

# Insurance Business Transfers: Moving from Theory to Practice

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# Basics of An Insurance Business Transfer (“IBT”)

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1. **Transferring insurer** applies to state insurance department to transfer to an **assuming insurer** a **discrete book** of business;
2. After insurance department and court **approval**, the transferring insurer’s assets and corresponding liabilities move to the assuming insurer; and
3. The assuming insurer becomes directly liable to the policyholder (**novation**).

# Lay of the Land – Which States Permit IBT

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- IBT statutes in the United States:
  - Oklahoma (2018)
  - Rhode Island (2015)
  - Vermont (2013)
  - Other States have or are considering similar statutes (IL, AK)
- Europe: similar transactions very common, e.g., Part VII transfer under UK Act

# Typical Process For An IBT

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- Identify discrete book of business for transfer (requirements/restrictions vary state-by-state).
- Identify assuming insurer (eligibility varies state-by-state).
- Insurance Department approval – always required.
  - Pay fees (\$10,000 and up) plus Department's costs.
  - Develop written IBT Plan:
    - Details of proposed transaction;
    - Audited financial statements and annual reports of transferring company;
    - Actuarial report and opinion quantifying the liabilities to be transferred, pro forma financials for the projected solvency of the assuming company;
    - Certificates of authority;
    - Plan administration;

# Typical Requirements For An IBT (cont'd)

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## Elements of Plan Continued....

- Plan for notice to stakeholders; and
- Assuming company's investment policies, claims management, and administration.
- Transferring insurer's domiciliary regulator must approve.
- Assuming insurer's domiciliary regulator must approve.
- Opportunity for stakeholders to object.
- Court approval (not required in VT).

# Experts

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## C. Oklahoma example:

"Independent expert" means an impartial person who has no financial interest in either the assuming insurer or transferring insurer, has not been employed by or acted as an officer, director, consultant or other independent contractor for either the assuming insurer or transferring insurer within the past twelve (12) months, is not appointed by the Commissioner to assist in any capacity in any proceeding initiated pursuant to Article 18 or Article 19 of Title 36 of the Oklahoma Statutes and is receiving no compensation in connection with the transaction governed by this act other than a fee based on an hourly basis that is not contingent on the approval or consummation of an Insurance Business Transfer and provides proof of insurance coverage that is satisfactory to the Commissioner.

36 O.S. § 1683(10).



# Oklahoma Statutory Framework

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- Oklahoma enacted its Insurance Business Transfers Act effective November 1, 2018.
- The Oklahoma Insurance Department issued guidance on IBTs as well: [https://www.oid.ok.gov/wp-content/uploads/2019/11/102518\\_OID-Guidance-FINAL-100918-3.pdf](https://www.oid.ok.gov/wp-content/uploads/2019/11/102518_OID-Guidance-FINAL-100918-3.pdf)
- For more information, see: <https://www.oid.ok.gov/regulated-entities/insurance-business-transfers/ibt-law-and-guidance/>

# Basic Features of Oklahoma IBT Laws

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- Broad in terms of specific lines of business that may be transferred.
- Policyholders receive notice of the proposed IBT during the judicial review stage and they have an opportunity to be heard at a hearing or in court.
- Court approval required.



# Vermont Statutory Framework

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Vermont's Legacy Insurance Transfers Act, VT St. Title 8, Section 7111-7121

<https://legislature.vermont.gov/statutes/fullchapter/08/147>

# Basic Features of VT Law

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- Permits transfer of a closed block of non-admitted commercial insurance and reinsurance agreements.
- Cannot be workers' compensation, health, life, or any other personal lines.
- Policies must have had expired periods for not less than five years.
- Assuming insurer must be a Vermont domiciled entity established specifically to acquire a closed block of business.
- Does not necessarily require court approval (agency opinion subject to judicial review).
- Policyholders may opt-out of the transfer.
- Assuming insurer not subject to state guaranty fund statutes.



# Rhode Island Statutory Framework

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Rhode Island Statute Section 27-14.5 – Voluntary Restructuring of Solvent Insurers Act, directed the Commissioner to promulgate regulations for an IBT Plan.

<http://webserver.rilin.state.ri.us/Statutes/TITLE27/27-14.5/INDEX.HTM>

Rhode Island “Regulation 68” may be found at:

<https://rules.sos.ri.gov/regulations/part/230-20-45-6>



## Basic Features of Rhode Island Law

An IBT must be approved by the Rhode Island Department and sanctioned by the Court resulting in a novation of the insurance business identified in the IBT Plan.

Requires notice to policyholders and other stakeholders.

Court order of approval substitutes for policyholder affirmative consent.

Commutation is allowed.

