



**ACLI's Principles and Guidelines on
Insurance Business Transfer and Corporate Division Legislation¹
(June 20, 2019)**

	INSURANCE BUSINESS TRANSFER	CORPORATE DIVISION
Type of entities	Domestic, assuming insurers, including reinsurers	Domestic stock insurers and reinsurers Domestic stock insurers include those affiliated with a mutual insurance holding company
Lines covered	ACLI member companies' covered lines	ACLI member companies' covered lines
Active and/or closed blocks of business	Both	Both
Policyholder consent	Not required	Not required
Court approval	Required The applicant shall inform the court of the reasons why he or she petitions the court to find no material adverse impact to policyholders or claimants affected by the proposed transfer. If the court finds that the implementation of the transfer plan would not materially affect the interests of policyholders or claimants that are part of the subject business, the court shall enter an implementation order	Not required, so long as other requirements relating to public hearing, notice and independent expert reports(s) are included. Subject to exhaustion of typical administrative remedies, aggrieved persons should have judicial recourse consistent with the Section 15 of the NAIC Insurance Holding Company System Model Act
Regulatory approval	Domestic regulator of the assuming insurer must approve; and the domestic regulator of the transferring company must either approve or provide a non-objection letter (if the latter, so long as it doesn't disturb other applicable appeal rights) In addition, the transfer should not substantially lessen competition in insurance in this state or tend to create a monopoly in this state As a condition to approval, statutes and regulations should require an adequate demonstration that the proposed transfer will protect adequately the interests of affected policyholders and reinsurers (with respect to the transferring and assuming companies, and originating and successor companies) as to a set of key criteria, including (i) capital	Domestic regulator of the dividing company must approve In addition, the division should not substantially lessen competition in insurance in this state or tend to create a monopoly in this state As a condition to approval, statutes and regulations should require an adequate demonstration that the proposed division will protect adequately the interests of affected policyholders and reinsurers (with respect to the dividing and resulting companies, and originating and successor companies) as to a set of key criteria, including (i) capital adequacy and credit quality, (ii) efficacy of continuing operations support and management, (iii) continuity of contract rights and obligations and infrastructure, (iv) thorough analysis of

¹ As of June 20, 2019, insurance business transfer legislation has been enacted in Oklahoma, Rhode Island, Vermont and Arizona, while corporate division legislation has been enacted in Georgia, Illinois, Iowa, Michigan, Connecticut, Arizona and Pennsylvania and is pending in Nebraska.

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	<p>adequacy and credit quality, (ii) efficacy of continuing operations support and management, (iii) continuity of contract rights and obligations and infrastructure, (iv) thorough analysis of key issues concerning policy features and interests and (v) guaranty association coverage for affected policyholders.</p> <p>A rigorous application of the above, including but not limited to, Form A criteria should serve as an adequate basis on which to assess the advisability of transfer proposals.</p>	<p>key issues concerning policy features and interests and (v) guaranty association coverage for affected policyholders.</p> <p>A rigorous application of the above, including but not limited to, Form A criteria should serve as an adequate basis on which to assess the advisability of division proposals.</p>
Regulator review of potential impact on policyholder interests	<p>Required</p> <p>The Commissioner shall approve the plan of transfer so long as the following requirements are met:²</p> <p>(1) The financial condition of a transferring insurer, assuming insurer(s) and an acquiring party of an assuming insurer(s), if any, will not jeopardize the financial stability of the insurer, or prejudice the interest of its policyholders or reinsurers.</p> <p>(2) The terms of the plan of transfer will not be unfair or unreasonable to the transferring insurer's or assuming insurer(s)' policyholders or reinsurers.</p> <p>(3) A transferring insurer, assuming insurer(s) and an acquiring party of an assuming insurer(s), if any, will not have plans or proposals to liquidate the transferring insurer or assuming insurer(s), sell its assets, or consolidate or merge the transferring insurer or assuming insurer(s) with a person, or to make any other material change in its business or corporate structure or management, that are unfair or unreasonable to the transferring insurer's or assuming insurer(s)' policyholders and reinsurers and not in the public interest.</p> <p>(4) The competence, experience and integrity of the persons who would control the operation of a transferring insurer and an assuming insurer(s) are such that it would be in the interest of the transferring insurer's and assuming insurer(s)' policyholders and reinsurers or the general public to permit the transfer.</p> <p>(5) The transfer is not likely to be hazardous or prejudicial to the insurance-buying public.</p>	<p>Required</p> <p>The Commissioner shall approve the plan of division so long as the following requirements are met:²</p> <p>(1) The financial condition of a dividing insurer, resulting insurer(s) and an acquiring party of a resulting insurer(s), if any, will not jeopardize the financial stability of the insurer, or prejudice the interest of its policyholders or reinsurers.</p> <p>(2) The terms of the plan of division will not be unfair or unreasonable to the dividing insurer's or resulting insurer(s)' policyholders or reinsurers.</p> <p>(3) A dividing insurer, resulting insurer(s) and an acquiring party of a resulting insurer(s), if any, will not have plans or proposals to liquidate the dividing insurer or resulting insurer(s), sell its assets, or consolidate or merge the dividing insurer or resulting insurer(s) with a person, or to make any other material change in its business or corporate structure or management, that are unfair or unreasonable to the dividing insurer's or resulting insurer(s)' policyholders and reinsurers and not in the public interest.</p> <p>(4) The competence, experience and integrity of the persons who would control the operation of a dividing insurer and resulting insurer(s) are such that it would be in the interest of the dividing insurer's and resulting insurer(s)' policyholders and reinsurers or the general public to permit the division.</p> <p>(5) The division is not likely to be hazardous or prejudicial to the insurance-buying public.</p>

