

2012 Kansas Statutes

74-4921c. Same; duties of board; prohibited investments, certain business operations in Sudan; exceptions; divestment, procedure; fiduciary responsibilities; report. (a) As used in K.S.A. 2012 Supp. 74-4921c and 74-4921d, and amendments thereto:

(1) "Active business operations" means a company engaged in business operations that provide revenue to the government of Sudan or a company engaged in oil-related activities;

(2) "board" means the board of trustees of the Kansas public employees retirement system;

(3) "business operations" means maintaining, selling or leasing equipment, facilities, personnel, or any other apparatus of business or commerce in Sudan, including the ownership or possession of real or personal property located in Sudan;

(4) "company" means a sole proprietorship, organization, association, corporation, partnership, venture or other entity, its subsidiary or affiliate that exists for profitmaking purposes or to otherwise secure economic advantage. "Company" also means a company owned or controlled, either directly or indirectly, by the government of Sudan, that is established or organized under the laws of or has its principal place of business in the republic of the Sudan;

(5) "complicity" means the taking of actions which have directly supported or promoted the genocidal campaign in Darfur;

(6) "energy or power-related operations" means any business operation that involves a project commissioned by the national electricity corporation of Sudan or similar Sudanese entity whose purpose is to facilitate energy or power generation and delivery;

(7) "government of Sudan" means the government of Sudan or its instrumentalities;

(8) "invest" or "investment" means the purchase, ownership or control of stock of a company, association or corporation, the capital stock of a mutual water company or corporation, bonds issued by the government or a political subdivision of Sudan, corporate bonds or other debt instruments issued by a company, or the commitment of funds or other assets to a company, including a loan or extension of credit to that company;

(9) "KPERs fund" means the Kansas public employees retirement fund created pursuant to the provisions of K.S.A. 74-4921, and amendments thereto;

(10) "military equipment" means weapons, arms or military defense supplies;

(11) "mineral extraction activities" includes, but is not limited to, the exploring, extracting, processing, transporting or wholesale selling or trading of elemental minerals or associated metal alloys or oxides or ore;

(12) "oil-related activities" means, but is not limited to, the export of oil, extracting or producing oil, exploration for oil, or the construction or maintenance of a pipeline, refinery, or other oil field infrastructure;

(13) "research firm" means a reputable, neutral third-party research firm;

(14) "substantial action" means a boycott of the government of Sudan, curtailing business in Sudan until that time described in subsection (m), selling company assets, equipment or real and personal property located in Sudan, or undertaking significant humanitarian efforts in the eastern, southern, or western regions of Sudan; and

(15) "Sudan" means the republic of the Sudan, a territory under the administration or control of the Sudan, including, but not limited to, the Darfur region, or an individual, company, or public agency located in Khartoum, northern Sudan, or the Nile River Valley that supports the republic of the Sudan.

(b) The board shall not invest KPERs funds in a company with business operations in Sudan that meets all of the following criteria:

(1) The company is engaged in active business operations in Sudan. If that company is not engaged in oil-related activities, that company also lacks significant business operations in the eastern, southern and western regions of Sudan; and

(2) either of the following apply:

(A) The company is engaged in oil-related activities, mineral extraction activities or energy or power-related operations, or contracts with another company with business operations in the oil, mineral extraction, energy and power sectors of Sudan, and the company failed to take substantial action related to the government of Sudan because of the Darfur genocide; or

(B) the company has demonstrated complicity in the Darfur genocide.

(c) Notwithstanding subsection (b), the board shall not invest KPERs funds in a company that supplies military equipment within the borders of Sudan. If a company provides equipment within the borders of Sudan that may be readily used for military purposes, including, but not limited to, radar systems and military-grade transport vehicles, there shall also be a strong presumption against investing in that company unless that company implements safeguards to prevent the use of that equipment for military purposes.

(d) (1) The board may contract with a research firm or firms to determine those companies that have business operations in Sudan. Such research firm or firms may obtain aggregate data on a majority of companies with business operations in Sudan. On or before September 30, 2007, such research firm or firms may report any findings to the board and may submit further findings to the board if there is a change of circumstances in Sudan.

(2) In addition to the reports described in subsection (d)(1), the board shall take all of the following actions no later than September 30, 2007:

(A) Review publicly available information regarding companies with business operations in Sudan;

(B) contact other institutional investors that invest in companies with business operations in Sudan; and

(C) send written notice to a company with business operations in Sudan that the company may be subject to this section.

(e) (1) The board shall determine, by the next applicable board meeting and based on the information and reports described in subsection (d), if a company meets the criteria described in subsection (b) or (c). If the board plans to invest or has investments in a company that meets the criteria described in subsection (b) or (c), that planned or existing investments shall be subject to subsections (g) and (h).

(2) Investments of the board in a company that does not meet the criteria described in subsection (b) or (c) or does not have active business operations in Sudan are not subject to subsection (h), provided that the company does not subsequently meet the criteria described in subsection (b) or (c) or engage in active business operations. The board shall identify the reasons why that company does not satisfy the criteria described in subsection (b) or (c) or does not engage in active business operations in the report to the joint committee on pensions, investments and benefits described in subsection (i).

