Dodd-Frank Gives Home States Sole Authority for Solvency Regulation

The Dodd-Frank Act significantly changed the regulation of all financial services, including life insurance. Title V of the Act introduces important reforms affecting relationships between regulators, life insurers and reinsurers. Title V limits some but not all forms of extraterritoriality – instances where a state attempts to compel companies incorporated in other states to abide by its rules.

Title V addresses regulation of reporting requirements and solvency. Under the new law, a company’s home state has sole authority for solvency regulation – reserving, reporting, investments, etc. Dodd-Frank does not affect issues such as compensation structures, market conduct, product authorizations and remedies for distressed companies.

A well-known example of extraterritoriality is New York’s Regulation 147, enacted in 1994 to set reserving guidelines for products with long-term guarantees. Included in the regulation were rules guiding credit for reinsurance. For a New York insurer to obtain credit for reinsurance, that company’s reinsurance partners had to abide by New York regulations as well. Many companies set up New York-only subsidiaries to do business there to minimize the impact of the state’s strict reinsurance and reporting guidelines.

Section 531(a) of Title V of Dodd-Frank specifies that if the home state of the ceding insurer “recognizes credit for reinsurance for the insurer’s ceded risk, no other state can deny such credit for reinsurance.” It is a possible scenario that New York-specific subsidiaries will go away.

New York so far has not resisted these changes; however, the Empire State maintains that it can continue to require foreign admitted reinsurers to hold reserve levels that mirror the credit for reinsurance given to domestic carriers. New York is among the states that have already updated their insurance laws to align with Title V/Dodd-Frank. Other states include New Jersey, Indiana, Connecticut and Virginia. California and Georgia have legislation pending as well.

Dodd-Frank defines the power of setting reserving, solvency and reporting requirements to each insurer’s home state. On the other hand, those same regulators will have to abide by the decisions of other supervisors for foreign companies doing business within their borders. SGLA will continue to follow developments and provide updates. ∞