² We recognize that many of the existing laws and proposed legislation follow the NAIC Insurance Holding Company System Model Act in providing that the Commissioner shall approve the transfer or division unless he or she finds that certain criteria are not met. Throughout this document, we note that so long as all of the required criteria are included in proposed legislation, such legislation would meet the ACLI's expectations.

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	<p>(6) The interest of the policyholders of the transferring insurer that may become policyholders of an assuming insurer(s) will be adequately protected by the assuming insurer(s) or acquiring party of an assuming insurer(s), if any</p> <p>(7) The transfer is not being made for purposes of hindering, delaying or defrauding any policyholders or reinsurers.</p>	<p>(6) The interest of the policyholders of the dividing insurer that may become policyholders of a resulting insurer(s) will be adequately protected by the resulting insurer(s) or acquiring party of a resulting insurer(s), if any</p> <p>(7) The division is not being made for purposes of hindering, delaying or defrauding any policyholders or reinsurers.</p>
Regulator review of financial condition	<p>Required</p> <p>The Commissioner shall approve the plan of transfer so long as the following requirements are met:²</p> <p>(1) The financial condition of a transferring insurer, assuming insurer(s) and an acquiring party of an assuming insurer(s), if any, will not jeopardize the financial stability of the insurer, or prejudice the interest of its policyholders or reinsurers.</p> <p>(2) A transferring insurer, assuming insurer(s), and an acquiring party of an assuming insurer(s), if any, will not have plans or proposals to liquidate the transferring insurer or assuming insurer(s), sell its assets, or consolidate or merge the transferring insurer or assuming insurer(s) with a person, or to make any other material change in its business or corporate structure or management, that are unfair or unreasonable to the transferring insurer's or assuming insurer(s)' policyholders and reinsurers, and not in the public interest.</p> <p>(3) The transferring insurer and assuming insurer(s) will be solvent upon the consummation of the transfer</p> <p>(4) The assets allocated to the transferring insurer and assuming insurer(s) will not be, upon the consummation of a transfer, unreasonably small in relation to the business and transactions in which the transferring insurer and assuming insurer(s) was engaged or is about to engage.</p>	<p>Required</p> <p>The Commissioner shall approve the plan of division so long as the following requirements are met:²</p> <p>(1) The financial condition of a dividing insurer, resulting insurer(s) and an acquiring party of a resulting insurer(s), if any, will not jeopardize the financial stability of the insurer, or prejudice the interest of its policyholders or reinsurers.</p> <p>(2) A dividing insurer, resulting insurer(s) and an acquiring party of a resulting insurer(s), if any, will not have plans or proposals to liquidate the dividing insurer or resulting insurer(s), sell its assets, or consolidate or merge the dividing insurer or resulting insurer(s) with a person, or to make any other material change in its business or corporate structure or management, that are unfair or unreasonable to the dividing insurer's or resulting insurer(s)' policyholders and reinsurers, and not in the public interest.</p> <p>(3) The dividing insurer and resulting insurer(s) will be solvent upon the consummation of the division</p> <p>(4) The assets allocated to the dividing insurer and resulting insurer(s) will not be, upon the consummation of a division, unreasonably small in relation to the business and transactions in which the dividing insurer and resulting insurer(s) was engaged or is about to engage.</p>
Balance sheet considerations	<p>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 asset/liability matching and the treatment of the material elements of such portfolio for purposes of statutory accounting.</p>	<p>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 division including, without limitation, an assessment of the risks and quality (including liquidity and marketability) of the proposed transfer portfolio, and consideration of asset/liability matching and the treatment of the material elements of such portfolio for purposes of statutory accounting.</p>

