



**STATE OF TENNESSEE**  
**DEPARTMENT OF COMMERCE AND INSURANCE**  
Insurance Division  
500 James Robertson Parkway  
Fourth Floor, Davy Crockett Tower  
Nashville, Tennessee 37243  
615-741-2176

June 28, 2006

Dan H. Elrod, Esq.  
Miller & Martin, PLLC  
1200 One Nashville Place  
Nashville, Tennessee 37219-2433

**Re: Interpretive Opinion No. 02-06**  
**Foreign Government Ownership of Insurance Companies**

Dear Mr. Elrod:

This letter is written in response to your letter dated May 31, 2006, to Commissioner Paula A. Flowers whereby you ask for guidance from this Department. Your letter is being treated as a request for an interpretive opinion from the Insurance Division of the Tennessee Department of Commerce and Insurance ("Division") pursuant to Tenn. Comp. R. & Reg. Tit. Dept. of Commerce and Ins., ch. 0780-1-77-.01(1)

The facts understood by the Division are as follows:

General Motors Acceptance Corporation ("GMAC") owns several insurance companies licensed to do business in this State ("GMAC Insurance Companies"). GMAC has entered into a purchase and sale agreement with FIM Holdings LLC ("FIM Holdings") whereby FIM Holdings will acquire 51% of GMAC. After the purchase and sale transaction, Aozora Bank, Ltd. ("Aozora") will have an indirect 6.2% non-voting, non-managing ownership interest in FIM Holdings and an indirect 3.1% non-voting ownership interest in GMAC. Two Japanese governmental entities, that have no current control of Aozora, own preferred stock that is convertible into 29.8% of the common stock of Aozora. As a result of the transaction, the Japanese governmental entities will collectively own approximately a 1% interest in GMAC on an as converted basis.

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You opine on behalf of your client that that the above transaction is not prohibited by Tenn. Code Ann. 56-2-401(a) because the two Japanese governmental entities will only own a *de minimus* indirect, non-voting interest in an insurance company doing business in the State of Tennessee.

**RESPONSE:**

Tenn. Code Ann. § 56-2-401(a) states that:

Any insurance company or other insurance entity which is financially owned or financially controlled by any alien or foreign government outside the continental limits of the United States or the territories of the United States is hereby prohibited from doing any kind of insurance business in the state of Tennessee.

This section effectively provides a prohibition for insurance companies doing business in this state to be (1) financially owned or (2) financially controlled by a foreign government.

The first part of Tenn. Code Ann. § 56-2-401(a) prohibits foreign governments from “financially own[ing]” an insurance company doing business in this State. As Title 56 is devoid of any definition of “financially own,” the Department is put in a position in which it must determine what it means to “financially own” an insurance company. It is the Division’s position that the proper approach to defining the phrase “financially own” is to make it synonymous with direct ownership. It would appear that the section’s primary purpose is to prevent foreign governments from exercising any control or influence over the management of an insurance company doing business in this State. While the section is very broad in its application to any ownership or control, it does not seem to further any governmental interest to allow the prohibition against foreign government ownership of an insurance company to indirect ownership. A foreign government that indirectly owns an interest in an insurer in Tennessee has too tenuous a connection to the insurer to exert any influence over it. To apply the prohibition on financial ownership to indirect ownership of an insurance entity doing business in the State of Tennessee would not further any legitimate government interest.

The second part of Tenn. Code Ann. § 56-2-401(a) prohibits foreign governments from “financially control[ing]” an insurance company doing business in this State. Unlike the previous prohibition, Title 56 does provide guidance on the use of the word “control” as it relates to insurance companies. Tenn. Code Ann. § 56-11-201(3) states, in pertinent part, that:

“Control” means the possession, direct or indirect, of the power to direct the management of an entity, whether through the ownership of voting securities, by contract or otherwise. “Control” shall be presumed to exist if any person, directly or indirectly, owns, controls, holds with the power to vote, or holds proxies representing, ten percent (10%) or more of the voting securities of any other person.

The Division believes this definition to be appropriate when defining the meaning of the phrase “financially control” in Tenn. Code Ann. § 56-2-401(a).

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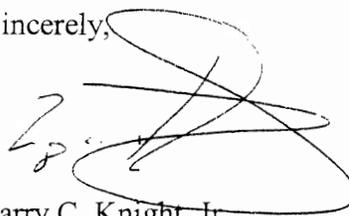
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Applying the above analysis to the set of facts you have presented, it is the Division's opinion that the described transaction will not cause the GMAC Insurance Companies to violate Tenn. Code Ann. § 56-2-401(a). As to the first prohibition, the two Japanese governmental entities will not directly possess any ownership interest in the GMAC Insurance Companies. Instead, its ownership will be indirect through a holding company. As stated above, it is the Division position that such does not violate Tenn. Code Ann. § 56-2-401(a). Secondly, the Japanese governmental entities will not control the GMAC Insurance Companies, as that term is defined by Tenn. Code Ann. § 56-11-201(3). As stated, no entity owned or controlled by the Japanese governmental entities will own or control in excess of ten percent of the voting securities of the GMAC Insurance Companies.

In conclusion, it is the opinion of the Insurance Division that the proposed acquisition of GMAC by FIM Holdings will not violate Tenn. Code Ann. § 56-2-401(a) because the Japanese governmental entities will not financially own or financially control the GMAC Insurance Companies.

This response by the Insurance Division to a specific fact situation relating to the interpretation of the Tennessee Insurance Law should not be construed as a legal position or opinion of the Commissioner of Commerce and Insurance or any other official in the Department of Commerce and Insurance. 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. Any variation in the facts presented to the Insurance Division could result in a different conclusion as asserted herein.

Sincerely,

A handwritten signature in black ink, appearing to read "L. Knight, Jr.", written over a large, loopy scribble.

Larry C. Knight, Jr.

Assistant Commissioner for Insurance

LCK/tdg

cc: Paula A. Flowers, Commissioner  
John F. Morris, Chief Counsel for Insurance  
Kathy Fussell, Financial Analysis Director  
Tony D. Greer, Staff Attorney