# Rhode Island Developments

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- RI domiciled company already formed to accept IBTs (ProTucket).
- An IBT has been under discussion but not filed
- Commutation transaction approved under the same statute.
- *In re GTE Reinsurance Co.*, No. PB 10-3777, 2012 R.I. Super. LEXIS 4 (Super. Ct. Jan. 2012) (commutation plan does not violate Due Process and Contracts Clause challenges)

# Recent Oklahoma IBT Approval

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- November 2019: Oklahoma Insurance Department was the first in the nation to approve an IBT:
  - Transferring Insurer: Providence Washington Insurance Co. (“PWIC”).
  - Assuming Insurer: Yosemite Insurance Company (OK) (“Yosemite”).
  - Yosemite and PWIC are affiliates, and are both wholly owned by Enstar Group Limited, a publicly traded Bermuda exempted company in the business of acquiring and operating insurers and reinsurers world wide which are in run-off.
  - Subject Business: nearly all of PWIC’s insurance and reinsurance business and \$38.5M.
  - All pleadings available:  
<https://www.oscn.net/dockets/GetCaseInformation.aspx?db=oklahoma&number=CJ-2019-6689&cmid=3831864>

# Excerpt From PWIC/Yosemite IBT (OK)

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The Insurers are currently wholly owned by Enstar Holdings .... The Insurers are in run-off and no longer issue new policies of insurance. ...

The Insurers currently have substantially the same management team and all the Subject business is administered by Enstar US. Enstar US will remain the administrator of the Subject Business, such that the policyholders of Transferring Insurer will receive the identical service after the transfer to the Assuming Insurer.

The Assuming Insurer is currently licensed in 48 states and District of Columbia, and is in the process of applying for all other states licenses. To the extent that any state requires that the Assuming Insurer have a license to manage any Subject Business in such state, the transfer of the Subject Business with respect to such state shall occur on the receipt of such license.

- OK Update: A second transaction is also in process (under review by an independent expert)

# Potential Applications Of IBT

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1

Company with closed book of business transfers that book to company specializing in administering run-off business or the same type of business.


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Transfer to an entity that has been reinsuring that book to remove the legal liability from the issuing company




# FOCUS: What Can Be Transferred?

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- Rhode Island permits commercial property and casualty and excess worker's compensation, run-off (5 years), no personal lines or primary worker's compensation

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- Oklahoma permits property, casualty, life, health, and other suitable lines, active or run-off

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- Vermont permits a non-admitted insurer from any jurisdiction to transfer commercial P&C non-admitted policies and reinsurance agreements; thus, workers compensation, health, life, and personal lines are not eligible for transfer.

# Is A Captive Permitted?

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- Oklahoma, Rhode Island, and Vermont all permit captive assuming insurers and protected cell assuming insurers.
- But there can be practical limitations on using a protected cell.


# Policyholder Rights With IBT

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All states require notice to policyholders.



Oklahoma: notice and court order of approval substitute for policyholder affirmative consent.



Rhode Island: notice and court order of approval substitute for policyholder affirmative consent.



Vermont – policyholders can opt out of transfer.

# Do You Want Court Approval?

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- Pros and Cons of Court Approval.
- Court approval required in Rhode Island and Oklahoma.
- Not required in Vermont.
- Full faith and credit issues.

# Summary Of State-Specific Distinctions With IBTs

State	Type	Key Distinctions
Oklahoma	IBT	<ul style="list-style-type: none"><li>• No restrictions on line or active v. run-off</li><li>• Policyholders receive notice and opportunity to object, court approval substitutes for policyholder consent</li><li>• \$ 10,000 administrative fee, plus Department costs</li></ul>
Rhode Island	IBT	<ul style="list-style-type: none"><li>• Run-off commercial and reinsurance lines (must be in run-off 5 years) eligible</li><li>• Policyholders receive notice and opportunity to object, court approval substitutes for policyholder consent</li><li>• \$5,000 administrative fee (with discretion), plus Department costs (\$10,000 for commutation plan with discretion)</li></ul>
Vermont	IBT	<ul style="list-style-type: none"><li>• Limited to commercial non-admitted policies and reinsurance agreements</li><li>• Court approval <i>not</i> required and policyholders can opt out of transfer</li><li>• \$30,000 administrative fee, plus Department costs and transfer tax</li></ul>

# Evaluate Your Resources

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- Costs
  - Application Fee?
  - Independent Expert costs – generally shared between transferring and assuming insurers.
  - Department may also shift its internal costs, plus costs for its consultants.
- Are you establishing the accepting insurer? What are the capital and surplus requirements for that insurer? (must be solvent)
- Do you have time to work through this process?
  - See Oklahoma's Sample Timeline at: [https://content.naic.org/sites/default/files/inline-files/cmte\\_e\\_res\\_mech\\_wg\\_related\\_ok\\_ins\\_bus\\_transfers\\_guidance.pdf](https://content.naic.org/sites/default/files/inline-files/cmte_e_res_mech_wg_related_ok_ins_bus_transfers_guidance.pdf)
- Can you risk a denial?
- Do you anticipate objections?

