

Insurance and Reinsurance Commutations, Run-Off, and Loss Portfolio Transfers

The Language, Vehicles, and Pathways for Losing Unwanted Legacy Liabilities

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I. Introduction and Market Overview

The insurance and reinsurance industry carries an enormous volume of legacy liabilities resulting from long-tail claims and insurance and reinsurance contracts written years or even decades ago that continue to generate claims, consume capital, and impose operational and regulatory burdens on the companies responsible for them.

These legacy books, sometimes referred to as “discontinued” or “run-off” portfolios or operations, represent obligations that may no longer align with a company’s current strategic direction, yet remain on its balance sheet until discharged or transferred.

According to PwC’s September 2025 Global Insurance Run-Off Survey, US non-life run-off reserves total \$523 billion.^[i] The scale of these legacy obligations is staggering and continues to grow. Globally, non-life run-off reserves are estimated at \$1,129 billion (US), an 11 percent increase from the prior year’s estimate of \$1,014 billion, reflecting both reserve deterioration and the reclassification of additional portfolios as discontinued.^[ii]

The composition of legacy liabilities includes approximately 37 percent general liability, 34 percent motor, 10 percent property, 9 percent financial loss, and 1 percent marine.^[iii] Asbestos, pollution, and health hazards make

up about 9 percent.^[iv]

The operational drag of administering aging claims—many of which involve complex coverage disputes, long-tail exposures such as asbestos and environmental liabilities, or intricate reinsurance recoveries—diverts management attention and specialist resources from active operations and imposes regulatory obligations on companies.

Casualty reserve deterioration—particularly in general liability, commercial auto, and professional liability lines—is driving a wave of new activity, with many companies seeking to transfer or cap these exposures before further deterioration erodes capital and confidence.^[v] In 2024 alone, 33 publicly disclosed non-life run-off transactions were announced with approximately \$6.6 billion in gross liabilities transferred, and from January to August 2025, an additional 25 deals were publicly announced.^[vi]

Simply stated, the run-off market is experiencing unprecedented levels of activity and capital formation. Survey data indicates that 88 percent of respondents selected loss portfolio transfers as the most likely transaction type over the next 18 months, while 87 percent anticipate new capital inflows into the run-off market over the next three years.^[vii] The average target internal rate of return for consolidators' pricing run-off deals remains around 14 percent, and 47 percent of market participants identify the \$250 million to \$1 billion range as presenting the greatest deal opportunity.^[viii]

Emerging exposures are adding new dimensions to the legacy liability landscape of asbestos, environmental, and sexual misconduct claims. Per- and polyfluoroalkyl substances (PFAS), sometimes referred to as “forever chemicals,” represent a potentially large new category of environmental liability that some commentators have compared to asbestos in its potential scope and cost.^[ix] Sports-related head injuries, including chronic traumatic encephalopathy (CTE), represent another category of emerging claims that may generate long-tail liabilities across multiple insurance and reinsurance programs.^[x]

This commentary addresses available options to address legacy liabilities, including commutations, run-off management, loss portfolio transfers, adverse development covers, novations, insurance business transfers, and corporate divisions, as well as the regulatory framework governing these transactions and the emerging market dynamics shaping their use.

Importantly, the first option companies should consider is staying in the run-off game. Shedding legacy liabilities usually comes at a steep monetary cost and may include substantial reputational and other costs and consequences. Further, obtaining finality often proves to be more elusive than anticipated.

Accordingly, often the most economical solution—and the best business decision— may be to stand pat and continue with existing run-off operations in whole or substantial part. This is particularly true where the company is doing an efficient job in running off its liabilities, where there is an overlap in legacy relationships and ongoing relationships, and where reserves are adequate. For companies wishing to shed legacy obligations, there are many tools in the run-off operations toolbox.

II. Options for Exiting Legacy Books Exit and Run-Off Operations

There are several potential options for insurers and reinsurers to offload legacy liabilities and run-off legacy businesses.

A. Commutations

A commutation is an agreement between a ceding company and a reinsurer (or a retrocedent and a retrocessionaire) that terminates all obligations between the parties under one or more reinsurance contracts, typically in exchange for a lump-sum payment.

