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Insurance Business Transfer (IBT) Transactions / Corporate Divisions Transactions

Background

An **insurance business transfer** (IBT) represents a transaction designed to transfer existing insurance obligations of one insurer (transferring insurer) to a second insurer (assuming insurer) without policyholder consent, subject to approval regulatory approval and court approval. While policyholder consent is not required, notice to policyholders, key stakeholders and the general public is required, and concerns regarding the transaction will be considered in the regulatory and/or court approval process. Following an IBT, the assuming insurer becomes directly liable to policyholders and the transferring insurer's obligations under the insurance policies and contracts are extinguished thereby achieving legal finality for the transferring insurer.

A corporate division (CD) is a division of one dividing insurer into two or more resulting insurers. The dividing insurer'sassets and liabilities are allocated between or among the resulting insurers without requiring affirmative policyholder consent. Following a CD, the resulting insurer(s) becomes directly liable to policyholders and the dividing insurer's obligations under the insurance policies and contracts are extinguished thereby achieving legal finality for the dividing insurer.

IBT and CD transactions may not be appropriate for troubled companies unless detailed analysis is undertaken and suitable mechanisms for policyholder protections are put in place.

The procedures in this section are best practices for state insurance regulators to use in reviewing IBT and CD transactions. While acknowledging that such transactions may differ, this guidance is intended to recommend minimum review standards, where applicable and does not prohibit a regulator from requesting and reviewing additional information.

The term insurer in this document refers to licensed insurance risk bearing entities. Although some jurisdictions do not consider certain health entities insurers, this term is used generically to include such entities.

Unless otherwise noted, the following guidance is intended to pertain to both IBT and CD transactions.

Section I – Insurer Information

The applicant requesting the transaction must provide the following minimum documentation for review by the regulatory authorities:

1. **Entity Contact Information**

    a. Below information for 1) applicant; 2) CD – Dividing and Resulting insurer(s); 3) IBT – transferring and assuming insurer(s)

    b. Insurer names

    c. DBA/AKA (if applicable)

    d. NAIC company code

    e. NAIC group code prior to transaction (if applicable)

f. State or jurisdiction of domicile of all insurers in the transaction

g. List of states/jurisdictions where each insurer is currently licensed and list of states/jurisdictions where each insurer was ever licensed

h. Comments (regarding surplus lines, etc.)

i. Contact person

j. Address

k. Phone number

l. Email address

2. **Affiliates of the Involved Insurers**

a. Organizational chart pre-transaction

b. Ultimate controlling person pre-transaction

c. Organizational chart post-transaction

d. Ultimate controlling person post-transaction

e. For each new insurer that will be created by the proposed CD, a copy of its:

i. Proposed articles of incorporation

ii. Proposed bylaws and

iii. The kinds of insurance business that the new insurer(s) would be authorized to conduct

f. Respective controlling parties of dividing or transferring and resulting or assuming insurers

3. **Management of Applicants**

a. Officer and director information for involved insurer(s)

b. Individual's first and last name

c. Position title

d. Known regulatory actions

Section II – Transactional Design

The applicant requesting the transaction must provide the following minimum documentation for review by the regulatory authorities:

The following procedure is intended to mitigate the risk of approving a proposed IBT/CD transaction that may not be well designed based upon the effects of the transaction.

1. **Insurance Business Transfer – Narrative of the proposed IBT, including:**

    a. Identification of the policies subject to the IBT.

    b. Reasons for undertaking the IBT.

    c. All steps necessary to accomplish the IBT, including legal and regulatory requirements and the timetable for completing such requirements.

    d. The effect of the IBT on the transferring insurer's and assuming insurer's financial condition.

    e. The effect of the IBT on the transferring insurer's and assuming insurer's policyholders (including with respect to guaranty association coverage) claimants and other stakeholders.

    f. Summary of the IBT plan, including any agreements.

    g. Identification and description of the business to be transferred (including the lines of business, liabilities by state/jurisdiction, and guaranty associations that could be affected should the assuming or resulting insurer be liquidated).

    h. Most recent audited financial statements, along with quarterly and annual reports of the transferring insurer and the assuming insurer filed with its domiciliary regulator.

    i. The most recent actuarial report and opinion that quantifies the liabilities in the business to be transferred to the assuming insurer(s) under the policies or reinsurance agreements.

    j. Three years of pro-forma financial statements demonstrating the projected solvency of the assuming insurer(s) and explanation of assumptions used and certification that all financial regulatory requirements will be met after the transaction. The reviewing regulator has the discretion to request more than three years of financial projections if deemed appropriate. For example, more years of financial projections would likely be requested if the subject business is expected to take more than three years to run-off.

    k. Officers' certificates of the transferring insurer(s) and the assuming insurer(s) attesting that each has obtained all required internal approvals and authorizations regarding the IBT plan and completed all necessary and appropriate actions relating thereto.

    l. Description of any reinsurance arrangements that will transfer to the assuming insurer or from the assuming insurer that would cover the subject business under the IBT.

