

CLIENT ALERT

U.S. Insurance Business Transfer and Corporate Division Transactions – Updated State of Play

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I. Background

Last year, we [reported on](#) insurance business transfer (“[IBT](#)”) and corporate division laws. These laws are in select U.S. states and provide novel mechanisms for an insurer to transfer policy liabilities to another entity without the need for individual policyholder consents. At a high level, IBT laws allow an insurer to transfer legal liability of some or all business underwritten to another insurer. Corporate division laws provide for a corporate-level reorganization by allowing an insurer to divide into separate companies—a process that can be viewed as the reverse of a merger. Our last report on this topic in June 2023 (available [here](#)) described the origins of IBT and corporate division laws and their commercial implications for insurers, as well as the legal and procedural requirements for such transactions. This alert provides an update on the current IBT and corporate division laws in U.S. states, and insurance regulators’ responses to these laws and commercial activity under these laws, including the recent exposure for public comment, until June 14, 2024, of an updated, draft *Best Practices Procedures for IBT/Corporate Divisions* (the “[Best Practices](#)”) and *Restructuring Methods: An NAIC White Paper* (the “[White Paper](#)”), both available on the [website](#) of the NAIC’s Restructuring Mechanisms (E) Working Group (the “[Working Group](#)”).

U.S. Insurance Business Transfer and Corporate Division Transactions – Updated State of Play

II. Legislative Updates

Since our June 2023 report on this topic, which described IBT laws adopted by [Vermont \(2014\)](#), [Rhode Island \(2016\)](#), [Oklahoma \(2018\)](#), [Arkansas \(2021\)](#) and Illinois¹ and corporate division laws in [Connecticut \(2017\)](#), [Illinois \(2018\)](#), [Michigan \(2018\)](#), [Iowa \(2019\)](#), Georgia (2019) and [Colorado \(2021\)](#),² the state of Georgia adopted an IBT law on May 6, 2024 (the “[GA IBT Law](#)”).³ The stated purpose of the GA IBT Law is to provide options for insurers to transfer blocks of insurance business “in an efficient and cost-effective manner” and provide “needed legal finality for such transfers in order to provide for improved operational and capital efficiency for insurance companies,” while encouraging economic growth and investment in Georgia.

The GA IBT Law, which became effective upon adoption, applies to property, casualty, life, health and “any other line of insurance that the [Georgia Commissioner of Insurance (the “[Commissioner](#)”)] deems appropriate” for an IBT. The law allows a Georgia domestic insurer to assume business from a transferring insurer or reinsurer (which may be domiciled in Georgia or elsewhere). As in other states’ IBT laws, the relevant insurer(s) must file an IBT plan with the Commissioner for approval. The IBT plan must include evidence of approval of or nonobjection to the IBT from the chief insurance regulator of the transferring insurer’s domestic jurisdiction. Following the Commissioner’s approval of the IBT plan, a petition must be filed with the Superior Court of Fulton County to approve the IBT plan and issue an implementation order, which will effect a statutory novation of the subject policies to the assuming insurer and extinguish the transferring insurer’s insurance obligations and risks under such policies.

The GA IBT Law requires a finding by both the Commissioner and the court that the IBT is not likely to have a “material adverse effect on the interests of policyholders, reinsurers, or claimants that are part of the subject business,” with such finding to be supported by an independent expert’s report filed with the IBT plan. In addition to submitting the IBT plan to the Commissioner and the court, notice of the IBT must also be provided to impacted policyholders, reinsurers, guaranty associations and insurance regulators in other relevant jurisdictions, as set forth in the GA IBT Law.

III. Regulatory Updates

The National Association of Insurance Commissioners (the “[NAIC](#)”) continues to actively engage with issues relating to IBT and corporate division transactions through the development of best practices guidance and a related white paper, as well as a related workstream regarding the continuation of guaranty association coverage for policies that are the subject of an IBT or corporate division.