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Regulator review of operational impacts	<p>Required</p> <p>Any material changes in the transferring insurer's and assuming insurer(s)' business, corporate structure and/or management must not be unfair or unreasonable to the transferring insurer's or assuming insurer(s)' policyholders and reinsurers and must be in the public interest.</p>	<p>Required</p> <p>Any material changes in the dividing insurer's and resulting insurer(s)' business, corporate structure and/or management must not be unfair or unreasonable to the dividing insurer's or resulting insurer(s)' policyholders and reinsurers and must be in the public interest.</p>
Regulator review of owner and management qualifications	<p>Required</p> <p>The competence, experience and integrity of the persons who would control the operation of the transferring insurer and assuming insurer(s) are such that it would be in the interest of the transferring insurer's and assuming insurer(s)' policyholders and reinsurers and the general public to permit the transfer.</p>	<p>Required</p> <p>The competence, experience and integrity of the persons who would control the operation of the dividing insurer and resulting insurer(s) are such that it would be in the interest of the dividing insurer's and resulting insurer(s)' policyholders and reinsurers and the general public to permit the division.</p>
Independent expert report	<p>Required, and the report must address, with respect to the transferring insurer, assuming insurer(s), and an acquiring party of an assuming insurer(s), if any, the following:</p> <ul style="list-style-type: none"> • Business purposes of the proposed transaction • Capital adequacy and risk-based capital (including consideration of the effects of asset quality, non-admitted assets and actuarial stresses to reserve assumptions) • Cash flow and reserve adequacy testing (including consideration of the effects of diversification and concentration of lines of business on policy liabilities) • Business plans • Management's competence, experience and integrity 	<p>Required, and the report must address, with respect to the dividing insurer, resulting insurer(s), and an acquiring party of a resulting insurer(s), if any, the following:</p> <ul style="list-style-type: none"> • Business purposes of the proposed transaction • Capital adequacy and risk-based capital (including consideration of the effects of asset quality, non-admitted assets and actuarial stresses to reserve assumptions) • Cash flow and reserve adequacy testing (including consideration of the effects of diversification and concentration of lines of business on policy liabilities) • Business plans • Management's competence, experience and integrity
Public hearing	Required	Required
Notice to policyholders and the general public	Public notice must be provided, as well as specific notice to individual policyholders ³ , reinsurers, applicable state regulators and guaranty associations, and any other persons determined by the Department	Public notice must be provided, as well as specific notice to individual policyholders, reinsurers, applicable state regulators and guaranty associations, and any other persons determined by the Department
Licensing in other states	Assuming insurer(s) must be licensed such that policyholders of the assuming insurer(s) maintain guaranty association coverage in the same state in which they had it immediately prior to the transfer.	Resulting insurer(s) must be licensed such that policyholders of the resulting insurer(s) maintain guaranty association coverage in the same state in which they had it immediately prior to the division.

³ With regard to group certificates issued under a group policy, the general view was that consistent with a bias towards transparency, if the insurance company was sending mailings to individuals (regardless of their status as a policyholder or a certificateholder) in the normal course of servicing the business, then the notice should be sent to the individual certificate holder.