    m. Description of any guarantees or additional reinsurance that will cover the transferred business.

n. A statement describing the assuming insurer's proposed investment policies and any contemplated third-party claims management and administration arrangements.

o. An exhibit similar to Schedule P Part 2 showing how management's reserve estimates have changed over time for the business to be transferred/divided, on both a gross and net of reinsurance basis.

p. An exhibit showing how the Appointed Actuary's (or other internal/third party actuary who has reviewed the subject business) estimates have changed over time for the business to be transferred/divided, on both a gross and net of reinsurance basis.

q. List of states/jurisdictions where the assuming insurer(s) is licensed.

r. Full description and analysis and any other information relevant to whether the transaction will reduce, eliminate, or otherwise change guaranty association coverage, including:

   i. For IBT transactions involving the transfer of life, annuity or health insurance the applicant's representation that the assuming insurer(s) is licensed with respect to the transferred business in the same U.S. jurisdictions where the transferring insurer(s) is licensed or had ever been licensed with respect to the transferred business.

   ii. For IBT transactions involving property and casualty insurance, the applicant's representation that the laws of each U.S. jurisdiction where any such policies issued by the transferring insurer are transferred such that rights to guaranty fund coverage are not reduced, eliminated, or otherwise changed as a result of the transaction.

s. A full description and analysis of all plans regarding run-off operations of any of the insurer(s) relating to the business being transferred.

t. Update to the Own Risk and Solvency Assessment reports ("ORSA") demonstrating how the proposed transaction would impact the ORSA analysis for the transferring insurer(s) as well as for any insurer that will be assuming policy liabilities if the proposed transaction is approved.

u. Documentation of how the administration of policies, including claims handling by the transferring insurer(s) following the transaction will provide a continuing level and quality of service.

v. Form of notice to be provided under the IBT to any policyholder whose policy is part of the transfer, including a full description as to how such notice shall be provided.

2. **Corporate Division – Narrative of the Proposed CD, including:**

   a. Identification of the policies subject to the CD

   b. The manner of allocating between or among the resulting insurer(s) including:

      i. Any assets of the dividing insurer that will not be owned by all of the resulting companies as tenants in common.

      ii. The liabilities of the dividing insurer, including policy liabilities, to which not all of the resulting insurer(s) will become jointly and severally liable.

c. The manner of distributing shares in the new insurer(s) to the dividing insurer(s) or its shareholders.

d. A reasonable description of the liabilities, including policy liabilities, and items of capital, surplus,or other assets, in each case, that the dividing insurer(s) proposes to allocate to each resulting insurer(s), including specifying the reinsurance contract, reinsurance coverage obligations, and related claims that are applicable to those policies.

e. All terms and conditions required by the laws of the jurisdiction or the articles of incorporation and bylaws of the dividing or resulting insurer(s).

f. Evidence demonstrating that the interest of all classes of policyholders (including with respect to guaranty association coverage), claimants and other stakeholders of the dividing and resulting insurer(s) will be properly protected, and all other terms and conditions of the division.

g. Nothing in this shall expand or reduce the allocation and assignment of reinsurance as stated in the reinsurance contract.

h. If the dividing insurer(s) survives the division, the plan of division shall include any proposed amendments to such insurer(s) bylaws and information as to whether any interests in such insurer(s) will be canceled or converted including:

    i. All proposed amendments to the dividing insurer's articles of incorporation and bylaws, if any;

    ii. If the dividing insurer(s) desires to cancel some, but less than all, shares in the dividing insurer(s), the manner in which it will cancel such shares; and

    iii. If the dividing insurer(s) desires to convert some, but less than all, shares in the dividing insurer(s) into shares, securities, obligations, money, other property, rights to acquire shares or securities, or any combination thereof, a statement disclosing the manner in which it will convert the shares.

i. If the dividing insurer(s) does not survive the proposed division, the plan of division shall contain the manner in which the dividing insurer(s) will cancel or convert shares in the dividing insurer(s) into shares, securities, obligations, money, other property, rights to acquire shares or securities, or any combination thereof.

j. An exhibit similar to Schedule P Part 2 showing how management's reserve estimates have changed over time for the business to be transferred/divided, on both a gross and net of reinsurance basis.

k. An exhibit showing how the Appointed Actuary's (or other internal/third party actuary who has reviewed the subject business) estimates have changed over time for the business to be transferred/divided, on both a gross and net of reinsurance basis.

l. Business plan.

m. Ongoing operations of the resulting insurer(s).

    i. A listing of the insurer's major markets/products.

ii. A description of the insurer's strategy covering major markets/products and customers and the critical success factors for achieving these strategies.

iii. A description of the insurer's competitive positioning for each of its major markets/products and a discussion of growth potential, profit potential and trends for each.

iv. Identification and a discussion of the significant trends in the insurer's major markets/products, e.g., demographic changes, alternative markets, distribution methods, etc.

v. Identification of the largest risk exposures of the insurer, e.g., financial market volatility, environmental exposures, geographic distribution, etc.