¹ Vt. Stat. Ann. tit. 8, § 7111 *et seq.*; 230 R.I. Code R. § 20-45-6.1 *et seq.*; Okla. Stat. tit. 36, § 1681 *et seq.*; Ark. Code Ann. § 23-69-501 *et seq.*; 215 Ill. Comp. Stat. 5/1701 *et seq.*

² Conn. Gen. Stat. §§ 38a-156r – 156z; 215 Ill. Comp. Stat. 5/35B-1 *et seq.*; Mich. Comp. Laws § 500.5500 *et seq.*; Iowa Code § 5211.1 *et seq.*; Ga. Code Ann. § 33-14-120 *et seq.*; Colo. Rev. Stat. § 10-3-1701 *et seq.*

³ Ga. Code Ann. § 33-52-10 *et seq.*

U.S. Insurance Business Transfer and Corporate Division Transactions – Updated State of Play

A. Exposure of Updated Best Practices and White Paper Until June 14, 2024

On May 13, 2024, the Co-Chairs of the Working Group, Director Elizabeth Kelleher Dwyer (RI) and Commissioner Glen Mulready (OK), exposed updated versions of two documents for a 30-day public comment period: (1) the Best Practices, setting forth guidance for state insurance regulators to use in reviewing transactions, and (2) the White Paper, discussing the historical background and “inspiration” for U.S. IBT and corporate division laws, as well as the status of and transactions under IBT and corporate division legislation in the United States.

Best Practices Exposure

The updated Best Practices draft is intended to pertain to both IBT and corporate division transactions (unless otherwise noted), and addresses topics including:

- recommended filing requirements, including detailed information about the applicant(s), the proposed transaction and its effects and historical and projected financial information (Sections I and II);
- the areas of focus and “robust” level of regulatory review required for approving an IBT or corporate division, including that reviewing authorities “should undertake efforts to establish, at a high level of confidence, that policyholders and other key stakeholders will experience no material adverse impacts” as a result of the transaction (Section III);
- guidance regarding independent experts hired by the insurance department (and paid for by the applicant), including that an independent expert should be viewed as required for IBTs and preferred but not required for corporate division transactions (for which in-house insurance department expertise may be used). The Best Practices draft states that experts should provide “a detailed report regarding the prospective solvency of the resulting insurer(s) or the assuming insurer(s),” and that “other independent experts will also provide reports to be reviewed by the regulator and the ultimate reviewing authority,” such as an actuarial review of the reserves and capital before and after the transaction (Section IV);
- detailed procedures for evaluating whether “the reserves and capital position . . . that will apply to all insurers before and after the transaction will create no material adverse impacts on the policyholders and other key stakeholders,” including using an independent actuarial expert and analyzing reinsurance, liabilities and assets (Section V);
- other issues to consider that may affect policyholders, claimants and other stakeholders, such as legal clauses to protect policyholders or the rights of policyholders or other stakeholders in other jurisdictions (Section VI);
- how to ensure due process and adequate communication to a variety of stakeholders, including working with other affected regulators to review proposed communications (Section VII);

U.S. Insurance Business Transfer and Corporate Division Transactions – Updated State of Play

- criteria that a regulator should use to determine the impact of the transaction on guaranty association coverage (or other secondary market benefits), discussed further in Section III.B below (Section VIII); and
- requirements for entities in runoff that may result from an IBT or corporate division, such as a documented run-off plan (Section IX).

Restructuring Mechanisms White Paper Exposure

The draft White Paper provides an extensive background discussion laying the historical and regulatory landscape with regard to restructuring transactions. Although the White Paper is not intended to “establish an official position” by the NAIC regarding IBTs or corporate divisions, it concludes by offering six recommendations from the Working Group for potential further action by the NAIC. The recommendations include that standardized financial guidelines be established for evaluating IBTs and corporate divisions; that state statutes be revised as needed to ensure continuity of guaranty association coverage (as discussed further in Section III.B below); that the NAIC’s National Treatment and Coordination (E) Working Group consider whether any changes should be made to streamline the licensure process for companies resulting from restructuring transactions of runoff blocks; and that the NAIC’s Statutory Accounting Principles (E) Working Group determine the appropriate accounting for an IBT or corporate division transaction that utilizes a protected cell, prior to any pursuit of potential changes to the NAIC Protected Cell Model Act (Model 290). Finally, the draft White Paper includes a statement that the Working Group “strongly discourages states from entertaining” the use of an IBT or corporate division involving long-term care insurance.

