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CLIENT ALERT

Michigan 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 Connecticut, Oklahoma, Rhode Island, Vermont and Illinois. 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.

Effective December 20, 2018, Michigan amended its insurance code to add Chapter 55, Domestic Stock Insurer Division (the "MI Division Law"), which we summarize in this alert.

Law

The MI Division Law, which became effective when passed, allows a Michigan 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 Michigan Department of Insurance and Financial Services ("MI DIFS"). The MI Division Law is similar to insurer division statutes passed in Connecticut in October 2017 and Illinois in November 2018. Like the Illinois and

Connecticut laws, the MI Division Law is not limited to certain classes of business or to closed blocks, and does not include a policyholder “opt out” provision. In addition, while certain states provide for a court-sanctioned approval process, under the MI Division Law the Director of the MI DIFS reviews the Dividing Company’s division plan without court involvement.

Application Process

The Dividing Company must submit a plan of division to the MI DIFS 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.

Unlike the Illinois and Connecticut division laws, the MI Division Law includes a provision stating that if a division is undertaken in conjunction with the divestiture of one of the Resulting Companies, the Director shall not approve the division until the potential acquiring party has separately received the necessary approvals for such acquisition (*i.e.*, a Form A approval). The Michigan approval standards for a plan of division include additional standards not found in the Illinois or Connecticut laws regarding a potential post-division acquisition.

The MI Division Law provides that the Director of MI DIFS shall approve the plan of division unless: (a) the interest of affected policyholders will not be adequately protected; (b) any Resulting Company would not be able to satisfy the requirements for the issuance of a certificate of authority; (c) the division would substantially lessen competition in insurance or tend to create a monopoly in Michigan; (d) the financial condition of an acquiring party of a Resulting Company, if any, is such that it might jeopardize the financial stability of the insurer, or prejudice the interest of its policyholders or any other shareholders; (e) the terms of the plan of division are unfair and unreasonable to the Dividing Company’s policyholders or shareholders; (f) an acquiring party of a Resulting Company, if any, has plans or proposals to liquidate the Resulting Company, sell its assets, or consolidate or merge the Resulting Company with a person, or to make any other material change in its business or corporate structure or management, that are unfair and unreasonable to the Resulting Company’s policyholders, and not in the public interest; (g) the competence, experience, and integrity of the persons who would control the operation of a Resulting Company are such that it would not be in the interest of the Resulting Company’s policyholders or the general public to permit the division; (h) the division is likely to be hazardous or prejudicial to the insurance-buying public; (i) the division violates the Michigan Uniform Voidable Transactions Act; (j) the division is being made for purposes of hindering, delaying, or defrauding any policyholders or other creditors; (k) one or more Resulting Companies will not be solvent on the consummation of the division; or (l) the assets allocated to one or more Resulting Companies will be unreasonably small in relation to the Resulting Company’s business.

Unlike the division laws in Illinois and Connecticut, under which a hearing is discretionary, the MI Division Law requires that the Director of MI DIFS hold a public hearing prior to approving a plan of division. After approval by the Director, the plan of division becomes effective after the Dividing Company executes and files a certificate of division with the MI DIFS.

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 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.

Related Transactions

The MI Division Law contemplates that a plan of division may be undertaken as part of a larger transaction. As noted above, the Director of the MI DIFS will consider whether a Resulting Company will be acquired in conjunction with a plan of division. Further, similar to Illinois and Connecticut, the MI Division Law amends the insurance company merger law (MCL 500.7604) to provide that, to facilitate the merger of any Resulting Company with and into another company simultaneously with the effectiveness of a division, a Dividing Company may adopt and execute a plan of merger or consolidation on behalf of a Resulting Company, and the Director of MI DIFS may approve the merger or consolidation as part of its approval of a plan of division.

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