The International Risk Management Institute defines a commutation as “an agreement between a ceding insurer and the reinsurer that provides for the valuation, payment, and complete discharge of all obligations” between the parties under the commuted contracts.^[xi] Commutations are among the most common and flexible tools for managing legacy reinsurance liabilities.

In the statutory context, New York Insurance Law § 1321, for example, defines commutation as the “elimination of all present and future obligations between the parties, arising from the reinsurance agreement, in exchange for a current consideration.” This statutory definition, applicable particularly in the context of impaired or insolvent insurers, underscores the finality that distinguishes a commutation from other forms of reinsurance dispute resolution.^[xii] There are several key characteristics shared by most commutations, which are discussed below.

- ***Bilateral agreement:*** A commutation requires the agreement of both parties. Neither party can compel the other to commute absent a contractual commutation clause or regulatory intervention. Multilateral commutations, while less common, involve multiple parties simultaneously terminating overlapping reinsurance obligations across a portfolio of contracts.
- ***Valuation of obligations:*** The parties generally must place a value – present value – on all future obligations under the contracts being commuted, including known claims, incurred but not reported (“IBNR”) reserves, and any future premium adjustments. The pricing process typically begins with each side independently estimating the expected future claim payments that would be made in the absence of a commutation. These estimates incorporate case reserves, incurred-but-not-enough-reported (“IBNER”) development on known claims, and pure IBNR for claims not yet reported. The difference between the parties’ respective estimates often forms the basis for negotiation, with the ultimate settlement reflecting relative bargaining power, information asymmetry, the parties’ confidence in the effective resolution of the liabilities, and each party’s assessment of counterparty credit risk.^[xiii] The parties do not have to agree on the value of the obligations as long as they are able to agree on a price. Even if the commutation is not consummated, the company may discover adjustments that should be made to its reserves.

- ***Complete discharge:*** Once executed, a commutation extinguishes all rights and obligations under the commuted contracts, providing finality to both parties as to those contracts.
- ***No regulatory approval:*** Unlike many of the other mechanisms discussed in this commentary, a commutation generally does not require prior regulatory approval, although it may trigger reporting obligations. However, for impaired or insolvent companies, state insurance law or regulation may impose additional requirements. For example, New York Insurance Law § 1321 permits the superintendent to allow commutations for impaired or insolvent insurers under court supervision.

Parties pursue commutations for a variety of strategic and operational reasons. Common motivations include:

- the desire to exit a line of business or reduce exposure to a particular counterparty;
- concerns about the counterparty's financial condition or solvency, particularly where the reinsurer's credit quality has deteriorated;
- differing views on loss development, where one party's actuarial projections diverge significantly from the other's;
- the desire to release capital tied up in reinsurance recoverables and associated reserves;
- fractured business relationships that make ongoing contract administration difficult; and
- the administrative burden of managing aging, complex reinsurance arrangements.

Often, factors completely or largely unrelated to the particular reinsurance contracts, such as overriding business goals or strategies, drive commutation decisions.

1. Contractual Commutation Provisions

Some reinsurance contracts, particularly those covering long-tail casualty lines, contain built-in commutation provisions that either require or permit commutation after a specified period or upon the occurrence of certain triggering events.

These clauses may take a variety of forms including providing a specific time window and formula for determining the "commuted value" based on premiums, expenses, and paid recoveries, providing a mechanism for using independent actuaries if the parties cannot agree on the price, sunset clauses that cut off the right to report new claims after a set number of years and forces a commutation of all remaining open claims, and conditional clauses that require or permit a commutation if the reinsurer falls into financial distress, suffers a rating downgrade, or changes ownership.

These provisions typically specify the methodology for calculating the commutation amount (e.g., actuarial determination of outstanding liabilities discounted to present value), the notice requirements, and the dispute-resolution mechanism if the parties cannot agree on valuation. Commutation clauses may involve specific

liabilities under the reinsurance contract or the reinsurance contract in its entirety. Commutation clauses vary considerably. Here are some examples:

The Reinsured may at any time request that this Agreement be commuted. In such event, the Reinsurer and the Reinsured shall review such losses and shall attempt to reach a settlement by mutual agreement. If the Reinsurer and the Reinsured cannot reach a settlement by mutual agreement, then the Reinsurer and the Reinsured shall mutually appoint an independent actuary (F.S.A./F.C.A.S.; or A.S.A./A.C.A.S.) who shall investigate, determine and capitalize the present value of such losses, and the payment by the Reinsurer of its proportion of the amount so ascertained to be the capitalized value of such loss or losses shall constitute a complete and final release of the Reinsurer in respect of such loss or losses.