(f) (1) The board shall not be required to divest passively managed commingled funds when the estimated

annual costs of divestment exceed 5% of the total value of scrutinized companies with active business operations held in the fund and the ratio holds for at least six months time. Such an estimate should be submitted in a report to the joint committee on pensions, investments, and benefits before the exemption is exercised. The report should be updated semi-annually thereafter as applicable.

(2) Notwithstanding subsection (e), if the board's investment in a company described in subsection (b) or (c) is limited to investment via an externally and actively managed commingled fund, the board shall contact that fund manager in writing and request that the fund manager remove that company from the KPERS fund as described in subsection (h). If the KPERS fund or account manager creates a fund or account devoid of companies described in subsection (b) or (c), the transfer of board investments from the prior fund or account to the fund or account devoid of companies with business operations in Sudan shall be deemed to satisfy subsection (h).

(3) If the board's investment in a company described in subsection (b) or (c) is limited to an alternative fund or account, the alternative fund or account manager creates an actively managed commingled fund that excludes companies described in subsection (b) or (c), and the new fund or account is deemed to be financially equivalent to the existing fund or account, the transfer of board investments from the existing fund or account to the new fund or account shall be deemed to satisfy subsection (h). If the board determines that the new fund or account is not financially equivalent to the existing fund, the board shall include the reasons for that determination in the report described in subsection (i).

(4) The board shall make a good faith effort to identify any private equity investments that involve companies described in subsection (b) or (c) or are linked to the government of Sudan. If the board determines that a private equity investment clearly involves a company described in subsection (b) or (c) or is linked to the government of Sudan, the board shall consider, at its discretion, if those private equity investments shall be subject to subsection (h). If the board determines that a private equity investment clearly involves a company described in subsection (b) or (c) or is linked to the government of Sudan and the board does not take action as described in subsection (h), the board shall include the reasons for its decision in the report described in subsection (i).

(g) Except as described in subsection (f) or subsection (e)(2), the board, in the board's capacity of shareholder or investor, shall notify any company described in subsection (e)(1) that the company is subject to subsection (h) and permit that company to respond to the information and reports described in subsection (d). The board shall request that the company take substantial action no later than 90 days from the date the board notified the company under this subsection. If the board determines that a company has taken substantial action or has made sufficient progress towards substantial action before the expiration of that 90-day period, that company shall not be subject to subsection (h). The board shall, at intervals not to exceed 90 days, continue to monitor and review the progress of the company until that company has taken substantial action in Sudan. A company that fails to complete substantial action or continue to make sufficient progress towards substantial action by the next time interval shall be subject to subsection (h).

(h) If a company described in subsection (e)(1) fails to complete substantial action by the time described in subsection (g), the board shall take the following actions:

(1) The board shall not make additional or new investments or renew existing investments in that company.

(2) The board shall liquidate the investments of the board in that company no later than 18 months after this subsection applies to that company. The board shall liquidate those investments in a manner to address the need for companies to take substantial action in Sudan and consistent with the board's fiduciary responsibilities as provided in K.S.A. 74-4921, and amendments thereto.

(i) On or before June 30, 2008, and every year thereafter, the board shall file a report with the joint committee on pensions, investments and benefits. The report shall describe the following:

(1) A list of investments the board has in companies with business operations in Sudan, including, but not limited to, the issuer, by name, of the stock, bonds, securities and other evidence of indebtedness;

(2) a detailed summary of the business operations a company described in subsection (i)(1) has in Sudan and whether that company satisfies all of the criteria in subsection (b) or (c);

(3) whether the board has reduced KPERS fund investments in a company that satisfies the criteria in subsection (b) or (c);

(4) if the board has not completely reduced KPERS fund investments in a company that satisfies the criteria in subsection (b) or (c), when the board anticipates that the board will reduce all investments in that company or the reasons why a sale or transfer of investments is inconsistent with the fiduciary responsibilities of the board as provided in K.S.A. 74-4921, and amendments thereto;

(5) any information described in subsection (e); and

(6) a detailed summary of investments that were transferred to funds or accounts devoid of companies with business operations in Sudan as described in subsection (f).

(j) If the board voluntarily sells or transfers all KPERS fund investments in a company with business operations in Sudan, this section shall not apply except that the board shall file a report with the legislature related to that company as described in subsection (i).

(k) Nothing in this section shall require the board to take action as described in this section unless the board determines, in good faith, that the action described in this section is consistent with the fiduciary responsibilities of the board as provided in K.S.A. 74-4921, and amendments thereto.

(l) Subsection (h) shall not apply to any of the following:

(1) Investments in a company that is primarily engaged in supplying goods or services intended to relieve human suffering in Sudan, and the supplying of such goods and services is done in conjunction with an international organization, the government of Sudan, the regional government of Southern Sudan or a non-profit entity, and is evaluated and certified by an independent third party to be substantial in relationship to the business operations of the company in Sudan and of benefit to one or more marginalized populations of Sudan;

(2) investments in a company that promotes health, education, journalistic or religious activities in or welfare in the western, eastern or southern regions of Sudan; and

(3) investments in a United States company that is authorized by the federal government to have business operations in Sudan.

(m) This section shall remain in effect only until one of the following occurs, and as of the date of that action, is repealed:

(1) The government of Sudan halts the genocide in Darfur for 12 months as determined by both the department of state and the congress of the United States; or

(2) the United States revokes its current sanctions against Sudan.

History: L. 2007, ch. 191, § 1; May 24.