INSURANCE BUSINESS TRANSFER/ CORPORATE DIVISION LAWS

NEED TO ENSURE STRONG POLICYHOLDER PROTECTIONS

BACKGROUND

- Several states have recently enacted laws allowing insurers to transfer business or divide into separate companies for the purposes of separating lines of business; exiting from under-performing, non-profitable business, and creating run-off business.
- None of these new laws require policyholder consent, nor include many other important policyholder and solvency protections.
- Historically, state laws have not given insurers authority to divide or transfer policies without consent.
- Despite posing more risk, these laws also lack many of the important policyholder protections contained in other similar frameworks, such as the UK Part VII Transfer process for insurance business transfer and the US Form A process for mergers and acquisitions.
- No matter how well intentioned the transaction, any such laws must include important guardrails to ensure that policyholders are not put at risk.
- The NAIC has acknowledged the increased risks associated with these laws, and recently created a Working Group (which will be chaired by RI and OK) to study the issue.

WHAT ARE THE ISSUES?

Currently, in most states…

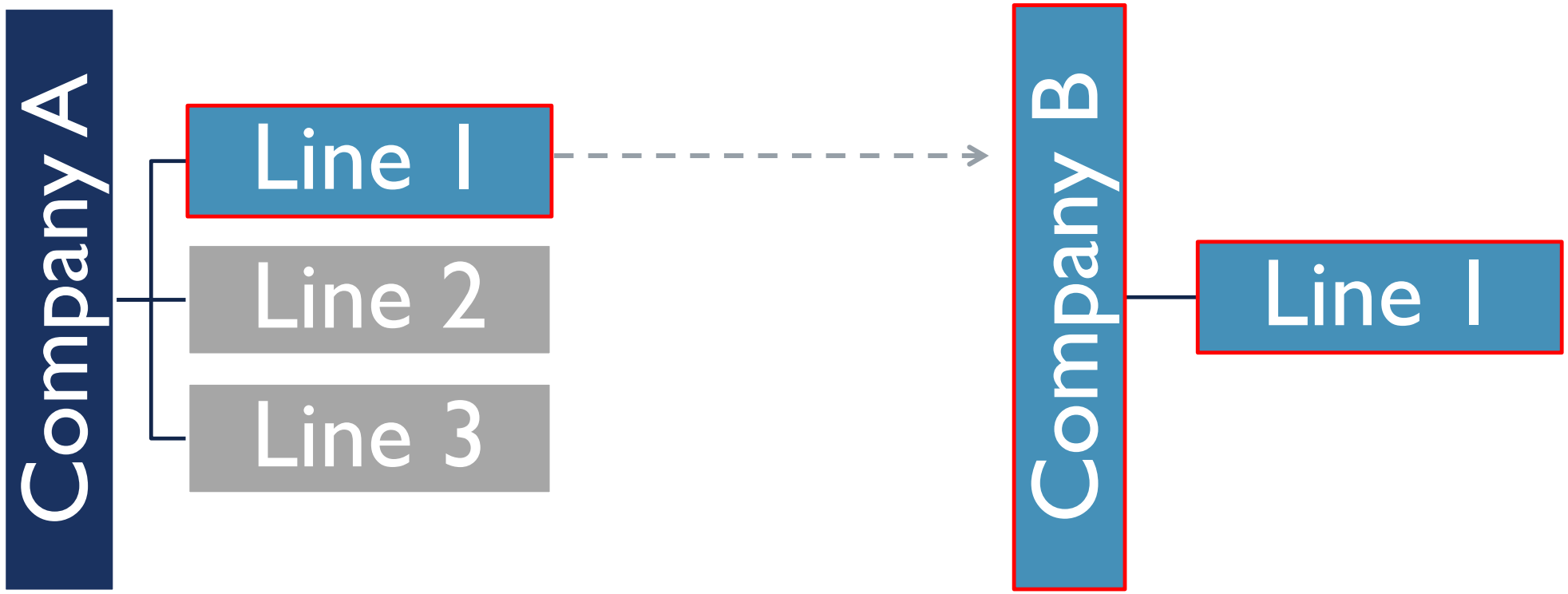
- ✓ Insurers must meet all statutory state licensure requirements before taking on insurance risk.
- ✓ Insurers meet rigorous statutory solvency standards, including financial analysis and examination to ensure they are financially capable of paying claims.
- ✓ Insurers are held accountable to their policyholders through a statutory enabled insurance regulatory process.
- ✓ Policyholders are notified when business is transferred from one company to another.

However, under some new state laws…

- X Insurers are allowed to pass on financial risk to the rest of industry by moving unprofitable, long tail, hard to value business to a newly formed, and less capitalized company, making it more likely to fail.
- X There are no notice requirements to policyholders and non-domestic regulators when risk is transferred from one entity to another.
- X Despite impacting policyholders in other states, there is no licensure requirement for the newly-formed company, and thus no guaranty association coverage in other states if the business fails. **The results could be devastating for the policyholders and the state-based system of insurance regulation.**

HOW DOES IT WORK?

Insurance division or business transfer laws allow blocks of business to move from one company to a newly-formed company with no policyholder consent.



WHAT'S THE POTENTIAL IMPACT?

A corporate division or business transfer should never allow a company to sidestep promises made to policyholders or shift the financial burden of distressed liabilities onto the guaranty association system.

1 Policyholders

- Insurer changed without consent and possibly without notice.
- Increased risk for company insolvency and lack of access to contracted benefits.
- Absence of guaranty association coverage in non-domestic states could overwhelm domestic guaranty associations putting policyholders at risk.

2 States

- No notice and no license requirement for new company in all states with impacted policyholders.
- For example, a company can divide and impacted policyholders in other states would find out only after the fact.
- Undermines integrity of state system of financial regulation.

3 Insurance Companies

- The insurance industry to pay guaranty association assessments for failed, newly-formed companies.
- Reputational risk to industry due to increase in company failures.

WHAT SHOULD BE INCLUDED IN A MODEL LAW OR REGULATION?

1. Strong solvency and policyholder protections
2. Exclusions for financially troubled and monoline companies
3. Ensure guaranty association coverage
4. Policyholder notice and consent or a court process similar to UK Part VII
5. Independent expert review

Questions?