The Reinsured and the Reinsurer may, by mutual agreement in writing, commute and settle all or any part of the Reinsurer's liability under this Agreement in respect of any Underwriting Year. Any such commutation shall be effected by the payment by the Reinsurer to the Reinsured of an amount agreed between the parties. Upon such payment, the Reinsurer shall be fully and finally released from all further liability in respect of the losses or Underwriting Year so commuted, whether known or unknown, reported or unreported.

All liability of the Reinsurer in respect of losses arising under this Contract shall be commuted as at [date / the [tenth] anniversary of the Effective Date] (the "Commutation Date"). The Reinsured shall, within 60 days after the Commutation Date, submit to the Reinsurer a valuation of all outstanding losses and loss adjustment **expenses**, including IBNR, as at the Commutation Date. The Reinsurer shall pay its share of such valuation, discounted to present value in accordance with [method], within 30 days of agreement. In default of agreement within 90 days, the valuation shall be determined by an independent actuary appointed in accordance with Article D. Upon payment, the Reinsured releases the Reinsurer from all further liability under this Contract.

In the event that (i) the Reinsurer's financial strength rating by [A.M. Best /S&P] is reduced below [A- / A-], (ii) the Reinsurer's policyholders' surplus falls by more than [25] percent from that shown in its last annual statement, or (iii) the Reinsurer becomes subject to any insolvency, rehabilitation, liquidation, run-off or scheme of arrangement, the Reinsured may, at its sole option, require commutation of the Reinsurer's liability hereunder by written notice. The commutation amount shall be calculated as [the Reinsurer's share of outstanding loss reserves plus IBNR, without discount / as determined by an independent actuary]. The amount shall be payable within 30 days of determination, and the Reinsured may draw on any security held under Article B in satisfaction of it.

2. Accounting Treatment and Disputes

Under SSAP No. 62R, Property and Casualty Reinsurance, commutations generally are treated as an exception to retroactive reinsurance accounting.^[xiv] Commuted balances are written off through the accounts where originally recorded, and the net gain or loss is reported as underwriting income.

The cedant records the cash received as a negative paid loss.^[xv] This accounting treatment, which avoids the complexities of retroactive reinsurance accounting, is one of the practical advantages of commutation as a legacy liability management tool.

Commutation negotiations may give rise to disputes, particularly regarding the valuation of outstanding obligations, the treatment of specific claim categories, and the allocation of contested reserves. Such disputes are typically subject to the arbitration clause of the underlying reinsurance contract. Where the commutation itself is the subject of dispute, courts have generally enforced the terms of commutation agreements as final settlements, applying principles of contract law to determine the parties' intent.^[xvi]

B. Run-Off

When an insurer or reinsurer ceases underwriting in a particular line of business but retains its existing obligations, the resulting book of business is said to be in "run-off." Run-off management or operations involves the orderly administration, claims handling, and eventual extinguishment of these legacy obligations.^[xvii]

Run-off does not involve a transfer of liabilities to a third party. Instead, the company retains its obligations and manages them to conclusion. Run-off management, however, can be outsourced to specialist run-off managers who bring expertise in claims handling, reserving, and reinsurance recovery for discontinued portfolios.

The run-off specialist market has grown significantly in recent years, with dedicated companies such as Enstar Group, River Stone (a Fairfax Financial company), Armour Group, Compre Group, Darag Group, Premia Holdings, Catalina Holdings, and others providing outsourced run-off management services in lieu of and in addition to acquiring run-off business.

1. Active Run-Off Management Strategies

Modern run-off management has evolved from passive claims administration to an active discipline focused on accelerating the resolution of legacy liabilities. Key strategies include:

- proactive claims settlement programs designed to resolve outstanding claims at favorable values;
- aggressive reinsurance collection efforts to maximize recoveries from reinsurers;
- commutation programs to eliminate bilateral exposures with counterparties;
- policyholder buyback programs offering policyholders a lump-sum payment in exchange for a full release; and
- portfolio optimization through loss portfolio transfers, adverse development covers, and other risk transfer mechanisms.