vi. A description of the major business risks of the insurer, e.g., sales practices, data integrity, service delivery, technology, customer satisfaction, etc.

vii. List of states/jurisdictions where the resulting insurer(s) is/are licensed.

n. Information relevant to whether the transaction will reduce, eliminate, or otherwise change guaranty association coverage, including:

i. For corporate division transactions involving life, annuity or health insurance, the applicant's representation that each resulting insurer is licensed in the same U.S. jurisdictions where the dividing insurer is licensed or had ever been licensed with respect to the life, annuity or health policies being allocated to the resulting insurer.

ii. For corporate divisions involving property and casualty insurance, the applicant's representation that the laws of each U.S. jurisdiction where any such policies issued by the dividing insurer are allocated such that rights to guaranty association coverage are not reduced, eliminated, or otherwise changed as a result of the transaction.

o. Run-off operations.

i. A description of all plans regarding any run-off operations.

p. Documentation of how the administration of policies including claims handling by the dividing insurer following the transaction will provide a continuing level and quality of service.

3. **Financial Information for IBT and CD**

a. Historical financial statements, including the most recently filed annual and quarterly statutory statements.

b. Financial statements (in a spreadsheet format) detailing the accounting of the proposed IBT or CD including:

i. Schedules detailing assets and liabilities to be reallocated as part of the IBT or CD.

ii. An accounting of any special charges, re-evaluations, or write-downs to be made as part of the IBT or CD.

c. Pro forma financial statements of the insurer(s) as if the IBT or CD were approved including an explanation of the underlying assumptions.

d. Financial projections for three years (assuming the IBT or CD is approved) for the transferring/dividing and assuming/resulting insurer(s) and an explanation of the assumptions upon which the projections are based. The reviewing regulator has the discretion to request more than three years of financial projections if deemed appropriate. For example, more years of financial projections would likely be requested if the subject business is expected to take more than three years to run-off.

e. A description of any tax consequences of the IBT or CD.

4. **Financial Support**

a. While every IBT or CT plan should stand on its own when determining the appropriate capital requirements, there may be situations where the parent may be offering continued financial support or management services that may be considered by the domiciliary regulator. In those instances, the provision for financial and managerial support by the parent entity to any insurer(s), needs to be legally enforceable before such support is given consideration in review of the transaction. If the plan provides for a commitment of parental and other legally enforceable plans for financial support such support might be needed to run off operations in the event of:

i. Inadequacy of reserves.

ii. Asset deterioration.

iii. Deterioration in the collectibility of reinsurance recoverables.

iv. Appropriate liquidity

5. **Organizational Impact**

a. The plan should affirm that all resulting insurer(s) shall be in compliance with licensure requirements in all applicable jurisdictions. If the restructuring transaction involves the transfer of reinsurance business from one reinsurer to another, approval of the transaction should consider the impact on the direct writer to continue to receive credit for reinsurance if it existed prior to the transaction.

b. Analysis of the change in organizational structure resulting from the transaction. Areas of emphasis include the following:

i. Ownership of the resulting corporate structures

ii. Relationship between management of the resulting insurer(s)

iii. Substantial reinsurance arrangements between resulting insurer(s)

iv. Other ongoing business ties between the resulting insurer(s)

Section III – Robust Regulatory Review

1. Initial Review of the Transaction

The domestic regulator should conduct an initial review of the proposal prepared by the applicant insurer to determine if all information required by Section I and Section II has been provided and the transaction has been properly designed. Some domestic regulators may choose to call a limited scope financial examination as part of conducting their review. The domestic regulator should ensure:

a. The documented reasons for the proposed transaction are reasonable and appropriate based upon the domestic regulator's existing knowledge of the insurer/group.

b. The steps necessary to accomplish the plan, including legal and regulatory expectations and a timeline, are reasonable and appropriate.

c. The projected impact of the transaction (proforma financial statements and RBC before and after) on the financial condition of all involved insurer(s) will not render any insurer(s) in a troubled company state.

d. The proforma business plan for all insurer(s) including major business risks, products, etc., of the insurer (e.g., sales practices, data integrity, service delivery, technology, customer satisfaction, etc.) as described in Section II is reasonable and appropriate.

2. High Level of Confidence

Reviewing authorities should undertake efforts to establish, at a high level of confidence, that policyholders and other key stakeholders will experience no material adverse impacts.

a. The regulatory review must be robust, including evaluations of financial projections, actuarial analysis and capital and liquidity projections. In addition, the review should also include a confirmation that the insurer(s) have performed a due diligence of the legal implications in other jurisdictions, specifically those that have anti-novation laws. Correspondingly, all affected regulators should conduct a review of their own laws to ensure there is no legal bar to the transaction.

b. The review should be conducted by the domestic regulator assisted by qualified independent experts (or in-house department of insurance expertise for CD) and should identify key risks to the transaction. The independent expert should not be a department of insurance employee and should be able to assert independence from the reporting entities under discussion. The expert review should, at a minimum, include the following:

    i. A prospective solvency assessment.