# Stakeholders And Potential Concerns

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- Policyholders
  - Transferring policyholders (entitled to notice).
  - Remaining policyholders (not entitled to notice unless the Commissioner requires).
  - Policyholders with accepting insurer (not entitled to notice unless the Commissioner requires).
- Regulators
  - Domiciliary regulator of the transferring insurer.
  - Domiciliary regulator of the assuming insurer.
  - Non-domiciliary regulators past and present.
- Identifying and Communicating Policyholder Benefits and Anticipating Potential Legal Challenges (e.g., Due Process and Contracts Clause arguments, Problems with Finality/Full Faith and Credit)

# Stakeholders And Potential Concerns (cont'd)

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- Guaranty associations (National Conference of Insurance Guaranty Funds, National Organization of Life and Health Insurance Guaranty Associations) and all state insurance guaranty associations for the states in which the applicant:
  - Has a certificate of authority (RI and OK) or has ever held a certificate of authority (OK); and
  - In which policies that are part of the subject business were issued or policyholders currently reside (OK).
- Reinsurers of the applicant pursuant to the notice provisions of the reinsurance agreements applicable to the policies that are part of the subject business, or where an agreement has no provision for notice, by internationally recognized delivery service.
- Transferring insurer's agents or brokers of records on the subject business.
- Newspapers, etc. – check your statute and regulations about any requirement to publish notice of the plan.



# Focus On GA Concerns

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- Will guaranty associations/member insurers in certain states be disproportionately impacted?
  - Scenario: Policies issued by insurer licensed in 50 states; entire book transferred to insurer licensed in only one state and that insurer later goes into liquidation; policyholders throughout the U.S., but the insurer is not licensed in 49 of those states.
- Typically Life & Health GA coverage is triggered where:
  - Policyholder resides in the state.
  - Product is covered.
  - Insolvent company is a member insurer of the GA (licensed).
  - If the insolvent insurer is not licensed, policyholders are “orphans.”
  - Life & Health GA Acts have orphan coverage provisions under which the domiciliary state covers policyholders in non-licensed state, e.g., a policyholder moves to a non-licensed state.
    - *But current “orphan” laws do not contemplate a wholesale shift of an entire book of business. They are intended for exceptional circumstances, e.g., a policyholder moves to a non-licensed state.*

# GA Concerns Continued...

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- Typically Property & Casualty GA coverage is triggered where:
  - Policyholder resides in the state.
  - Product is covered.
  - Insolvent company is a member insurer of the GA (licensed) and issued the policy.
  
- GA association coverage is based on state-specific laws; thus, the concern is that one state approving an IBT may believe there is GA coverage for the policyholders post-transaction, but future claims may still not meet the definition of a covered claim under a particular state's GA laws.

# Focus on Financial Aspects

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In reviewing the proposed transaction, the regulator may consider, among other things, all assets, liabilities, cash flows and the nature and composition of the assets proposed to be transferred in support of the plan of transfer including, without limitation, an assessment of the risks and quality (including liquidity and marketability) of the proposed transfer portfolio, and consideration of assets/liability matching and the treatment of the material elements of such portfolio for purposes of statutory accounting.

# Financial Aspects Continued...

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- Financial condition of the transferring and acquiring insurer
- Both companies must be solvent, and the financial condition cannot be hazardous to policyholders or others
- No anticipated liquidation or material restructuring anticipated
- Fair allocation of assets in relation to the transfer

# Alternatives To An IBT

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- Run off until the policy obligations expire.
  - May take a very long time with ongoing expenses
- Reinsurance or Loss Portfolio Transfer
  - Insurer ceases book of business and enters into reinsurance treaty where an insurer cedes policies and the loss reserves to pay them to a reinsurer
  - No legal finality and limited transfer of risk.
  - Costly premiums.
- Sale.
  - Only viable when the business is a stand-alone entity.
- Division – AZ, CT, IL, and MI
  - Only within a single state.
  - Permits corporate transaction through which the corporation is divided into two entities, each part retaining the business it originally wrote.
  - Affirmative individual consent from each policyholder is not required.

# Alternatives To An IBT (cont'd)

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- Novation/Assumption Reinsurance.
  - Expensive.
  - Time-consuming.
  - Requires notice to and consent from all policyholder, who may accept or reject the transfer.
  - Requires approval from transferor and transferee domiciliary regulators.
  - No judicial review or approval required.
- The following states have division statutes: Arizona, Connecticut, Illinois, Iowa, Michigan, Pennsylvania.
- Ten states have adopted some version of the NAIC Assumption Reinsurance Model Act, Colorado, Georgia, Kansas, Maine, Missouri, Nebraska, North Carolina, Oregon, Rhode Island, and Vermont. The Act allows for the transfer and novation of insurance contracts through assumption reinsurance agreements, defined as a contract that transfers insurance obligations or risks of existing or in-force contracts to an assuming insurer and it intended to effect a novation such that the assuming insurer becomes directly liable to policyholders. Virginia also has its own statute that is not based on the NAIC model act.

# Final Thoughts

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