The average target internal rate of return (IRR) for consolidators' pricing run-off deals remains around 14 percent, reflecting the attractive risk-adjusted returns available through disciplined run-off management.[\[xviii\]](#)

Experienced claims and legal professionals recognize that obtaining policy or contract buybacks is more difficult to achieve than decades ago and often requires payment of a premium above and beyond the value of known claims or liabilities. Further, as long-tail coverage litigation and resulting resolution of claims in these golden ages of the insurance coverage wars have been ongoing since the 1980s, scrutiny of prior settlements and releases, analysis of prior payments, attribution of payments to appropriate limits, and exhaustion and impairment of limits must be considered in resolving claims and terminating liabilities.[\[xix\]](#)

It is important to keep in mind that companies in run-off generally remain subject to the same regulatory requirements as active insurers, including statutory reporting, minimum capital requirements, and examination by their domiciliary regulator. Under SSAP No. 62R, the "run-off agreement" exception to retroactive reinsurance accounting applies only where:

1. the agreement covers lines of business no longer actively marketed;
2. the transferring entity remains primarily liable for the transferred obligations;
3. the agreement is non-cancellable; and
4. the parties are not affiliates.[\[xx\]](#)

Some states have enacted enhanced reporting requirements for run-off entities, and the National Association of Insurance Commissioners (NAIC) has considered whether additional regulatory oversight is appropriate for companies managing significant run-off portfolios.[\[xxi\]](#)

2. Run-Off Operations Require Skilled, Experienced Professionals on the Cutting Edge

Successful running off of legacy liabilities requires a first-rate claims and cessions acumen, contemporary relationships with insurers, policyholders, and reinsurers, deep knowledge of the business of insurance and reinsurance, cutting-edge knowledge of legal and litigation trends and developments, keen skills in evaluating and quantifying liabilities and recoveries, and creativity in negotiating favorable resolutions.

It is a misnomer to believe that running off legacy liabilities is an occupation for mediocre talent or of insurance or legal "has-beens." Runoff operations are often conducted by leading, active, and large insurers. Many times, the talent used in runoff operations are the same individuals that companies rely upon for contemporary business relationships and claims, emerging claims, and global solutions.

Sufficient resources must be devoted to successfully run-off legacy liabilities. **"A penny saved is a penny earned" remains true enough in runoff operations. But often the benefits of proper runoff or the detriments of suboptimal runoff extend beyond historic operations and impact current financial statements, contemporary claims, and business relationships.**[\[xxii\]](#)

3. Systems, Documents, and Personnel

In connection with run-off and loss portfolio transfers, it is important to keep in mind that the entity responsible for resolving claims and billing reinsurers must have adequate systems, access to relevant historical documents and key witnesses, as well as personnel with the proper skill sets.

It is likewise important to keep in mind that policies, underwriting documents and files, and claims files should be retained and available for run-off operations. Similarly, run-off operations require access to relevant witnesses and personnel. This is required for business purposes, reinsurance operations, and coverage litigation.

C. Loss Portfolio Transfers

A loss portfolio transfer (LPT) is a reinsurance transaction in which an insurer or reinsurer cedes a defined block of loss reserves to a reinsurer in exchange for a premium. The distinguishing feature of an LPT is that it covers losses that have already occurred (retroactive reinsurance), whereas prospective reinsurance covers future loss events.

[\[xxiii\]](#)

LPTs are a primary tool for transferring legacy liabilities off an insurer's balance sheet. The cedant pays a premium to the assuming reinsurer, who, in turn, assumes the obligation to pay claims as they develop. The premium is typically less than the face amount of the transferred reserves, reflecting the time value of money and the reinsurer's expectation of investment income on the premium.

Because an LPT is a reinsurance contract and not a statutory novation, the primary insurer generally remains legally liable to the original policyholders. The company faces the risks associated with the reinsurer becoming insolvent, bankrupt, or failing to comply with its obligations.

Legal obligations and claims handling revert to the insurer, who may be required to absorb the remaining liabilities back onto its balance sheet. Most LPTs contain a contractually negotiated aggregate limit of liability (often structured as a finite-risk cap), meaning that the reinsurer agrees to pay claims only up to a maximum dollar amount.