    ii. A finding that the assets to be transferred to insurers involved in the transaction are adequate to cover the insurers' liabilities being transferred.

    iii. A conclusion that the transaction does not have any material adverse impacts on policyholders, including services, benefits from reinsurers, guaranty associations or other secondary market mechanisms.

iv. A consideration of the plans of any insurer(s) involved in the transaction to liquidate another involved insurer, sell or dividend assets, consolidate, merge, or make other changes, and the resulting impact on capital, policyholders, reinsurers, and guaranty associations.

v. An analysis of any relevant contracts, including claims management and reinsurance, and recordkeeping.

vi. Management assessment and corporate governance assessment. (Note this can be undertaken by the independent expert if preferred).

c. The domestic regulator should consider whether any insurer(s) will lose the benefits of policy line diversification following the transaction. In making this determination, the domestic regulator should determine whether following the transaction the insurers are operating in a single industry segment is offering differentiated types of insurance products or is otherwise exposed to increased risk because of its insurable risk profile.

3. **Require Strong Financial Standards and Stress Testing**

a. Prescribed conservative assumptions should be included in capital calculations to avoid the manipulation of capital thresholds. (See additional information in the section on assessment of capital risk.)

b. Actuarial reserve and capital calculations should be performed by an expert that is independent of the insurance companies involved. Resulting projected RBC ratios and projected capital ratings should be reviewed. Policyholders and other key stakeholders should have the same economic protections which existed prior to the IBT or CD, including but not limited to guaranty association protection.

c. The final decision should outline the purpose of the transaction and impact to policyholders and other key stakeholders, and the opinion of the independent expert(s) and reviewing regulators, including other impacted regulators, and the input from policyholders.

d. Use uniform NAIC valuation and accounting standards.

i. When evaluating the solvency impact of a proposed transaction, the accounting utilized should be in conformance with the NAIC's uniform statutory accounting principles valuation and accounting rules in the NAIC *Accounting Practices and Procedures Manual* (AP&P Manual). Regulators are discouraged from allowing any permitted practices. If permitted practices are utilized, the impact of the deviations from the AP&P Manual at the time of the transaction, and in any subsequent projections, should be thoroughly analyzed and quantified and should be disclosed as part of the information shared with other affected regulators. In addition, statutory filings shall continue to provide disclosures of the impact of prescribed and permitted practices in accordance with the AP&P Manual.

e. The domiciliary regulatory should consider the financial strength ratings issued by rating agencies along with other financial strength benchmarks, for all insurer(s) involved in the transaction.

4. **Assessment of Risk Capital**

a. In IBT transactions where the liabilities of the assuming insurer(s) are intended to be segregated from the other liabilities not associated with such a transfer and are expected to be both self-sustaining (e.g., no more funds may be transferred to fund such liabilities under the terms of the transfer) and self-containing

(e.g., funds cannot be used to cover liabilities not associated with the transfer), the domiciliary regulator must ensure that there are appropriate statutes and/or regulations in place that provide a legal framework to protect the assets of the segregated accounts in the event of an insolvency of the segregated account. In addition, RBC should be calculated for each segregated account and for the company as a whole. The regulator should also consider requesting and reviewing other capital metrics (e.g., Best's Capital Adequacy Ratio (BCAR)or the company's own measure of economic capital for the business to be transferred/divided)

b. An actuarial report of the adequacy of reserves (gross and net) being transferred should include an analysis of:

   i. A comparison of the existing reserves to a Value at Risk (VaR) of 99.5% for a one-year period (non-life business), 97% for a five-year period (non-life business) or conditional tail expectation (CTE) of 90 or other higher level that are necessary to mitigate the risks being transferred. Some liabilities (such as asbestos, environmental, and other latent liabilities) are highly volatile and may not lend themselves to traditional methods of estimating percentiles for reserve stress testing. The standards presented may not be practicable in all situations. Regulators could consider focusing on stressing the reserves in a deterministic manner rather than attempting to quantify the 99.5% Value at Risk (VaR) for a one-year period, the 97% VaR for a five-year period, or the Conditional Tail Expectation of 90 or higher where these metrics may be difficult to estimate and/or potentially misleading.

   ii. A comparison to stressed reserves under reasonable deterministic criteria/scenarios provided by the domiciliary regulator.

   iii. A comparison of the proposed claim staff expertise and levels compared to estimate of previous claims staff expertise and levels.

c. If the reviewing authority requires additional capital which is higher than the required reserve, the additional amount should be reported in special surplus.

d. If the proposed transaction includes on-going operations for non-life business, the review should include an understanding of the basis for the projected liabilities associated with the ongoing business. This review should include pricing assumptions such as rate change history, loss trends, and on-going expenses. The independent expert should assess the potential need for a premium deficiency reserve as well as the adequacy of pricing for ongoing business.

e. Capital reviews of the transaction should consider the following (if relevant) to the transaction:

   i. Capital and/or reinsurance limits assessments should include quantitative analysis.

   ii. Risk exposure modeling.

   iii. Horizon and confidence levels to address short-term (1 year); mid-term (5 to 10 years); long-term (relatively consistent with liability horizon).

   iv. Stress scenarios and their relationship to capital adequacy.

   v. Discuss impact on capital needs attributable to: any diversification in liabilities (different types of exposures); asset mix; amount and quality of "outside" existing inuring reinsurance (applies to

portfolio before any reinsurance acquired subsequent to the transaction) and internal hedging.

f. Upon request, the domiciliary regulator should provide access to information to other licensed U.S. jurisdictions including the established amount of assets to be transferred to compensate for the uncertainty associated with the business and that the remaining assets need to be self-sustaining for the obligations transferred to it.

