

## **507C.2 Definitions.**

As used in this chapter, unless the context otherwise requires:

1. "*Affiliate*" of or "*affiliated*" with a specific person, means a person that directly or indirectly, through one or more intermediaries, controls or is controlled by, or is under common control with, the person specified.
2. "*Ancillary state*" means a state other than a domiciliary state.
3. "*Commissioner*" means the commissioner of insurance and any successor in office.
4. "*Commodity contract*" means any of the following:
  - a. A contract for the purchase or sale of a commodity for future delivery on, or subject to the rules of, a board of trade designated as a contract market by the commodity futures trading commission under the federal Commodity Exchange Act, 7 U.S.C. § 1 et seq., or a board of trade outside the United States.
  - b. An agreement that is subject to regulation under section 19 of the federal Commodity Exchange Act, 7 U.S.C. § 1 et seq., and that is commonly known to the commodities trade as a margin account, margin contract, leverage account, or leverage contract.
  - c. An agreement or transaction that is subject to regulation under section 4c(b) of the federal Commodity Exchange Act, 7 U.S.C. § 1 et seq., and that is commonly known to the commodities trade as a commodity option.
5. "*Control*" means the same as defined in section 521A.1, subsection 3.
6. "*Creditor*" is a person having a claim against an insurer, whether the claim is matured or unmatured, liquidated or unliquidated, secured or unsecured, absolute, fixed or contingent.
7. "*Delinquency proceeding*" means a proceeding instituted against an insurer for the purpose of liquidating, rehabilitating, reorganizing or conserving the insurer, and a summary proceeding under section 507C.9 or 507C.10. "*Formal delinquency proceeding*" means any liquidation or rehabilitation proceeding.
8. "*Doing business*" means any of the following acts, whether effected by mail or otherwise:
  - a. The issuance or delivery of contracts of insurance to persons resident in this state.
  - b. The solicitation of applications for the contracts, or other negotiations preliminary to the execution of the contracts.
  - c. The collection of premiums, membership fees, assessments, or other consideration for the contracts.
  - d. The transaction of matters subsequent to execution of the contracts and arising out of them.
  - e. Operating as an insurer under a license or certificate of authority issued by the division.
9. "*Domiciliary state*" means the state in which an insurer is incorporated or organized, or, in the case of an alien insurer, its state of entry.
10. "*Fair consideration*" is given for property or obligation when either of the following is present:
  - a. When in good faith property is conveyed or services are rendered or an obligation is incurred or an

antecedent debt is satisfied in exchange for the property or obligation, as a fair equivalent therefor, and in good faith.

b. When the property or obligation is received in good faith to secure a present advance or antecedent debt in amount not disproportionately small as compared to the value of the property or obligation obtained.

11. "*Foreign country*" means another jurisdiction not in a state.

12. "*Forward contract*" means a contract for the purchase, sale, or transfer of a commodity, as defined in section 1 of the federal Commodity Exchange Act, 7 U.S.C. § 1 et seq., or any similar good, article, service, right, or interest that is presently or in the future becomes the subject of dealing in the forward contract trade, or product or byproduct thereof, with a maturity date more than two days after the date the contract is entered into, including, but not limited to, a repurchase transaction, reverse repurchase transaction, consignment, lease, swap, hedge transaction, deposit, loan, option, allocated transaction, unallocated transaction, or a combination of them or option on any of them. "*Forward contract*" does not include a commodity contract.

13. "*General assets*" means all real, personal, or other property, not specifically mortgaged, pledged, deposited, or otherwise encumbered for the security or benefit of specified persons or classes of persons. As to specifically encumbered property, "*general assets*" includes all property or its proceeds in excess of the amount necessary to discharge the sum or sums secured by the property or its proceeds. Assets held in trust and on deposit for the security or benefit of all policyholders or all policyholders and creditors, in more than a single state, shall be treated as general assets.

14. "*Guaranty association*" means the Iowa insurance guaranty association created in chapter 515B, the Iowa life and health insurance guaranty association created in chapter 508C, and any other similar entity either presently existing or to be created by the general assembly for the payment of claims of insolvent insurers. "*Foreign guaranty association*" means a similar entity presently existing in or to be created in the future by the legislature of any other state.

15. "*Insolvency*" or "*insolvent*" means any of the following:

a. For an insurer issuing only assessable fire insurance policies, either of the following:

(1) The inability to pay any obligation within thirty days after it becomes payable.

(2) If an assessment is made, the inability to pay the assessment within thirty days following the date specified in the first assessment notice issued after the date of loss.

b. For any other insurer that it is unable to pay its obligations when they are due, or when its admitted assets do not exceed its liabilities plus the greater of:

(1) Any capital and surplus required by law for its organization.

