

Game changer: Oklahoma's new insurance business transfer law could set precedent for other states

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On 7 May 2018, Oklahoma Governor Mary Fallin signed into law the Insurance Business Transfer Act that, effective 1 November 2018, will allow an insurer or reinsurer, through a court supervised process, to transfer a portfolio of business to another insurer domiciled in Oklahoma without the affirmative consent of policyholders or insureds, becoming the first U.S. state to embrace insurance business transfers (“IBTs”) under a structure that closely mimics “Part VII” transfers authorized under the UK Financial Services and Markets Act 2000. If it gains traction, this statute could become a viable alternative structure to complex reinsurance transactions typically employed in the sale of a block of business to a third party.

Why does this matter?

While a number of other U.S. states have or are seeking to implement similar solvent run-off schemes and transfers, none hew as closely to the UK's Part VII transfers as Oklahoma's Transfer Act. For example:

- Vermont adopted its Legacy Insurance Management Act, which allows non-admitted insurers to transfer discontinued commercial business to a third-party company with regulatory approval.
- Rhode Island's “Voluntary Restructuring of Solvent Insurers Act” notably also provides a mechanism for court-sanctioned commutation of policies of commercial property and casualty insurers.
- Connecticut and Pennsylvania have adopted statutes allowing companies domiciled in those states to divide books of business within a company with regulatory approval.

What is the Insurance Business Transfer Act?

The Transfer Act outlines the procedures through which a transferring insurer can transfer and novate any book of property, casualty, life or health insurance to an assuming insurer (which includes a captive insurer) domiciled in Oklahoma through the filing of a business transfer plan with the Oklahoma Insurance Department and, following the Department's approval, the issuance of an implementation order by the District Court of Oklahoma County. Once approved, pursuant to the Transfer Act, the IBT will effect a novation of the transferred contracts of insurance or reinsurance with the result that the assuming insurer becomes directly liable to the policyholders of the transferring insurer and the transferring insurer's insurance obligations or risks, or both, under the contracts are extinguished. The Transfer Act, which some in the industry have called a “game changer,” appears to include both in-force contracts as well as discontinued or run off insurance.

Key components of the Transfer Act

- The application must contain, among other items, “evidence of approval or nonobjection of the transfer from the chief insurance regulator of the state of the transferring insurer’s domicile.”
- The application must also include an opinion from an independent expert regarding, inter alia, the likely effects of the transfer on policyholders and claimants, including distinguishing between those whose policies will not be transferred, and whether the proposed transfer has a material, adverse impact on the policyholders and claimants of the transferring and the assuming insurers.
- The Insurance Commissioner has 60 business days (which may be extended by an additional 30 business days) from receipt of a complete IBT plan to review the plan to determine if the applicant may proceed with a verified petition to the court seeking approval to implement the plan.
- Notice of a court hearing on the plan and a 60-day comment period must be sent to (i) the insurance regulators of each jurisdiction in which the applicant holds or has ever held a certificate of authority and in which subject policies were issued or policyholders currently reside, (ii) state insurance guaranty associations of such jurisdictions, (iii) reinsurers of the subject business, and (iv) all policyholders of the subject business.
- The notice must provide that a policyholder may comment on or object to the transfer and novation but also that policyholders will not have the opportunity to opt out of or otherwise reject the transfer and novation.

If the court finds that the implementation of the IBT plan would not materially adversely affect the interests of policyholders or claimants that are part of the subject business, the court must issue an implementation order that (inter alia):

- orders a statutory novation with respect to all policyholders or reinsureds and their respective policies and reinsurance agreements;
- releases the transferring insurer from any and all obligations or liabilities under policies that are part of the subject business; and
- authorizes and orders the transfer of property or liabilities, including, but not limited to, the ceded reinsurance of transferred policies and contracts on the subject business, notwithstanding any nonassignment provisions in any such reinsurance contracts.

Contact



Robert Fettman
Counsel, New York
robert.fettman@hoganlovells.com
+1 212 918 3038

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