5. **State-Imposed Restrictions**

a. If necessary, consider issuing U.S. jurisdiction-imposed restrictions to apply to the insurer(s) after the transaction, such as:

i. Dividend restrictions.

ii. Notice to impacted U.S. jurisdictions of major changes.

iii. Planned targeted examinations.

iv. Special surplus restricted capital.

Section IV – Review of the Transaction by an Independent Expert

1. **Use of an Independent Expert**

a. The ability of a commissioner to hire independent experts for specialized transaction review and financial testing, to be paid for by the applicant, is essential.

b. The regulatory review process for IBT or CD will utilize an independent expert to advise and assist the ultimate reviewing authority (regulator and or the court) in reviewing proposed transactions (including advising on any material adverse impact on policyholders, reinsurers, or guaranty associations) and to provide any other assistance or advice the regulator may require.

c. For CD, an independent expert is preferred but not required. If the domiciliary jurisdiction reviewing the transaction decides not to use an independent expert, the reviewing domiciliary jurisdiction shall document its conclusion that it has the expertise and provide notice to other jurisdictions with policyholders affected by the transaction on their conclusions regarding the use of state/jurisdiction department of insurance expertise.

d. The independent expert (or in-house department of insurance expertise for CDs) evaluation should be undertaken by an expert to establish with a high level of confidence that policyholders and other key stakeholders experience no material adverse impacts, including but not limited to the availability of guaranty association coverage. The independent expert must provide a detailed report regarding the prospective solvency of the resulting insurer(s) or the assuming insurer(s) in the event of an IBT or CD that utilizes an outside independent expert.

e. Other independent experts will also provide reports to be reviewed by the regulator and the ultimate approving authority. This will include an independent actuarial review of the reserves and capital (e.g., RBC and financial strength) before and after the transaction. The review is to ensure that all of the policyholders and other key stakeholders are not materially adversely impacted after the proposed

transaction. Note that the actuarial review is one of several experts that will likely be included and taken into consideration. While the independent expert (or in-house department of insurance expertise for CDs) can provide comments and evaluation of the reports of the other experts, the overall expert cannot change the reports of the other employed experts. For example, the reviewing expert cannot change the consulting actuarial opinion.

f. The experts (or in-house department of insurance expertise for CDs) should be independent of any influence from the companies involved and subject to the approval of the domestic regulators.

2. **Determine Scope of Each Expert Report**

The domiciliary regulator should determine:

a. How the expert report will be issued to the ultimate approving authority.

b. What parts of the report will be public.

c. Verify that the expert is independent.

d. Who appointed the expert and how the requesting entity will pay the costs.

e. What are the expert's qualifications and experience.

f. Does the expert have any conflicts of interest.

g. Are the procedures to be performed by the expert documented in a manner that is understandable.

h. Opinion of the expert on the likely effects of the plan.

i. Opinion of the expert on whether there were alternatives.

j. Opinion of the expert on whether different groups of policyholders, claimants and other stakeholders are likely to be impacted differently by the plan.

k. Opinion of the expert on the likely effects of the transaction on any reinsurer of the transferor or dividing parties.

l. If the independent expert has expertise in state guaranty association law, consideration of factors relevant to whether the transaction will reduce, eliminate, or otherwise change guaranty association coverage in accordance with sections II(1)(n) and (2)(k)(vii).

Section V – Reserves and Capital

Proposed CD and IBT transactions require that the independent experts and reviewing regulators certify that the reserves and the capital position (e.g., RBC) that will apply to all insurers before and after the transaction will create no material adverse impacts on the policyholders and other key stakeholders. The following procedures are intended to assist in evaluating this risk.

1. **Retain Qualified Independent Actuarial Experts**

    a. The actuarial expert should perform a "ground up" actuarial review of case and incurred but not reported reserves with particular focus on any long-tail claims. The actuarial expert should also opine on:

        i. Methodologies used by the insurer to estimate reserves.

        ii. The adequacy of reserves on a gross and net of reinsurance basis.

        iii. The insurer's economic approach to funding the run-off liabilities, including cash flow model stress tests.

        iv. If reserve discounting is permitted, funding of the discount and the adequacy of reserves net of discount.

    b. The adequacy of the expertise of the insurer's claims unit.

    c. Ascertain that the initial plan allows sufficient capacity for material adverse reserve development.

