

# DST POLICIES AND PROCEDURES

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| <b>DST Reference:</b>           | <b>OST-POL-4007-MUL</b>                           |
| <b>Title:</b>                   | <b>Divestment and Contract Prohibition Policy</b> |
| <b>Chapter:</b>                 | <b>Corporate Governance</b>                       |
| <b>Current Effective Date:</b>  | <b>August 6, 2019</b>                             |
| <b>Original Effective Date:</b> | <b>August 6, 2019</b>                             |

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**Applies to:** NC Department of State Treasurer – Investment Management Division; Supplemental Retirement Plans; Office of the State Treasurer

**Key words:** Divestment; contract prohibition; do-not-contract; Sudan; Iran; Boycott of Israel

## I. Purpose

The North Carolina Department of State Treasurer (“DST” or the “Department”) adopted implementing policies when each of the Divestment Acts (discussed below) were first enacted. After its effective date, this Divestment Policy shall serve as the Department’s unified policy on statutory requirements related to divestment and contract prohibitions, and the Department shall implement the Policy in a manner that fulfills the fiduciary duty described below and in keeping with the Divestment Acts. Nothing in the Policy shall require the Treasurer of the State of North Carolina (the “Treasurer”) to take action unless the Treasurer determines that the action is consistent with relevant fiduciary responsibilities.

## II. Background

The Treasurer has the fiduciary duty under N.C. Gen. Stat. § 147-69.7 to invest and manage the entrusted funds of the North Carolina Retirement Systems (“NCRS”)<sup>1</sup> in a manner consistent with statutes, regulations, and policies. Also, the Department jointly administers the North Carolina Supplemental Retirement Plans (“SRP”) with the North Carolina Supplemental Retirement Board of Trustees.<sup>2</sup> The Treasurer and the Department are required to manage all programs solely in the interest of the participants and beneficiaries of NCRS and SRP.

The North Carolina General Assembly (the “General Assembly”) provides direction from time to time regarding permitted investments for NCRS and SRP funds and permitted contract counterparties for governmental entities. Such directions include several divestment and contract prohibition (or “do-not-contract”) statutes: the Sudan (Darfur) Divestment Act (the “Sudan Divestment Act”);<sup>3</sup> the Iran Divestment Act of 2015 (the “Iran Divestment Act”);<sup>4</sup> and the Divestment from Companies Boycotting Israel Act (the “Companies Boycotting Israel Act”).<sup>5</sup> Collectively, these statutes are the “Divestment Acts” (or simply the “Acts,”), and each may be individually discussed as a “Divestment Act.”

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<sup>1</sup> The North Carolina Retirement Systems includes the Teachers’ and State Employees’ Retirement System, the Consolidated Judicial Retirement System, the Firemen’s and Rescue Workers’ Pension Fund, the Local Governmental Employees’ Retirement System, the Legislative Retirement System, the North Carolina National Guard Pension Fund, the Legislative Retirement Fund, and the Retiree Health Benefit Fund. N.C. Gen. Stat. § 147-69.2(b)(8).

<sup>2</sup> N.C. Gen. Stat. § 135-91.

<sup>3</sup> N.C. Gen. Stat. § 147-86.41 et. seq.

<sup>4</sup> N.C. Gen. Stat. § 147-86.55 et. seq.

<sup>5</sup> N.C. Gen. Stat. § 147-86.80 et. seq.

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## Sudan Divestment Act

In 2007, following various statements by the United States Congress, the President of the United States, and certain Federal officials regarding the genocidal activities of the Government of Sudan and associated groups, the General Assembly enacted the Sudan Divestment Act, prohibiting investments by NCRS in certain companies with activities linked to Sudan and imposing certain divestment requirements for securities already held by NCRS. The General Assembly made additional changes to the Sudan Divestment Act in 2017 and 2018, and this unified Divestment Policy reflects the updated statutes.<sup>6</sup>

## Iran Divestment Act

In 2010, Congress enacted the Comprehensive Iran Sanctions, Accountability, and Divestment Act (“CISADA”).<sup>7</sup> Section 202 of CISADA authorizes state and local governments to divest from companies whose operations in Iran’s energy sector support the Government of Iran’s efforts to achieve a nuclear weapons capability.<sup>8</sup> In 2015, the General Assembly passed the Iran Divestment Act, Session Law 2015-118, to implement the authority granted by CISADA. DST first adopted an Iran Divestment Policy in 2012 but then revised the policy in 2015 to conform to the Iran Divestment Act’s requirements, which include both divestment and contract prohibition provisions. The General Assembly made additional changes to the Iran Divestment Act in 2017 and 2018, and this unified Divestment Policy reflects the updated statutes.<sup>9</sup>

