Voluntary Restructuring – Opportunities for RI

Rhode Island has a window of opportunity to take the national lead in the insurance industry with voluntary restructuring of solvent insurers. Due to attempts by other states and state regulators to leapfrog Rhode Island, however, that window is in danger of closing.

Voluntary restructuring of solvent insurers is not a new concept, at least outside of the United States. For some time now, the United Kingdom has authorized solvent companies in run-off to propose a commutation plan extinguishing its liabilities for past and future creditor claims and terminating its business. The U.K. also permits insurers to transfer closed books of business to another with court approval – known as insurance business transfers (IBTs). Such mechanisms also exist in Bermuda as well, creating a track record of success.

Insurers benefit from utilizing IBTs and commutation plans by reducing administrative costs, freeing up capital otherwise held in reserve, and investing those funds elsewhere. Policyholders are protected by the regulatory and judicial process. But benefits are not limited to those involved in the transaction – jurisdictions that embrace IBT transactions can see an influx of capital, employment opportunities, and ancillary business growth.

In the U.S., the prospect 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 and others are jumping in with two feet.

In 2017, Connecticut took a first step and 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 2013. See Vt. Stat. Ann. tit. 8, § 7111, et seq. Although the Vermont law goes further than Connecticut's, it only provides for a regulatory procedure that does not provide the security of judicial finality, and may not entice insurers seeking more robust protections.

Two states – Rhode Island and Oklahoma – are taking more dramatic and conclusive steps to encourage voluntary restructuring.

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. Thanks to legislation this year (H 8163), the benefits to insurance companies in run-off have substantially increased. What began as a process limited to commutations of books of business now allows IBTs for companies to both transfer a closed book of business to a Rhode Island insurance company and/or commute such books of business. These processes are very similar to the U.K.'s Part VII transfers. Additionally, 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.

Rhode Island's revised law addresses concerns by some that the Restructuring Act may have been limited to commutations only. H 8163 struck 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). In doing so, the General Assembly 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 clarified 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.

In Rhode Island, Regulation 68 (the implementing regulation for the Restructuring Act) permits IBTs of policies or contracts that have expired more than sixty months prior to filing an IBT application. 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 expands the lines of insurance available for transfer. Pursuant to the Transfer Act, IBTs are allowed to transfer insurance obligations and risks of existing or in-force contracts. The Transfer Act takes effect November 1, 2018.

Although state legislatures have been busy passing and refining voluntary restructuring laws and regulations, insurers are not rushing the gate. Under a prior version of the Restructuring Act, one insurer in Rhode Island tested the commutation process and succeeded, 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 RUNOFF 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. Should IBTs take hold in Rhode Island, the state could see a large influx of capital positively impacting Rhode Island’s economy.

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