2. **Determine Impact Based on an Independent Actuarial and Capital Review**

    a. Based on review of the reserves and capital (e.g., RBC) before and after the transaction, the regulator should determine if the policyholders, claimants, and other stakeholders are not materially adversely impacted by the proposed transaction.

3. **Analysis of Reinsurance - Independent Reinsurance Experts**

    a. An analysis of reinsurance recoverables by a qualified expert including:

        i. A review of the process used to monitor, collect and settle outstanding reinsurance recoverables.

        ii. An analysis of existing and projected reinsurance balances including the expected timing of cash flows.

        iii. An analysis of the quality and financial condition of the reinsurers and prospects for recovery.

        iv. A detailed description of write-offs or required reserves based on the independent analysis taken as a whole.

        v. Disclosure of material disputes related to reinsurance balances and the potential impact of resolving those disputes.

        vi. A discussion of the impact of the IBT or CD on the collectibility of reinsurance balances.

    b. A legal analysis of the effect that a rehabilitation or liquidation proceeding involving the restructured entity would have on the timing and amounts of reinsurance recoverables and on the legal rights of the reinsurers to claim setoffs against such recoveries.

    c. If reinsurance is an integral part of the transaction, a copy of such agreement(s) and a written opinion from

a qualified expert as to:

i. The adequacy of coverage.

ii. The ability of the treaty to perform as anticipated and be unaffected by delinquency proceedings.

iii. The practical operation of the treaty.

iv. The timing and method of payment of reinsurance premium.

v. The financial condition of reinsurers.

vi. The sufficiency of coverage and other resources.

d. A discussion of existing or proposed reinsurance programs, whether with affiliates or other reinsurers, to assist the regulatory authority in determining that provisions are consistent with other information provided and that adequate coverage exists for both ongoing and run-off operations.

e. Any proposed amended, cancelled, or new pooling agreements, including explanations of significant differences before and after the restructuring or transfer, flowcharts to demonstrate the proposed movement of business, and the anticipated financial impact upon the affected companies.

4. **Analysis of Liabilities Other than Reserves**

The regulator or its independent experts should conduct an analysis of material liabilities other than reserves, including a discussion about any reallocations or dispositions as part of the IBT or CD, especially as they relate to reinsurance agreements and inter-company cost and tax-sharing agreements. The analysis should include all non-reserve related accruals and outstanding debt line items found on the Statutory Annual Statement (page 3) for liabilities, including write-ins.

a. Identification of any key concerns about potential legal decisions and/or pending verdicts that would substantially increase the expected aggregate liabilities.

b. Potential political or currency risks.

c. Potential "Black Swan" events (unusual and or infrequent).

i. Potential sources of "hidden" or unknown liabilities – for example, unintended latent liability coverage, unintended extra-contractual obligations, unidentified or reinstated policies, quality of policy record keeping.

ii. Risks related to the use of, or changes to the use of, outsourcing for claims management, asset management, or other administrative functions.

iii. Reliance on legal advice concerning claim liabilities.

5. **Analysis of Assets**

The regulator or its independent experts should conduct an analysis of assets to determine if existing assets and

future cash flows are sufficient to fund liabilities. This analysis should include:

a. Disclosure of assumptions regarding the assets of the insurer(s) involved in the IBT or CD, especially those assets with high volatility, liquidity uncertainties, material valuation issues, or representing a material percentage of the invested asset portfolio. Assets analysis should include an understanding of the asset allocation strategy and reinvestment strategy, including descriptions of how those strategies will change over time.

b. Current appraisals of any material real estate or mortgage holdings, independent valuation of limited partnerships, certain privately traded investments, highly volatile collateralized mortgage obligations, structured securities, and any other assets of concern.

c. A list of assumptions used by the insurer(s) as to investment yield, and disclosure of the effect that the reallocation of assets will have on historical investment yields.

d. If the asset analysis performed of the insurer indicates a potential asset/liability matching problem, documentation that the insurer plans to act, such as:

   i. Reallocation of problem assets to other parts of the organizational structure that are financially capable of absorbing the additional risk.

   ii. Securing a parental guarantee of investment yield.

   iii. Securing a parental guarantee of asset valuation or a parental agreement to substitute the insurer's assets.

   iv. Disposing of assets and replacement of better-quality assets or cash prior to approval of the IBT or CD.

Section VI – Analysis of Issues Affecting Policyholders, Claimants and Other Stakeholders

1. **Legal Clauses**

   a. Consider whether to require that "cut through" provisions be put in place for policyholders of the weaker entity.

2. **Consideration of Rights of Policyholders and Other Key Stakeholders in Other Jurisdictions**

   a. Consider whether to require that a mechanism be put in place to obtain policyholder consent regarding any novations.

   b. Preserve rights of policyholders and other key stakeholders regarding secondary market mechanisms protections.

Section VII – Due Process Communication of Transaction

Robust due process must be afforded to stakeholders (policyholders, claimants, reinsurers, guaranty associations, other regulators, etc.) impacted by a transaction which includes access to information concerning the transaction.