1. LPT Pricing Mechanics

LPT pricing reflects the interplay of several factors, including the expected ultimate loss amount, including development on known claims and IBNR; the expected payment pattern and timing of cash flows; the reinsurer's cost of capital and target return; the risk of adverse development beyond expected levels; and administrative, claims-handling, salvage, and retrocessional recovery costs.

Because an LPT attaches at the first dollar of carried reserves (in contrast to an adverse development cover, which attaches at or above carried reserves), LPT pricing embeds less timing risk but greater absolute exposure. The premium paid by the cedant typically ranges from 70 percent to 95 percent of the gross reserves transferred, depending on the tail length, reserve risk, and competitive dynamics.[\[xxiv\]](#)

2. SSAP 62R Accounting Treatment

Loss portfolio transfers are generally treated as retroactive reinsurance under SSAP No. 62R because they cover losses that have already occurred. Under retroactive reinsurance accounting, the ceding entity typically continues to report reserves on a gross basis in its statutory financial statements, with a corresponding reinsurance recoverable asset. The assuming entity excludes the assumed reserves from its loss reserves and instead establishes a retroactive reinsurance reserve.^[xxv]

3. Risk Transfer Requirements

For an LPT to receive reinsurance accounting treatment, the transaction must transfer significant insurance risk from the cedant to the reinsurer. The NAIC and actuarial texts commonly reference the “10-10 rule” as a rule of thumb: the reinsurer must have at least a 10 percent probability of suffering a loss of at least 10 percent of the premium. Transactions that fail to satisfy risk transfer requirements may be recharacterized as financing arrangements, which receive less favorable accounting treatment.^[xxvi]

D. Adverse Development Cover

An adverse development cover (ADC) is a form of retroactive reinsurance that provides protection against the deterioration of existing loss reserves beyond a specified threshold. Unlike an LPT, which transfers the full reserve for a block of business, an ADC attaches at a point at or above the cedant’s carried reserves, protecting against adverse development.

ADCs are attractive to companies that wish to cap their exposure to reserve deterioration without fully transferring the underlying liabilities. The cedant retains the reserves on its balance sheet but obtains protection if those reserves prove insufficient.

The fundamental structural distinction between an LPT and an ADC lies in the attachment point. An LPT attaches at the first dollar of carried reserves, functioning similarly to a quota share of the reserve block. An ADC attaches at or above carried reserves, functioning as a stop-loss that protects against deterioration.

A “hybrid ADC” attaches within carried reserves but above the first dollar, providing a middle ground between full reserve transfer and pure excess-of-loss protection. Higher attachment points produce longer mean times to payment, providing greater investment income (discount) benefit to the reinsurer and generally result in lower premium relative to the limit of coverage.

Like LPTs, ADCs generally are treated as retroactive reinsurance under SSAP No. 62R. However, because the ADC attaches at or above carried reserves, the cedant may not recognize an immediate accounting benefit on its balance sheet unless and until actual development causes reserves to reach the attachment point. Generally, the premium paid for the ADC is reflected as a reduction to surplus at inception, while the expected recovery (if any) is recognized only as adverse development materializes.

E. Novations

A novation in the reinsurance context is a three-party agreement whereby the original reinsurer's obligations under a reinsurance contract are transferred to a new reinsurer, with the consent of the cedant. The effect is to substitute one reinsurer for another, completely releasing the original reinsurer from further liability. In the insurance context, the insured agrees to the substitution of another insurer in place of the insurer originally contracted with.

A novation is distinguished from an LPT in that it involves a change in the contractual counterparty rather than a reinsurance layering. After a novation, the cedant's contractual relationship is with the new reinsurer, not the original.

The principal practical challenge of novation is the requirement for affirmative consent from all three parties: the cedant, the original reinsurer (the transferor), and the new reinsurer (the transferee).

The cedant must agree to release the original reinsurer and accept the credit risk of the new reinsurer. In practice, cedants may be reluctant to consent to novations in which the new reinsurer has a lower credit rating or less financial strength than the original counterparty. Novations are most common in the context of corporate reorganizations, where the transferring and assuming entities are under common ownership, or where the assuming entity is a well-capitalized run-off specialist.

Under SSAP No. 62R, novations generally are treated as an exception to retroactive reinsurance accounting, similar to commutations.^[xxvii] This treatment recognizes that a novation, unlike an LPT, involves a substitution of counterparties rather than the layering of additional reinsurance on existing reserves.