(2) The total par or stated value of its authorized and issued capital stock.

c. As to an insurer licensed to do business in this state as of July 1, 1984, which does not meet the standard established under paragraph "b", the term "*insolvency*" or "*insolvent*" shall mean, for a period not to exceed three years from July 1, 1984, that it is unable to pay its obligations when they are due or that its admitted assets do not exceed its liabilities plus any required capital contribution ordered by the commissioner under provisions of the insurance law.

For purposes of this subsection "*liabilities*" includes but is not limited to reserves required by statute or by the division's rules or specific requirements imposed by the commissioner upon a company at the time of or

subsequent to admission.

16. "*Insurer*" means a person who has done, purports to do, is doing or is licensed to do insurance business, and is or has been subject to the authority of, or to liquidation, rehabilitation, reorganization, supervision, or conservation by an insurance commissioner. For purposes of this chapter, any other person included under section 507C.3 is an insurer.

17. "*Netting agreement*" means an agreement, including terms and conditions incorporated by reference therein, including a master agreement, which master agreement, together with all schedules, confirmations, definitions, and addenda thereto and transactions under any thereof, shall be treated as one netting agreement, that documents one or more transactions between parties to the agreement for or involving one or more qualified financial contracts and that provides for the netting or liquidation of qualified financial contracts or present or future payment obligations or payment entitlements thereunder, including liquidation or closeout values relating to such obligations or entitlements among the parties to the netting agreement.

18. "*Preferred claim*" means a claim with respect to which the terms of this chapter accord priority of payment from the general assets of the insurer.

19. "*Qualified financial contract*" means a commodity contract, forward contract, repurchase agreement, securities contract, swap agreement, and any similar agreement that the commissioner determines by regulation, resolution, or order to be a qualified financial contract for the purposes of this chapter.

20. "*Receiver*" means receiver, liquidator, rehabilitator, or conservator as the context requires.

21. "*Reciprocal state*" means a state other than this state in which section 507C.18, subsection 1, sections 507C.52 and 507C.53 and sections 507C.55 through 507C.57 are in force, and in which provisions are in force requiring that the commissioner or equivalent official be the receiver of a delinquent insurer, and in which some provision exists for the avoidance of fraudulent conveyances and preferential transfers.

22. "*Repurchase agreement*" means an agreement, including related terms, that provides for the transfer of certificates of deposit, eligible bankers' acceptances, or securities that are direct obligations of, or that are fully guaranteed as to principal and interest by, the United States or an agency of the United States against the transfer of funds by the transferee of the certificates of deposit, eligible bankers' acceptances or securities, with a simultaneous agreement by the transferee to transfer to the transferor certificates of deposit, eligible bankers' acceptances, or securities as described above, at a date certain not later than one year after the transfers or on demand against the transfer of funds. For the purposes of this definition, the items that may be subject to a repurchase agreement include, but are not limited to, mortgage-related securities, a mortgage loan, and an interest in a mortgage loan, but shall not include any participation in a commercial mortgage loan, unless the commissioner determines by rule, resolution, or order to include the participation within the meaning of the term. Repurchase agreement also applies to a reverse repurchase agreement.

23. "*Secured claim*" means a claim secured by mortgage, trust deed, pledge, deposit as security, escrow, or otherwise, but not including special deposit claims or claims against general assets. The term also includes claims which have become liens upon specific assets by reason of judicial process.

24. "*Securities contract*" means a contract for the purchase, sale, or loan of a security, including an option for the repurchase or sale of a security, certificate of deposit, or group or index of securities, including an interest therein or based on the value thereof, or an option entered into on a national securities exchange relating to foreign currencies, or the guarantee of a settlement of cash or securities by or to a securities clearing agency. For the purposes of this definition, the term "*security*" includes a mortgage loan, mortgage-related securities, and an interest in any mortgage loan or mortgage-related security.

25. "*Special deposit claim*" means a claim secured by a deposit made pursuant to statute for the security or

benefit of a limited class or classes of persons, but not including a claim secured by general assets.

26. "*State*" means a state, district, or territory of the United States and the Panama Canal Zone.

27. "*Swap agreement*" means an agreement, including the terms and conditions incorporated by reference in an agreement, that is a rate swap agreement, basis swap, commodity swap, forward rate agreement, interest rate future, interest rate option, forward foreign exchange agreement, spot foreign exchange agreement, rate cap agreement, rate floor agreement, rate collar agreement, currency swap agreement, cross-currency rate swap agreement, currency future, or currency option or any other similar agreement, and includes any combination of agreements and an option to enter into an agreement.

28. "*Transfer*" shall include the sale and every other and different mode, direct or indirect, of disposing of or of parting with property or with an interest in the property, or with the possession of the property or of fixing a lien upon the property or upon an interest in the property, absolutely or conditionally, voluntarily, by or without judicial proceedings. The retention of a security title to property delivered to a debtor shall be deemed a transfer suffered by a debtor.

84 Acts, ch 1175, § 2; 92 Acts, ch 1117, § 10; 2005 Acts, ch 70, §4