The following procedures are intended to address the risk of inadequate communication with various stakeholders.

1. **Review Proposed Communication Plan**

   The regulator will review the proposed communication plan to ensure that the transaction is described in enough detail and provides enough time for a person to determine if they will be adversely impacted.

2. **Communication to Policyholders, Claimants and Other Stakeholders**

   The domiciliary jurisdiction of the dividing or transferring insurer(s) must approve a plan that appropriately notifies impacted stakeholders regarding all aspects of the proposed transaction and stakeholders' ability to comment or object. Policyholders, claimants and other affected stakeholders should always be given notice, access to all information needed to meaningfully review a proposed transaction, and an opportunity to be heard in court (IBT) or at the public hearing (CD).

   a. Notice to stakeholders in a form to be approved by the regulator and shall include, at a minimum, notice to**:**

      i. Policyholders.

      ii. Claimants and their counsel of record.

      iii. Reinsurers.

      iv. NOLHGA/NCIGF/all affected state or U.S. jurisdiction insurance guaranty associations.

      v. Other stakeholders.

   b. The notice shall provide:

      i. Adequate time to allow stakeholders to assess the impact as determined by the domestic regulator, but no less than 30 days.

      ii. Opportunity to submit written comments and or attend public hearings.

      iii. Notice of the date, time and place of the public hearing.

3. **Due Diligence Requiring**

   Depending upon the nature of the transaction, the domiciliary regulator may require the transferring insurer(s) to provide reasonable notification to stakeholders and policyholders of the transaction, which may include, but are not limited to, the following:

   a. Mailing the notice to the stakeholder by first-class mail, postage prepaid to their last-known address as indicated by the records of the transferring insurer or to the address to which premium notices or other policy documents are sent;

   b. Sending the notice by internationally recognized delivery service (if needed);

c. By electronic means to any stakeholder who provided consent to receiving service by electronic mail and provides instructions for making the electronic notice or service. "Electronic means" shall include communications by facsimile or electronic mail;

d. By publication in a newspaper of general circulation in the state in which the transferring insurer has its principal place of business and in such other applicable publications; or

e. By retaining the services of a professional or entity that specializes in locating current addresses for businesses and persons.

4. **Notify/Coordinate with Affected Regulators**

The domiciliary regulator should communicate with other affected regulators regarding the transaction. The process should allow adequate opportunity to object or provide a letter of non-objection of all affected U.S. jurisdictions and the assuming and resulting entities should be licensed in all U.S. jurisdictions needed so as not to impair policyholders' access to their state guaranty associations. Stakeholders should be provided, at a minimum:

a. Adequate time to assess the impact.

b. Opportunity to submit written comments and or attend public hearings.

Section VIII – Guaranty Association and Other Secondary Market Considerations

1. **Guaranty Association Coverage**

Prior to approving a proposed restructuring transaction, a commissioner should make a factual determination regarding guaranty association coverage issues based on the criteria outlined below.

a. For IBT or CD transactions involving life, annuity or health insurance, the assuming or resulting insurer(s) should be licensed so that policyholders maintain eligibility for guaranty association coverage from the same guaranty association that would have provided coverage immediately prior to the IBT or CD transaction. This means that the assuming insurer or resulting insurer(s) must be licensed in all U.S. jurisdictions where the transferring or dividing insurer was licensed or had ever been licensed with respect to the policies being transferred or allocated in the transaction.

b. For IBT or CD transactions involving property and casualty insurance, the guaranty association laws in relevant U.S. jurisdictions should address IBT or CD transactions such that rights to guaranty association coverage are not reduced, eliminated, or otherwise changed as a result of the transaction. This is a jurisdiction-by-jurisdiction inquiry and may depend on whether the guaranty association law has been amended to address IBT or CD transactions.

c. Guaranty association representatives, National Conference of Insurance Guaranty Funds (NCIGF) and National Organization of Life and Health Insurance Guaranty Associations (NOLHGA) are useful resources for any guaranty association coverage issues that arise in evaluating these transactions**.**

2. **Secondary Market Mechanisms**

a. Where there was secondary market or similar mechanisms which benefited the policyholders orotherwise

accrued to the claims of policies before the CD or IBT, state regulators should ensure that the benefits remain after the CD or IBT. A CD or IBT should not reduce, eliminate or in any way impact coverage benefits.

b. Other organizations such as the National Workers Compensation Reinsurance Association should be contacted when relevant.

Section IX – Run-Off Procedures

Drafting Note:
Section IX is on procedures for those entities that are in run-off. It is not presumed that all IBT or all corporate divisions will result in run-off entities. Many of these procedures would likely be conducted post transaction approval. Therefore, the final location of the run-off procedures may be different than the other pre-transaction best practices sections.

