

Introduction

The Uniform Insurer's Run-off and Resolution law (the "UIRRL") was developed by a subcommittee of AIRROC's Legislative Committee. The subcommittee consisted of highly experienced bankruptcy attorneys, insurance receivers, guaranty fund managers, executives of insurers in run-off, insurance and reinsurance attorneys, trade association executives and others. These professionals worked for nearly one year to develop the proposed law¹. Brief background information follows on the UIRRL and the principles and objectives which guided the drafting. It is a consensus draft, meaning that not all members agreed with every element of the proposed law.

Background

In many respects, the law and regulation of insurance has not kept pace with the realities of the marketplace. For a variety of reasons, an insurer may become financially troubled and find it necessary to cease underwriting and wind-up its affairs. Rating agencies and new regulatory tools like risk-based capital requirements have contributed to earlier identification of a troubled insurer. Determining whether an insurer in such situations is solvent or insolvent on an ultimate basis cannot be done with a high degree of confidence. Yet, current law assumes that such a determination can be made with certainty. There is no statutory mechanism to permit such a troubled insurer to wind up its affairs to protect all stakeholders other than through receivership proceedings. For

¹ The subcommittee thanks Peter Ivanich of Dewey & LeBoeuf LLP for hosting the subcommittee meetings and Lynn Roberts of the same firm, who served as the subcommittee's reporter, a title that understates the important role she played.

insurers that are clearly insolvent, an alternative to receivership is needed. Since the receivership system is plagued by systemic problems, the management and employees of the insurer (the “debtor”) and policyholders and claimants (the “creditors”), those with the most knowledge and the greatest interest are excluded from the receivership process. Current receivership law in most jurisdictions does not permit anyone other than the insurance commissioner to be a receiver and to propose a plan to address the insurer’s situation. This places a public official in control of what is a private matter and many courts utilize “administrative review” rather than “best interest” standards when a proposed plan is contested. The UIRRL is designed to address these and other problems by creating a new statutory mechanism that stands between being an operating company and one in receivership.

Principles and Objectives

The following principles and objectives guided the subcommittee’s work:

- A statutory scheme is needed to permit resolution of an insurer’s liabilities that is efficient and maximizes and preserves value for creditors when an insurer finds it necessary to cease business.
- The debtor and the creditors of a troubled insurer should be given the latitude and an opportunity to create and implement a resolution plan subject to regulatory or court approval as the case may be, rather than being subject to the current system where government is in “command and control.”

- Guaranty funds should be given the opportunity to participate in a resolution plan when covered claims are present in a troubled insurer (personal lines and small commercial insurance), since it may provide considerable cost savings to the funds as compared with a receivership proceeding.
- The statute should be written generally so as to permit creativity and innovation, yet grant sufficient power and authority to be effective.
- The resolution process should be transparent, open, and should require accountability.
- The statute should only apply to insurers that are troubled and have ceased underwriting, and not apply to clearly solvent entities or permit an insurer to commute liabilities and then resume underwriting.

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