F. Insurance Business Transfers

An insurance business transfer (IBT) is a statutory mechanism, modeled in part on the United Kingdom's Part VII transfer process, that allows the transfer of insurance or reinsurance obligations from one insurer to another by operation of law, without requiring the affirmative consent of individual policyholders.^[xxviii]

IBTs provide a mechanism for the complete legal novation of policyholder obligations, achieving finality that is not available through traditional reinsurance mechanisms such as LPTs and ADCs.

Several US states have enacted IBT legislation, each with distinct features and limitations. Companies considering IBTs must carefully review the statutes at issue and understand the requirements, limitations, risks, and benefits. The potential for constitutional and other legal challenges must also be considered.

1. Oklahoma

Oklahoma's Insurance Business Transfer Act, codified at Oklahoma Statutes title 36, sections 1681 through 1688, ^[xxix] was enacted in 2018 and became effective November 1, 2018. It allows the transfer of insurance or reinsurance obligations from a transferring insurer to an assuming insurer, with approval of the Oklahoma Insurance Commissioner and the District Court of Oklahoma County.

The Act covers property, casualty, life, and health insurance, as well as any other line the Commissioner finds suitable for transfer, and applies to both open and closed books of business.[\[xxx\]](#)

2. Rhode Island

Rhode Island's Voluntary Restructuring of Solvent Insurers Act[\[xxxi\]](#) provides a restructuring mechanism for solvent insurers. Rhode Island was the first state to enact legislation specifically designed to permit the court-ordered transfer of insurance obligations from one insurer to another.

The Voluntary Restructuring of Solvent Insurers Act was enacted in 2002, establishing a framework under which a solvent insurer could petition the Rhode Island Superior Court for an order approving the transfer of specified blocks of business to an assuming insurer. The statute was subsequently amended and supplemented by Insurance Regulation 68, promulgated in 2016, which provided additional procedural detail and regulatory guidance for the transfer process. The governing provisions are codified at 230 R.I. Code Regs. § 20-45-6.1 et seq. The scope of the Rhode Island statute is deliberately narrow.

It is limited exclusively to property and casualty commercial lines business that has been closed to new writings for a minimum period of sixty months. Personal lines, workers' compensation, life insurance, and health insurance are excluded from the statute's reach. The requirement that the transferring insurer be solvent distinguishes this process from insolvency proceedings and ensures that policyholder protections applicable in rehabilitation or liquidation are not circumvented.

The transferring insurer petitions the Rhode Island Superior Court for an order approving the novation of its policies to the assuming insurer. Upon court approval, the transfer operates as a statutory novation: the assuming insurer steps into the shoes of the transferring insurer, becoming directly liable to policyholders on the transferred policies, and the transferring insurer is released from further obligation.

Policyholders do not have the right to opt out. Once the court approves the transfer, all affected policyholders are bound by the novation, regardless of whether they consent. The statute requires the appointment of an independent expert to assess the fairness of the proposed transfer to affected policyholders. The independent expert must evaluate whether policyholders will be materially adversely affected by the transfer, considering factors including the financial strength of the assuming insurer, the adequacy of reserves, and the claims-handling capabilities of the assuming entity. The court considers the independent expert's report in determining whether to approve the transfer.

Additionally, the Rhode Island framework provides for the use of a protected cell company structure, which permits the assuming insurer to segregate the transferred liabilities within a distinct cell, insulating both the assuming insurer's other business and the transferred policyholders from cross-contamination of risk.

3. Vermont

Vermont's Legacy Insurance Management Act, codified at Vermont Statutes Annotated title 8, sections 7111 through 7121 (2014),[\[xxxi\]](#) is limited to surplus lines and reinsurance. It requires regulatory approval by the

Vermont Department of Financial Regulation but not court approval, and includes a policyholder opt-out provision. Vermont's approach differs from Rhode Island's in several material respects, reflecting a distinct legislative philosophy regarding the appropriate balance between finality for transferring insurers and protection of policyholder interests.

The Vermont statute applies to non-admitted insurers seeking to transfer closed blocks of commercial business. The statute excludes personal lines insurance, workers' compensation, life insurance, and health insurance from its scope, limiting its application to commercial property and casualty business. The Vermont framework relies on regulatory approval rather than court supervision. Upon regulatory approval, the transfer operates as a statutory novation, with the assuming insurer becoming directly liable on the transferred policies.