## Companies Boycotting Israel Act

In 2017, the General Assembly passed the Companies Boycotting Israel Act. Session Law 2017-193 noted that boycotts and related tactics have become a tool of economic warfare that threaten the sovereignty and security of key allies and trade partners of the United States and that the State of Israel is the most prominent target of such boycott activity.<sup>10</sup> Under the Companies Boycotting Israel Act, a company that boycotts Israel (as defined by the statute) is ineligible for State investment or contracts, and the Department must divest from investments in such companies.

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<sup>6</sup> In January and July of 2017, two Executive Orders (E.O. 13761 and E.O. 13804, respectively) revoked certain sanctions with respect to Sudan and the Government of Sudan. U.S. Dept. of the Treasury, Resource Center, Sudan and Darfur Sanctions. <https://www.treasury.gov/resource-center/sanctions/programs/pages/sudan.aspx> (last visited May 8, 2019). Because other sanctions remain in effect, the Sudan Divestment Act has not expired. N.C. Gen. Stat. § 147-86.46.

<sup>7</sup> H.R. 2194 (P.L. 111-95).

<sup>8</sup> The definition of the term “investment” includes “the entry into or renewal of a contract for goods or services,” so the Iran’s Divestment Act’s contract prohibition is also explicitly permitted by CISADA. 22 U.S.C. 8532(g)(2).

<sup>9</sup> One significant change was the repeal of the certification requirement found in N.C. Gen. Stat. § 147-86.59. See Norma Houston, *Iran Divestment Act Changes—No Certification Required Anymore!*, Coates’ Canons: NC Local Government Law, <https://canons.sog.unc.edu/iran-divestment-act-changes-no-certification-required-anymore/> (last visited May 8, 2019).

<sup>10</sup> Session Law 2017-193 (House Bill 161).

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## III. Definitions

This Policy shall use the definitions provided by the Divestment Acts at N.C. Gen. Stat. §§ 147-86.42 (Sudan Divestment Act), 147-86.57 (Iran Divestment Act) and 147-86.80 (Companies Boycotting Israel Act). In addition, the Department uses the following terms in its administration of the Divestment Acts:

*Do-Not-Contract List*—Generally, this is the list, updated annually, of the companies that are subject to the contract prohibitions of a particular Divestment Act. Such companies are ineligible for contracts with the State of North Carolina or any of its political subdivisions (including local governments such as counties and municipalities). This list is combined with the Final Divestment List. A company may be on multiple Do-Not-Contract Lists.

*Final Divestment List*—Generally, this is the list, updated annually, of the companies that are subject to the investment restrictions of a Divestment Act. In the Divestment Acts, this is called the “list of restricted companies.” A company may be on multiple Final Divestment Lists. Parent and subsidiary companies are also included due to how the Acts define “Company.”

*Substantial Positive Action Exception List*—Required by the Iran Divestment Act, this is a list of companies that meet the requirements of [N.C. Gen. Stat. § 147-86.61\(b\)](#). In practice, this is simply an additional category on the Final Divestment List required by the Iran Divestment Act.

## IV. Roles and Responsibilities

*Corporate Governance Committee (the “Committee”)*—In keeping with its Charter,<sup>11</sup> the Corporate Governance Committee has primary authority over the Department’s compliance with the Divestment Acts and shall approve divestment processes, asset freezes, and new legal requirements related to the same. The Committee shall also discuss, evaluate, and review divestment matters and approve recommendations and changes.

*Investment Management Division (“IMD”) Staff*—IMD staff members shall have primary responsibility to develop and maintain the Final Divestment Lists required by the Divestment Acts and shall implement, follow, and track any trading or investing restrictions required by the Acts. They shall be the primary points of contact for any research or vendors with whom the Department contracts to assist with compliance with the requirements of the Divestment Acts. Designated IMD staff members shall report to the Committee as needed or upon the Committee’s request.

*SRP staff*—SRP staff members shall work with designated IMD staff members to ensure that SRP maintains compliance with the Divestment Acts.

*Department attorneys*—One or more of the Department’s in-house attorneys shall assist the IMD and SRP staff members and the Committee with compliance with the Divestment Acts. Department attorneys shall prepare and publish divestment notices.

