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CLIENT ALERT

Illinois Adopts Insurance Company Division Law

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In recent years, several U.S. states have enacted legislation or promulgated regulations meant to approximate the effect of Part VII of the UK Financial Services and Markets Act 2000, which allows an insurer to transfer its business, or a book of business, to another entity through a court approval process without the need for individual policyholder consents. We have previously reported on such legislation and regulations in Oklahoma, Vermont, Rhode Island and Connecticut. Each state provides a mechanism for transferring insurance liabilities without affirmative policyholder consent, although there are differences in the transfer process in each state, including in the types of business that may be transferred, whether the transfer must be approved by a court or by the insurance regulator of the state, and whether policyholders may object to or "opt out" of the transfer.

On November 27, 2018, Illinois passed the Domestic Stock Company Division Law (SB1737) (the "IL Division Law"), which we summarize in this alert.

Law

The IL Division Law, which will become effective January 1, 2019, allows an Illinois domestic stock insurer (the "Dividing Company") to divide into two or more insurance companies (the "Resulting Companies") and allocate its assets and liabilities, including policy liabilities, between the Resulting Companies pursuant to a plan of division approved by the Director of the Illinois Department of Insurance ("IL DOI"). The stated purpose of the IL Division Law is to improve the competitive position of Illinois domestic stock companies and enhance the desirability of Illinois as a jurisdiction of domicile for stock insurance companies. Unlike the laws of certain other states, the IL Division Law is not limited to certain classes of business or to closed blocks. In addition, while certain states provide for a court-sanctioned approval process, under the IL Division Law the Director of the IL DOI reviews the Dividing Company's division plan without court involvement. The IL Division Law is similar to a Connecticut insurer division statute passed in October 2017.

Application Process

The Dividing Company must submit a plan of division to the IL DOI to divide into two or more insurers. The plan of division must identify each Resulting Company to be created by the division and describe, among other things, the manner of allocating assets and liabilities between the Resulting Companies. The Director of IL DOI shall approve the plan of division unless: (i) the interest of any class of policyholder or shareholder of the dividing company is not protected; (ii) a Resulting Company would be ineligible to receive an Illinois insurance license; (iii) the division violates a provision of the Uniform Fraudulent Transfer Act; (iv) the division is being made to hinder, delay or defraud any policyholders or creditors; (v) one or more Resulting Companies will not be solvent; or (vi) the remaining assets of one or more of the Resulting Companies will be unreasonably small in relation to the business of the Resulting Company. The IL DOI may hold a public hearing on the division if a hearing is deemed by the Director to be in the public interest or the Dividing Company requests a hearing. After approval by the Director, the plan of division becomes effective when the Dividing Company executes and files a certificate of division with the county recorder.

Following a division, each Resulting Company is responsible (i) individually for the policies and liabilities that the Resulting Company issues or incurs after the division; (ii) individually for the policies and liabilities of the Dividing Company that are allocated to or remain the liability of the Resulting Company, as specified in the plan of division; and (iii) jointly and severally with the other Resulting Companies for the policies and liabilities of the Dividing Company that are not allocated to a particular Resulting Company by the plan of division.

Next Steps

The IL Division Law will become effective on January 1, 2019. Under the statute, the Director of IL DOI may promulgate rules to carry out the statute; e.g. regulations setting out in greater detail the requirements for division plans and the IL DOI's review of such plans. In addition, the National Association of Insurance Commissioners is in the early stages of forming a new working group to consider issues related to insurance business transfer laws.

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