The Vermont statute contains a critical limitation that distinguishes it from both the Rhode Island and Oklahoma frameworks: it provides affected policyholders and reinsureds with an opt-out right. Although the opt-out right protects individual policyholder interests, it limits the degree of finality achievable under the Vermont scheme.

4. Arkansas

Arkansas enacted its Insurance Business Transfer Act, codified at Arkansas Code Annotated section 23-69-501 et seq., in 2021.^[xxxiii] The Arkansas statute was expressly modeled on the Oklahoma framework, with its expansive scope, court supervision, and absence of policyholder opt-out. The Arkansas statute covers both open and closed books of business and applies across all lines of insurance.

The Arkansas transfer process requires court approval. The transferring insurer submits a plan of transfer to the Arkansas Insurance Commissioner for review, following which it petitions the appropriate Arkansas court for an order approving the novation. The court must determine that the transfer is fair and reasonable to affected policyholders and that the assuming insurer has adequate financial resources, reserves, and operational capabilities to honor the transferred obligations.

An independent expert is appointed to assess the impact of the transfer on policyholders, and notice is provided to affected parties, who may appear and be heard at the court hearing. The assuming insurer must be licensed in each line of business and the state involved in the transfer. The statute includes additional guidance for transfers involving long-term care insurance

5. Illinois

Illinois enacted its Insurance Business Transfer Law in 2023 through Public Act 103-0075, codified at 215 ILCS 5/1701 et seq.^[xxxiv] The Illinois IBT statute is limited to property and casualty insurance and specifically excludes life, accident, and health insurance. It was adopted in addition to the state's existing corporate division statute. This limitation reflects concerns raised during the legislative process regarding the particular vulnerability of individual life and health policyholders and the longer-duration nature of those obligations.

Court approval is required for all IBT transactions under the Illinois statute, providing an independent judicial check on the fairness and reasonableness of proposed transfers. The court must be satisfied that the transfer will

not materially adversely affect policyholders, that the assuming entity is financially capable of meeting the transferred obligations, and that proper notice has been provided to affected parties. Illinois also has a separate Corporate Division statute, which is discussed below.

6. Additional States and Model Laws

Additional states with IBT statutes include Arizona and Georgia. The National Council of Insurance Legislators (“NCOIL”) has promulgated a model IBT law, modeled primarily on the Oklahoma statute, to provide a template for states considering IBT legislation.^[xxxv]

The NAIC’s Restructuring Mechanisms White Paper, adopted by the Financial Condition (E) Committee on December 11, 2025, provides a comprehensive overview of the various IBT and corporate division statutes and their key features.^[xxxvi]

G. Corporate Divisions

Corporate division statutes represent a fundamentally different approach to achieving finality for legacy insurance liabilities compared to insurance business transfers. Corporate divisions allow an insurer to divide itself into two or more separate companies through a regulatory-only approval process—without the requirement of court approval. Under a division plan, the original insurer splits into a continuing entity and one or more assuming entities, with legacy liabilities allocated to the assuming entity.

The corporate division mechanism achieves novation by obtaining approval of a plan of division by the relevant insurance regulator. Once the division is effective, policyholders whose policies are allocated to the assuming entity become policyholders of that new entity by operation of law. The continuing entity is released from liability on the transferred policies without the need for individual policyholder consent or judicial confirmation.

This distinguishes divisions from IBTs, which require court approval and typically provide for a more robust objection process. A corporate division (also known as a statutory division or divisive merger) allows an insurance company to divide into two or more entities by operation of law, with liabilities allocated among the resulting entities. Unlike an IBT, which transfers obligations from one existing entity to another, a corporate division creates new entities from the dividing company.

