

RHODE ISLAND'S SOLVENT RUN-OFF STATUTE

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When an insurance company comes to the end of practicable profitability, there have been few choices for the company. While state supervised rehabilitation, supervision, or liquidation are always available, not so an easy solvent run-off. Those that have attempted solvent run-offs as independent companies have often run into practical problems of maintaining valuable employees, reinsurance issues, disappointing sales of books of business, and a dwindling of ultimate payout.

In recent years, the State of Rhode Island, has been in the forefront of new legislative approaches to a variety of insurance problems including "friendly" alien insurance company legislation, protective cell legislation and more recently, solvent run-off legislation.

Why solvent run-off legislation? This question has been asked many times by interested attorneys, accountants, insurance executives, and from audiences at seminars. Those familiar with the legislation have often answered the question by pointing out that until Rhode Island's enactment, there really have been no guidelines for a solvent run-off in a legislative context. Thus, those who may seek to "run-off", whether stock or mutual, subsidiaries of larger companies, or entities purchased for the purpose of "run-off", can now look to a practical and statutory scheme.

The second benefit is one of timing. Solvent run-offs are difficult to manage, among other things, because of the potential for long periods of time spent waiting for the "end of the game". It is difficult to keep up staff morale, pay appropriate compensation to officers and employees, and pay expenses while essentially flogging a number of tired horses. Rhode Island's scheme is set to provide quicker relief to the ultimate beneficiary.

There are a number of conditions with respect to the use of the new Rhode Island statute R.I. Gen. Laws § 27-14.5-1, *et. seq.* "Voluntary Restructuring Of Solvent Insurers." First, the entity must be a Rhode Island domestic. It is anticipated by the Department of Business Regulation that those interested in such a course of action would apply in the ordinary course for redomestication of the company. Secondly, the insurance company then applies to the Providence County Superior Court with a proposed "commutation plan". Under current law, the commutation plan requires the approval of fifty percent (50%) of each class of the insurers' creditors and the consent of seventy-five percent (75%) of the aggregate value of liabilities owed to each class of creditors.

Assuming creditor approval, the court would enter an appropriate order which enjoins certain litigation between the insurer and its creditors and the creditors are given leave to make claims. Among other things, the commutation plan requires a showing that the insurer's assets exceed the total amount of payments required under the terms of the plan. The plan will also, upon approval, release the insurer of obligations to creditors, provide for an appropriate reporting to the Court and to the Rhode Island Department of Business Regulation, and be binding upon the insurer and its creditors.

One issue, of course, is that of reinsurance. The statute makes it clear that the law shall not be construed as authorizing any applicant to compel payment from a reinsurer on the basis of estimated incurred but not reported loss or loss expenses, or case reserves or unpaid losses and loss expenses. It also makes it clear that liabilities subject to an assumption reinsurance agreement will be transferred to the assumption reinsurer. The practical effect would seem to be to substitute the assumption reinsurer for the insurer and to free the insurance entity from transferred liabilities. Further, the statute specifically assigns each assumption reinsurer the benefit of "reinsurance on transferred liabilities."

The statute further gives the Commissioner of Insurance (the Director of the Department of Business Regulation) authority to place the insurer in rehabilitation or liquidation during the course of the commutation process. This, in particular, gives great oversight power to the Director but until such time as the Director shall act, the Board of Directors of the insurer remains in control.

As yet, no company has been redomesticated into Rhode Island and utilized this statutory scheme, but it seems as if will be just a matter of time. First, if for some reason the process doesn't "work", then it is likely that the company is no worse off and can still resolve itself or, if required, seek rehabilitation or liquidation from the Department. Secondly, the Department, being known as pragmatic and having experience with rehabilitation and other resolutions of insurance entities, is sophisticated in such matters and is apt to act with business-like efficiency when dealing with such matters.

It is anticipated that regulations will be issued in the future to supplement the statutory authority.

Rhode Island's new voluntary restructuring of solvent insurers statute provides a mechanism for insurers, more likely property and casualty insurers, to exit the insurance business in a timely reasonable manner which meets the expectations of the company and its investors and policyholders. It also provides a mechanism under which smaller companies, who use vendors for a substantial part of their run-off, could see relatively prompt termination of a number of specific liabilities in a manner consistent with appropriate good business judgment. Rhode Island's "Voluntary Restructuring of Solvent Insurers" statute provides the best domestic resolution process yet devised for solvent "run-offs".