

Topic: **Financial Condition of Acquiring Party**

Situations that necessitate evaluation of Acquiring Party:

- Form A Applications (acquisition of control through acquisition or merger)
- Mergers of Insurance Companies pursuant to Chapter 824, Tex. Ins. Code
- Formation of new Texas domestic insurance company

Examples of criteria that will cause closer scrutiny and questions regarding financial condition of the applicant include but are not limited to:

- indications of past or existing intercompany activity whereby funds flow between affiliates without clear, well defined agreements, documented business reasons, and timely repayments;
- complicated organizational structure, with interrelationships lacking well defined business needs, with particular emphasis on situations triggering the abovementioned item;
- substantial debt of the applicant, its shareholders or affiliates, with no clear means of repayment, repayment heavily dependent on the insurance company, or history of inability to repay debt as it becomes due;
- trend of increasing debt not accounted for by relevant changes in operations;
- prior restructuring or liquidation under bankruptcy or other insolvency laws;
- lack of clear financial wherewithal of applicant to finance the purchase price;
- financial statement reflecting substantial composite assets such as “invested assets” that lack specificity or ability to confirm values, or net worth based on unsubstantiated assets or significant receivables from affiliates;
- lack of audited financial statements, in the case of an entity;
- qualified audit opinion, or substantive internal control issues;
- material adverse examination findings if applicant currently is, or owns, an insurance company;
- potentially damaging lawsuits against applicant or affiliate that present a threat to the financial condition;
- plans for dividends out of the insurer that exceed ____% of the insurer’s capital and surplus, or plans to exchange assets of the insurer;

- history of negative operating cash flow;
- history of aggressive acquisitions/business growth;
- applicant funds operations or debt of affiliates out of the ordinary course of business;
- history of significant losses and/or need for capital infusions to keep operations ongoing;
- an insurance company applicant triggers hazardous financial condition indicators (in 28 TAC § 8.3) and/or is the subject of regulatory action, or has a history of regulatory action;
- an insurance company applicant has minimal capital and surplus and/or risk-based capital below 200% of authorized control level.

Statutory and Regulatory Authority:

- TIC Chapter 824
- TIC § 823.201 – 823.207
- TIC § 823.154
- TIC Art. 1.32
- 28 TAC § 7.209
- 28 TAC § 8.3