or less than ninety-nine and five-tenths percent (99.5%) of the value of all assets under management by the fund, including the companies divested under section 26 of this chapter.

(b) As provided by this section, any cessation of divestment or reinvestment shall be strictly limited to the minimum steps necessary to avoid the contingency set forth in subsection (a).

(c) For any cessation of divestment, reinvestment, and subsequent ongoing investment authorized by this section, the fund shall submit a report in an electronic format under IC 5-14-6 to the legislative council for distribution to the members of the general assembly in advance of any initial reinvestment. The report shall be updated annually thereafter as applicable, setting forth the reasons and justifications for the decision to cease divestment, reinvest, or remain invested with companies with scrutinized active business operations. This section does not apply to companies that have ceased to have scrutinized business operations.

As added by P.L.149-2007, SEC.3.

IC 5-10.2-9-35

Immunity; liability of the fund and its agents

Sec. 35. (a) Both:

- (1) the state and its officers, agents, and employees; and
- (2) the fund and its board members, executive director, officers, agents, and employees;

are immune from civil liability for any act or omission related to the removal of an asset from the fund under this chapter.

(b) In addition to the immunity provided under subsection (a), both:

- (1) the officers, agents, and employees of the state; and
- (2) the board members, executive director, officers, agents, and

employees of the fund;
are entitled to indemnification from the fund for all losses, costs, and expenses, including reasonable attorney's fees, associated with defending against any claim or suit relating to an act authorized under this chapter.

As added by P.L.149-2007, SEC.3.

IC 5-10.2-9-36

Severability

Sec. 36. The provisions of this chapter are severable in the manner provided in IC 1-1-1-8(b).

As added by P.L.149-2007, SEC.3.