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<sup>11</sup> Corporate Governance Committee Charter, OST-POL-4000-ALL.

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## V. Implementation

In general, the Divestment Acts each require the Treasurer and the Department to identify companies that meet certain statutory criteria, compile lists of such companies (and parents and subsidiaries), and then use such lists to divest from investments in those companies and avoid future investments. Each of the Divestment Acts identify what investments are prohibited and permitted. In addition, the Iran Divestment Act and the Companies Boycotting Israel Act prohibit the Department and all other North Carolina state agencies, as well as local governments, from contracting with companies on their respective Final Divestment Lists.

This Policy describes in general terms the process that the Department shall follow to comply with the Divestment Acts.

### A. Development and Maintenance of Restricted Companies Lists

In compliance with the Divestment Acts, the Department shall develop and maintain lists that meet the specific criteria of each Act. The Department shall follow the processes that each Act requires to ensure that no company is erroneously added to a list. In doing so, the Department may obtain assistance from one or more vendors that provide research or other services.

The lists shall be made publicly available by posting on the Department's website. The Department shall update the lists on an annual basis and shall post such updated lists on its website on or about August 30 of each year.

### B. Engagement with Restricted Companies and Interested Third Parties

Designated IMD staff members and the Department's attorneys shall work together to ensure that any company included on one of the Divestment Acts' lists is notified as required by the Acts. In addition, if any company seeks to be removed from one of the lists, the IMD staff members and Department attorneys shall ensure that the Divestment Acts' requirements are met before doing so.

IMD and SRP staff members and the Department's attorneys shall also work in conjunction with the Department's Communications staff members to ensure that questions and comments from interested third parties are received, reviewed, and addressed. For purposes of this Policy, interested third parties include other state agencies and local governments of North Carolina; officials and employees of other United State government entities, both state and federal; policy-oriented, non-profit, and other political action groups; investment managers and vendors providing investment-related services; and any other person that is interested in the Divestment Acts, including private citizens and other members of the public.

IMD and SRP staff members and the Department's attorneys shall ensure that all of the Department's investments and contracts comply with the Divestment Acts. Such compliance may include requiring certain representations from investment managers and vendors providing investment-related services.

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## C. Reporting by the Department

As required by each of the Divestment Acts, IMD staff members and the Department's attorneys shall prepare a report pertaining to each of the Divestment Acts and shall transmit such reports to the Joint Legislative Commission on Governmental Operations by October 1 of each year. Each report shall include information regarding investments sold, invested, and withdrawn, if any, pursuant to this Policy.

## VI. Enforcement

The Department's Corporate Governance Committee shall have primary responsibility for enforcing this Policy and the Department's compliance with the Divestment Acts.

Enforcement with respect to investment managers and vendors providing investment-related services, particularly when a required representation pertaining to the Divestment Acts is violated, shall be the responsibility of designated IMD and SRP staff members, with the assistance of one or more of the Department's attorneys. The Department may seek whatever remedy provided by contract or law that is deemed appropriate under the circumstances.

Each State or Local agency of North Carolina, and not DST or the State Auditor, is responsible for ensuring its own compliance with the Divestment Acts, particularly the Iran Divestment Act and the Companies Boycotting Israel Act, which both include specific contract prohibitions.

## VII. Related Statutes, Rules, and Policies

- [Sudan \(Darfur\) Divestment Act \(N.C. Gen. Stat. § 147-86.41 et. seq.\)](#)
- [Iran Divestment Act of 2015 \(N.C. Gen. Stat. § 147-86.55 et. seq.\)](#)
- [Divestment from Companies Boycotting Israel Act \(N.C. Gen. Stat. § 147-86.80 et. seq.\)](#)

## VIII. Revision/Review History

| Version | Date Approved | Description   |
|---------|---------------|---|
| 1.0     | 8/6/2019      | New Policy, this policy replaces the following three rescinded policies: Sudan Divestment Policy [OST-POL-4006-IMD]; Iran Divestment Policy [OST-POL-5002-IMD]; and Boycott Israel Divestment Policy [OST-POL-4006-IMD] |

*For questions or clarification on any of the information contained in this policy, please contact the policy owner or designated contact point: [IMD Compliance Analyst, Deana Moore-Solomon](#). For general questions about department-wide policies and procedures, contact the [DST Policy Coordinator](#).*