

Rhode Island Regulation 68

Voluntary Restructuring of Solvent Insurers Act

Recently Rhode Island revised its Voluntary Restructuring of Solvent Insurers Act as implemented by DBR Regulation 68. This is, in many respects, modeled after the UK's Part VII Transaction, which, subject to court approval, enables companies to transfer/novate a book of business (and divest itself of all residual liability), to another unrelated insurer that assumes all liabilities associated with that business. Reg. 68 is not as broad as the UK's Part VII legislation, but nevertheless creates an option in the United States that had not heretofore been available.

Once the transferor identifies the book (or books) of business to be transferred, the first step is obtaining the consent of the domiciliary regulator of the insurer seeking to transfer/novate business to a Rhode Island domestic. Without knowing which other state(s) may be involved, it is impossible to know the applicable regulator's predisposition to such a transaction. Both Elizabeth Dwyer, Superintendent of Insurance, and Jack Broccoli, Associate Director -Financial Regulation, have indicated that Rhode Island will work with other regulators to address any regulatory concerns. Assuming no objections

at this stage, the next step is to either establish a newly-licensed Rhode Island domestic, or to identify one that is prepared to assume the business pursuant to the requirements of the statute and regulation.

While utilizing an existing Rhode Island domestic may be an easier process, the regulatory process to form and license a Rhode Island domestic to take advantage of Reg. 68 is relatively simple, and requires a minimum combined capital and surplus

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of \$3mm. An advantage of Reg. 68 is that it permits a Rhode Island company to set up individual protected cells, thus allowing that company to assume disparate books of business, and then to either retain or reinsure the business as part of the business transfer plan.

Pursuant to the statute, the business to be transferred to the Rhode Island domestic is limited to commercial property & casualty run-off liabilities, so not all lines of business would qualify for a business transfer plan, (for example

workers' compensation would not qualify).¹ Additionally, to qualify under Reg. 68, the business to be transferred must have a natural expiration that occurred more than sixty (60) months prior to the filing of the Insurance Business Transfer Plan and be in a closed book of business or a reasonably-specified groups of policies. The Rhode Island domestic* would then manage the run-off of the business, but the business could be reinsured from the Rhode Island company, or from each protected cell within the company, to a third-party reinsurer. This structure would add another layer of separation by giving it separate reinsurance protections.

There are a number of factors that should be kept in mind in planning for the utilization of a Rhode Island domestic for run-off purposes including, but not limited to:

- Consent must be obtained from the domiciliary regulator of the insurer seeking to transfer/novate business;
- The new (or existing) Rhode Island insurer to which the book of business is transferred/novated may reinsure the business as part of the business transfer plan, but this would require review of the reinsurance agreement any potential collateral requirement;
- The independent actuarial review (commissioned by the Rhode Island Department) must consider all

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interested parties and will be an important aspect to gaining approval from all the regulators involved;

- Communication with non-domestic regulators should occur so they do not raise objections, although their express approval may not be required. For example, review of the business transfer plan to fully understand what blocks of business and why these blocks are being transferred will be necessary in order to communicate with the regulators and gain their support. Although, as noted above, explicit approval may not be required from non-domiciliary states, it is likely Rhode Island will listen to concerns from other states and seek to gain their support;

- Credit for reinsurance of transferred book—business ceded or retroceded by the Rhode Island domestic to a non-admitted (including offshore) reinsurer may require collateral in the form of so-called Reg 114 trusts, letters of credit, other trusts, or funds withheld.

As previously noted, there are some potential roadblocks/pitfalls that may confront the transferor, including, but not limited to:

- Some states may be hostile and/or express concerns regarding a voluntary

restructuring and transfers under the Rhode Island statute and regulation;

- Some insurers, insureds, reinsurers, and industry groups may oppose them;

- Whether the business transfer plan and commutation plan are respected by other states has not been tested in court. There is a good argument to be made that states should give proper deference (comity) to Rhode Island Reg. 68;

- The Rhode Island insurer assuming business may be required to provide collateral such as Reg 114 trusts, letters of credit, etc. so that transferring insurer may claim full reserve credit for any transfer because;

- The Rhode Island insurer (particularly if a new domestic) likely cannot be widely licensed due to seasoning requirements, and may not have ratings or a significant amount of surplus.

For additional information please contact the authors of this article. ●

1. Rhode Island has also indicated there is nothing in Reg. 68 that would preclude alien business from being transferred to Rhode Island under such a plan and there are various ways this could be accomplished. Many books of alien business have a

substantial amount of U.S. policyholders and therefore regulators may view this favorably as policyholders would gain from the oversight provided by U.S. regulators.

** One company has now been incorporated in Rhode Island, ProTucket Insurance Company, to take advantage of Reg. 68.*



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