To the extent the amount of run-off business (business that was written in prior years which is no longer being sold) is material for an insurer, the domiciliary regulator should consider separate procedures on such business. Such procedures may apply to all operations or just certain aspects of the insurer's operations. Run-off can also occur as a result of an IBT which transfers part of the business of one insurer (transferring insurer) to another insurer (assuming insurer) or a CD transaction where one insurer divides into two or more resulting insurers. In all these situations, the run-off business should be subject to the following regulatory guidance as a baseline of guidance. The regulator can perform additional procedures beyond those listed.

1. **Review the Required Documented Run-Off Plan**

   a. Review the monthly financial reporting of the run-off (claims development on a direct, ceded and net basis), actual vs projected results and the following related information:

      i. Assumptions or material changes in assumptions regarding the assets included in the plan including specifically those that are subject to greater volatility, liquidity uncertainty, valuation issues, appraisals on material real estate and mortgage holdings.

      ii. Material disputes with reinsurers or other third parties.

   b. Material reinsurance agreements and written opinion from qualified expert as to:

      i. Adequacy of the coverages.

      ii. Ability of the plan to perform as anticipated.

      iii. Practical operation of the plan.

      iv. Timing and method of payment of the reinsurance premiums.

      v. Financial condition of the reinsurers.

2. **Require the Following as Part of the Approval of the Run-Off Plan**

a. Pre-approval of any new reinsurance agreements or change in existing reinsurance agreements.

b. Pre-approval of any change in the daily operations of the insurer's existing practices including claims paying, investments practices and collections (e.g., reinsurance processes).

c. Pre-approval of any affiliated transactions.

d. Pre-approval of any commutation of liabilities (inward or outward).

3. **For Run-Off Plans, Consider Subjecting to Pre-Approval all the Following Other Items:**

a. Dividends (including ordinary);

b. Disposal or encumbrances of assets;

c. Withdrawal of bank accounts;

d. Lending of any funds;

e. Transfer of property;

f. Incurring any debt, obligation or liability;

g. Terminate, surrender, forfeit, convert, or lapse any insurance policy, certificate or contract; and/or

h. Reserves to be held lower than Value at Risk (VaR) of 99.5% for a one-year period (non-life business), 97% for a five-year period (non-life business) or conditional tail expectation (CTE) of 90 or other higher level that are necessary to mitigate the risks being transferred. Some liabilities (such as asbestos, environmental, and other latent liabilities) are highly volatile and may not lend themselves to traditional methods of estimating percentiles for reserve stress testing. The standards presented may not be practicable in all situations. Regulators could consider focusing on stressing the reserves in a deterministic manner rather than attempting to quantify the 99.5% Value at Risk (VaR) for a one-year period, the 97% VaR for a five-year period, or the Conditional Tail Expectation of 90 or higher where these metrics may be difficult to estimate and/or potentially misleading.

i. Material reinsurance agreements and written opinion from qualified expert as to:

i. Adequacy of the coverages.

ii. Ability of the plan to perform as anticipated.

iii. Practical operation of the plan.

iv. Timing and method of payment of the reinsurance premiums.

v. Financial condition of the reinsurers.

GLOSSARY OF TERMS

(Related to the Form A System)

Term	Description
Affiliate	An "affiliate" of, or person "affiliated" with, a specific person is a person who directly, or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with, the person specified.
Applicant (Information)	The applicant is the insurer wishing to enter into a CD or IBT and making a filing with the domiciliary regulator. When entering applicant information, one or the other may be entered but not both a company name and individual name.
Application Status	The application status may be any one of the following: Approved, Approved with Stipulation, Transaction Closed, Transaction Not Closed, Denied or Withdrawn. Submitted, Under Review, and Withdrawn.
CoCode	CoCode is the company code number assigned to the insurer by the NAIC.
Comments	Comments are a list of statements regarding the filing.
Company	A company is an applicant or entity that is other than an individual.
Contact Name	The contact's name is the initial contact person at the state or jurisdiction of domicile. The state contact person is the department staff, usually an analyst, serving as the primary liaison between the applicant, and the domestic insurer.
Directors	Directors are the individuals who sit on the board of directors governing the applicant (company).
Domestic Insurer	The domestic insurer is the company being acquired or merged. The term insurer shall have the same meaning as set for within each U.S. jurisdiction's insurance code. Domestic insurer means an insurer domiciled in the respective state (e.g., a TX domestic insurer is licensed and domiciled in the state of Texas).
Domicile State Information	Domicile state or jurisdiction information is information regarding the initial contact person at the state or jurisdiction of domicile.
Entity	An entity is any person, company or organization related to the filing or having an interest in the filing. Entity types are as follows: applicant, affiliate, company, director, key party, officer, and shareholder.
Filing Number	The filing number is a tracking number assigned to a Form A filing only after the filing is saved by the Form A system.
Group Code	The group code is a unique three to five-digit number assigned by the NAIC to identify those companies that are part of a larger group of insurance.
"Independent Expert"	An impartial person who has no financial interest in either the assuming company or transferring company, has not been employed by or acted as a consultant or other independent contractor for either the assuming company or transferring company within the past twenty-four (24) months and is receiving no compensation in connection with the transaction governed by this regulation other than a fee premised on a fixed or hourly basis.