

304.37-010 Definitions for Subtitle 37.

As used in this subtitle, the following terms shall have the respective meanings set forth, unless the context shall otherwise require:

- (1) The term "commissioner" shall mean the commissioner of insurance or the Department of Insurance, as appropriate;
- (2) "Insurer" includes every person engaged as principal and as indemnitor, surety, or contractor in the business of entering into contracts of insurance, except it shall not include agencies, authorities, or instrumentalities of the United States, its possessions and territories, the Commonwealth of Puerto Rico, the District of Columbia, or a state or political subdivision of a state;
- (3) An "insurance holding company system" consists of two (2) or more affiliated persons, one (1) or more of which is an insurer;
- (4) An "affiliate," or person "affiliated" with a specific person, is a person that directly, or indirectly through one (1) or more intermediaries, controls, or is controlled by, or is under common control with, the person specified;
- (5) A "person" is an individual, a corporation, a partnership, an association, a joint stock company, an unincorporated organization, any similar entity, or any combination of the foregoing acting in concert, but shall not include any bank in its fiduciary capacity or securities broker performing no more than the usual and customary broker's function;
- (6) A "subsidiary" of a specified person is an affiliate controlled by the person directly or indirectly through one (1) or more intermediaries;
- (7) The term "voting security" shall include any security convertible into or evidencing a right to acquire a voting security;
- (8) The terms "control," "controlling," "controlled by," and "under common control with" mean the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract other than a loan contract or commercial contract for goods or nonmanagement services, or otherwise, unless the power is the result of an official position with or corporate office held by the person. 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. This presumption may be rebutted by a showing made in the manner provided by KRS 304.37-020(12) that control does not exist in fact. The commissioner may determine, after forwarding all persons in interest notice and opportunity to be heard and making specific findings of fact to support the determination, that control exists in fact, notwithstanding the absence of a presumption to that effect;
- (9) "Enterprise risk" means any activity, circumstance, event, or series of events involving one (1) or more affiliates of an insurer that, if not remedied promptly, is likely to have a material adverse affect upon the financial condition or liquidity of the insurer or its insurance holding company system as a whole, including, but not limited to, anything that would cause the insurer's risk-based capital to fall into

company action level as set forth in KRS 304.3-125 and administrative regulations promulgated thereunder or would cause the insurer to be in hazardous financial condition in accordance with KRS 304.2-065; and

- (10) "Supervisory college" means a forum for cooperation and communication between the involved supervisors established for the fundamental purpose of facilitating the effectiveness of supervision of entities which belong to an insurance group and facilitating both the supervision of the group as a whole on a groupwide basis and improving the legal entity supervision of the entities within the insurance group.

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History: Amended 2012 Ky. Acts ch. 74, sec. 13, effective July 12, 2012. -- Amended 2010 Ky. Acts ch. 24, sec. 1472, effective July 15, 2010. -- Amended 1994 Ky. Acts ch. 92, sec. 4, effective July 15, 1994. -- Amended 1992 Ky. Acts ch. 267, sec. 7, effective July 14, 1992. -- Created 1972 Ky. Acts ch. 52, sec. 1, effective June 16, 1972.