As noted above, the draft White Paper and Best Practices are currently available on the [Working Group’s website](#) and the comment deadline for both documents is June 14, 2024. We expect the Working Group to schedule a meeting to discuss the documents and comments received, potentially at the NAIC’s upcoming Summer National Meeting in August.

B. Guaranty Association Considerations

Companies considering pursuing an IBT or corporate division must assess applicable guaranty association laws in any state where impacted policies or policyholders are located to determine how coverage could be impacted by the proposed transaction. Our June 2023 report described regulators’ focus on the impact of an IBT or corporate division transaction on guaranty association coverage and measures taken by certain states to ensure that such coverage is not reduced, eliminated or otherwise changed due to a change in insurer resulting from a corporate division or IBT. In December 2023, the NAIC adopted amendments to the *Property and Casualty Insurance Guaranty Association Model Act* (“[Model 540](#)”) to address IBT and corporate division transactions. The amendments expand the definition of “covered claim” to include claim obligations that have been transferred to another insurer, provided that certain conditions are met, including that the insurer that issued the policy was a member of the guaranty association and the claim would have been a covered claim if it had

U.S. Insurance Business Transfer and Corporate Division Transactions – Updated State of Play

remained the responsibility of the original member insurer.⁴ Throughout the drafting process, regulators and interested parties emphasized that the goal of the amendments is to ensure that guaranty fund coverage for policyholders is neither eliminated nor created solely as a result of an IBT or division transaction.

The NAIC's Receivership and Insolvency (E) Task Force (the "Task Force"), which drafted the amendments to Model 540, has encouraged states to adopt corresponding amendments to their property and casualty guaranty association laws in their next legislative sessions. However, the Task Force recommended that the Model 540 amendments be considered "acceptable but not required" for NAIC accreditation purposes, meaning that states would not be required to adopt them in order to maintain their NAIC accreditation status. To date, we are not aware of any states that have adopted the amendments, but we expect that some may do so since many states' laws are based on Model 540.

With respect to guaranty fund coverage for life and health insurance subject to an IBT or a corporate division transaction, in lieu of making any changes to the *Life and Health Insurance Guaranty Association Model Act*, the National Organization of Life and Health Insurance Guaranty Associations has advised the NAIC that the critical consideration in order to retain the needed coverage for policyholders is to ensure that the assuming or resulting insurer in an IBT or division should be licensed in all states where the issuing insurer was licensed or ever was licensed.

IV. Commercial Activity

Our June 2023 report also described the transactions that have taken place under IBT and divisions laws. Since that reporting, we are aware of one additional transaction that is pending under Oklahoma's IBT law. On August 8, 2023, the Oklahoma Insurance Commissioner approved an IBT involving the transfer of a portfolio of reinsurance liabilities, obligations and expenses within the Excess & Casualty Reinsurance Association Pool (a reinsurance pool that underwrote property and casualty risks before 1982). A petition seeking final, judicial approval was filed with the District Court of Cleveland County on August 25, 2023 and is currently pending.

V. Conclusion

We have seen continued progress since last year both with respect to state adoption of IBT and corporate division laws and transactions proceeding under them. Companies considering pursuing an IBT or corporate division transaction should monitor the development of the NAIC's Best Practices and White Paper, which should provide further uniformity in regulatory expectations and review of these transactions.

⁴ See NAIC Model 540 § 5.

U.S. Insurance Business Transfer and Corporate Division Transactions – Updated State of Play

Should you have any questions regarding this client alert or IBT and corporate division laws generally, please contact Allison Tam, one of the attorneys listed below or an attorney with whom you regularly work.

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