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§7–706.

(a) (1) In this section, "earned surplus" means the part of surplus that, after deduction of all losses, represents the net earnings, gains, or profits that have not been distributed to shareholders as dividends, transferred to stated capital, transferred to capital surplus, or applied to other purposes allowed by law.

(2) In this section, "earned surplus" does not include unrealized capital gains or reevaluation of assets.

(b) In this section, "extraordinary dividend" or "extraordinary distribution" includes any dividend or distribution of cash or other property with a fair market value, that when combined with the fair market value of any other dividends or distributions made in the preceding 12 months exceeds the lesser of:

(1) 10% of the insurer's surplus as regards policyholders as of December 31 of the preceding year; or

(2) (i) for a life insurer, the net gain from operations of the insurer not including:

1. realized capital gains for the 12-month period ending December 31 of the preceding year; and

2. pro rata distributions of any class of the insurer's own securities; or

(ii) for an insurer that is not a life insurer, the net investment income of the insurer not including:

1. realized capital gains for the 12-month period ending December 31 of the preceding year; and

2. pro rata distributions of any class of the insurer's own securities.

(c) (1) In determining whether a dividend or distribution is extraordinary under this section, an insurer that is not a life insurer may carry forward net investment income from the 3 calendar years prior to the preceding calendar year that has not already been paid out as dividends.

(2) The amount carried forward under paragraph (1) of this subsection shall be computed by taking the net investment income from the 3 calendar years prior to the preceding calendar year:

(i) not including realized capital gains; and

(ii) minus dividends paid in the preceding 3 calendar years.

(d) An insurer that is not a life insurer may pay an extraordinary dividend only out of earned surplus.

(e) A domestic insurer may not pay an extraordinary dividend or make any other extraordinary distribution to its shareholders unless:

(1) the insurer provides notice of the declaration to the Commissioner at least 30 days before the declaration is made; and

(2) the Commissioner has approved or not disapproved the declaration within the 30 days following notice.

(f) (1) Notwithstanding any other provision of law, an insurer may declare an extraordinary dividend or extraordinary distribution conditioned on the Commissioner's approval.

(2) A conditional declaration confers no rights on shareholders unless, within 30 days after the Commissioner receives the notice under subsection (e) of this section, the Commissioner either approves the payment or distribution, or does not disapprove the payment or distribution.

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