



**STATE OF TENNESSEE  
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**Re: Interpretive Opinion No. 04-17, European Group Policy Permissibility**

Dear Mr. Natier,

The Insurance Division ("Division") of the Tennessee Department of Commerce and Insurance ("Department") is in receipt of the request for an interpretive opinion submitted to Commissioner McPeak regarding whether or not the actions of a European Insurer ("Insurer") would constitute the business of insurance, requiring the Insurer to obtain a Tennessee insurance license. Specifically, you requested that the Division determine that the actions of the Insurer do not constitute the business of insurance and do not require the Insurer to obtain a Tennessee insurance license.

The facts as understood by the Division are as follows: a European corporation ("Corporation") has taken out a group life insurance policy on behalf of its employees with the Insurer. The Corporation has employees who are expatriate workers and some may be residents of Tennessee. Every employee of the Corporation, including those who are residents of Tennessee, is required to be part of the group policy. Any non-participation in the group policy by any employee would result in the Corporation losing beneficial tax exempt status in its home country.

The terms and conditions of the group policy are as follows: Each employee's salary will be deducted a set amount to cover their individual premium cost, which would be deducted within the European Union, and not within Tennessee. Each employee is given the option of making additional voluntary payments into the group policy to increase retirement benefits, but such payments must be made in Euros and from a European Union bank account. Further,

the Tennessee employees could allocate their funds to a financial product of their choice, but must make those changes by mail. Employees, including the Tennessee employees, can: transfer funds to a similar plan if they leave the Corporation, modify their plan to designate or change a beneficiary, and receive annuity payments upon retirement. The Insurer would provide to the employees an annual statement of accrued benefits, a certificate of voluntary payments made, and a statement of the rights and benefits of the employee when he or she leaves the Corporation.

You have indicated that the Insurer would have no face to face contact, telephone or internet communications with any of the Tennessee employees. Any contact would take place through mail, e-mail or a website of the Insurer. Finally, the Insurer would not solicit or market any insurance products to the Tennessee employees.

Tennessee Code Annotated (“Tenn. Code Ann.”) § 56-9-103(5) defines “doing business” as:

(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; or (E) Operating under a license or certificate of authority, as an insurer, issued by the department of commerce and insurance.”

Tenn. Code Ann. § 56-2-102(a) bars any insurance company from transacting business in the State of Tennessee until it has “received from the commissioner a certificate of authority to do business.” Tenn. Code Ann. § 56-2-107 outlines the activities that constitute transacting insurance business in Tennessee:

(1) The issuance or delivery of contracts of insurance to residents of this state; (2) The solicitation of applications for contracts of insurance; (3) The collection of premiums, membership fees, assessments or other considerations for contracts of insurance; or (4) The transaction of matters subsequent to the execution of contracts of insurance and arising out of them.

The Division relies on the statute and case law in determining what constitutes the business of insurance. Newman v. Smart Data Solutions, LLC, 2011 WL 2347574 (Tenn. Ct. App. 2011) interprets several areas of statutory law. The Tennessee Court of Appeals determined that the making of insurance contracts is considered the business of insurance, but does not constitute the sole part of the business of insurance. Id. at \*7. The Court further held that the collection of premiums and the paying of claims constituted the business of insurance. Id. at \*9.

The actions described by your letter are considered to be the business of insurance. The Insurer is issuing and delivering contracts of insurance to residents of this state. The Insurer collects premiums from the earnings of residents of this state, regardless where the money is collected from. Further, the Insurer transacts matters subsequent to and arising out of contracts of insurance, including the opportunity for the Tennessee employees to voluntarily contribute, the paying of claims and benefits to employees and their beneficiaries, and communication with the employees about their policies. The method in which the communication occurs is not significant enough to consider the activity to be anything but the business of insurance.

The Division considers the actions you described as constituting the business of insurance within the State of Tennessee. Any insurer participating in these actions would need to be licensed by the Department to transact business in this state.

Further, the Division would draw your attention to Tenn. Code Ann. § 56-2-401 which states that “any insurance company...that is financially owned or financially controlled by any alien or foreign government...is prohibited from doing any kind of insurance business in this state.” If the Insurer is financially tied to a government outside the United States, it cannot transact any business in this state, including the above described actions.

Please note that the Division has not made an independent investigation of the facts to determine the accuracy or completeness of the information supplied, but has instead relied solely upon the information you have provided. If such information is incorrect or changes substantially, it would be necessary for the Division to reconsider the matter and the position stated herein would be void. This letter expresses the Division’s position on enforcement action only and does not purport to express legal conclusions on the issues presented. This position is furnished solely for the benefit and use of the entities described herein. Please be advised that further publication or use of this position may only be made with the Division’s prior written consent.

This response by the Division is to a specific fact situation relating to the determination of what constitutes the business of insurance under Tenn. Code Ann. §§ 56-9-103(5) and 56-2-107 and should not be construed as a legal position or opinion of the Commissioner of the Tennessee Department of Commerce and Insurance or of any other official in the Department. Please note that the conclusions contained herein are based upon the representations that have been made to the Division, and any different facts or conditions might require a different response. As each inquiry is reviewed on the specific facts presented, this response is based only on such facts and may not be used as precedent by any person or entity. Any variation in the facts presented to the Division by Vincent Natier could result in a different conclusion than asserted herein.

If you have further questions or concerns regarding this letter, please feel free to contact me.



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