

## (Re)Setting the Table for Insurance Business Transfers

### Description

The concept of voluntarily restructuring solvent insurers has been met with some skepticism in the United States. Sure novating and commutating policies of insolvent insurers have been, at times, necessary, but legally novating (replacing one insurer with another) policies of a solvent insurer?

The purpose behind voluntarily restructuring is self-evident: to use otherwise tied-up capital by transferring particular lines of insurance business (and those associated liabilities) to another entity. Thereafter, cash held idle to cover reserves can be reinvested into other opportunities.

Voluntary restructuring of solvent insurers is not a new concept, at least outside of the U.S. The United Kingdom has authorized insurance business transfers, known colloquially as UK Part VII transfers, for some time now, as well as in Bermuda, creating a track record of success.

In the U.S, the opportunities for a vibrant voluntary restructuring market grows as states become comfortable with the concept and opportunities provided by voluntary restructuring of solvent insurers. Such “comfort”, however, is a relative term. Some states are dipping their toes in the water – i.e. Connecticut and Vermont – others, like Rhode Island and Oklahoma – are jumping in with two feet. For example, in 2017, Connecticut enacted **Public Act No. 17-2** authorizing domestic insurers to divide into two or more insurers ceding responsibility of the transferred policies to the respective resulting insurer. Vermont also has had a form of voluntary restructuring since it passed its law in 2013. See Vt. Stat. Ann. tit. 8, § 7111, *et seq.* Although the Vermont law goes further than Connecticut’s, its law is simply a regulatory procedure that does not provide the security of judicial finality.

Two states, in particular, are taking more dramatic and conclusive steps to encourage voluntary restructuring – Rhode Island and Oklahoma. Rhode Island has had its “Voluntary Restructuring of Solvent Insurers Act (the Restructuring Act) on the books for over a decade, R.I. Gen. Laws § 27-14.5-1, *et seq.*, along with its implementing regulation, 230-RICR-20-45-6, locally and historically known as Regulation 68. What began as a process limited to commutations of books of business now provides insurance companies a process to both transfer a closed book of business to a Rhode Island insurance company and/or commute such books of business very similar to UK Part VII transfers. Unlike Vermont’s law, the Restructuring Act contemplates both regulatory as well as judicial approvals of the transfer plan to provide the necessary finality businesses desire. In the last days of its 2018 legislative session, the Rhode Island General Assembly took steps to make the Restructuring Act even more attractive. On June 23, 2018, the General Assembly passed **H 8163 Substitute A** through both houses. The revised Restructuring Act will become effective upon signature by the governor. **H 8163** addresses concerns with the Restructuring Act’s language interpreted by some as limiting application of the law to commutations only. **H 8163** strikes statutory language that transferring lines of businesses had to be “for the sole purpose of entering into a voluntary restructuring.” R.I. Gen. Laws § 27-14.5-1(6)(ii). By striking such language, the General Assembly has clarified the intent of the Act to allow for transfers of lines of business separately and distinctly from commutating that transferred book. **H 8163** also clarifies that the purpose of “voluntary restructuring” is to enhance “organization and maximizing efficiencies” including “the transfer of assets and liabilities to or from an insurer, or the protected cell of an insurer.”

The Rhode Island General Assembly was not the only legislature busy working on voluntary restructuring of solvent insurers this year. Oklahoma enacted the “Insurance Business Transfer Act” (the Transfer Act), **ENR. S.B. NO. 1101 (2018)**. Like its Rhode Island predecessor, the Transfer Act requires regulatory and judicial approval. The major difference between Oklahoma’s Transfer Act and Rhode Island’s Restructuring Act appears to be the types of business lines to which each act is applicable.

As discussed above, Regulation 68 (the implementing regulation for the Restructuring Act) permits Insurance Business Transfers of policies or contracts that “must have a natural expiration which occurred more than sixty (60) months prior to the filing of the Insurance Business Transfer Plan and be in a closed book of business or . . . reasonably specified groups of policies.” 230-RICR-20-45-6.4(A)(1). Such closed books or groups of policies cannot be life, workers compensation, or personal lines insurance. R.I. Gen. Laws § 27-14.5-1(6)(i).

The Transfer Act apparently expands the lines of insurance available for transfer. Pursuant to the Transfer Act,

“Insurance Business Transfer” allows “transfer insurance obligations or risks, or both, of existing or in-force contracts of insurance or reinsurance from a transferring insurer to an assuming insurer.” The Transfer Act takes effect November 1, 2018.

Although state legislatures have been busy passing and refining voluntary restructuring laws and regulations, the dams have not burst from insurers taking advantage. Under a prior version of the Restructuring Act, one insurer tested and succeeded in the commutation process surviving constitutional challenges at the Superior Court level. See *In re GTE Reinsurance Co. Ltd.*, No. PB10-3777, 2011 WL 7144917 (R.I. Super. Ct. Aug. 25, 2011). Since the new permutation of the Restructuring Act, at least two insurers have domiciled in Rhode Island to potentially take advantage of the act. PWC, Global Insurance Run-Off Survey 13 (2018). But, it does not appear that any insurer has taken the next step by filing an Insurance Business Transfer Plan.

The legal platform exists for run-off business in at least two states and the market seems poised to act. See *id.* at 1-5. We will have to see whether or not the changes to the Restructuring Act and the introduction of the Transfer Act creates the final catalyst for insurers to pursue business transfer plans in the U.S.

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