Corporate division statutes have been enacted in a growing number of states. According to the NAIC White Paper, states with corporate division statutes include Arizona, Arkansas, Colorado, Connecticut, Georgia, Illinois, Iowa, Michigan, and Pennsylvania.^[xxxvii]

Pennsylvania’s corporate division statute, codified at 15 Pa.C.S. sections 361 through 368, has been in effect since 1990, making it one of the oldest and most established corporate division frameworks in the insurance context. ^[xxxviii] The Brandywine transaction, involving the division of Cigna Corporation’s insurance operations, was approved in 1995 and remains the most significant early use of the corporate division mechanism. In that

transaction, legacy liabilities were allocated to a separate entity (Brandywine Holdings), allowing Cigna's ongoing operations to proceed without the drag of run-off obligations.[\[xxxix\]](#)

Illinois enacted its Domestic Stock Company Division Law in 2018, codified at 215 ILCS 5/35B-1 et seq., and subsequently amended it in 2023.[\[xl\]](#) Illinois completed a corporate division in early 2021, in which Allstate subsidiaries divided their Michigan automobile insurance business. This transaction was one of the first uses of a corporate division statute specifically to address legacy automobile insurance liabilities.[\[xli\]](#)

Connecticut enacted its corporate division statute through Public Act No. 17-2 in 2017, codified at Connecticut General Statutes sections 38a-146 et seq.[\[xlii\]](#)

III. Risks and Challenges

The decision to pursue a legacy liability transfer—whether through an insurance business transfer, corporate division, loss portfolio transfer, or other mechanism—involves a careful assessment of the potential benefits against the attendant risks.

Beyond the legal and regulatory risks, legacy liability transfers entail operational and commercial risks that can materially affect the value of the transaction for insurers and reinsurers. These risks are particularly acute in transactions involving complex, long-tail liabilities with uncertain development patterns.

A. Counterparty Credit Risks

In LPTs and ADCs, the cedant retains the primary obligation to policyholders and is exposed to the credit risk of the assuming reinsurer. If the reinsurer becomes insolvent, the cedant remains liable for the transferred claims.

B. Regulatory Risks and Compliance

Transactions may be subject to regulatory scrutiny, including Form A or Form D filings, and may require prior approval. Form A filings are required under the Insurance Holding Company System Regulatory Act (NAIC Model § 440) for changes of control, while Form D filings require prior notice of material transactions within an insurance holding company system, including significant reinsurance transactions, service agreements, and intercompany loans.[\[xliii\]](#)

C. Reserve Adequacy

The valuation of legacy liabilities is inherently uncertain, and the risk of adverse development persists regardless of the mechanism employed. Inadequate reserves may present regulatory and other consequences, and rich

reserves could increase the costs of the transaction relative to the company continuing to run-off its legacy liabilities.

D. Guaranty Fund Concerns

A critical concern for policyholders affected by legacy liability transfers is the potential loss of guaranty fund protection. State guaranty associations typically provide coverage to policyholders of insolvent insurers domiciled in, or licensed in, the state where the policyholder resides. When policies are transferred to a new entity—particularly one domiciled in a different state—the transferred policyholder’s guaranty fund coverage may be affected.

Accordingly, one of the most significant challenges facing IBTs and corporate divisions is the treatment of guaranty fund coverage. The National Conference of Insurance Guaranty Funds (NCIGF) and the National Organization of Life and Health Insurance Guaranty Associations (NOLHGA) have provided input to the NAIC’s Restructuring Mechanisms Working Group on these issues.^[xlv] In response, the NAIC amended Model § 540 in 2023, expanding the definition of “Covered Claim” to address restructuring mechanisms and clarify guaranty fund coverage for transferred policies.^[xlv]

E. Constitutional and Legal Challenges

IBTs and corporate divisions may face constitutional challenges, particularly under the Due Process and Contract Clauses of the US Constitution. Opponents may argue that transferring policy obligations without policyholder consent impairs contractual rights and deprives policyholders of property without due process.

The Rhode Island Superior Court addressed these issues in *In re GTE Reinsurance Co.*, concluding that the restructuring mechanism’s procedural protections—including judicial oversight, independent expert review, and the requirement of no material adverse impact—satisfied constitutional requirements.^[xlv] This decision provides important precedent, but constitutional challenges may continue to arise as these mechanisms are tested in additional states.

F. Potential Loss of Reinsurance Offsets

Commutation of underlying reinsurance agreements may eliminate valuable reinsurance recoveries that would otherwise have inured to the benefit of policyholders or reduced the net cost of the transferred liabilities.

G. Loss of Institutional Knowledge Resulting From Transfer of Run-Off Operations

The claims handling expertise and institutional memory accumulated by the insurer’s or cedant’s run-off team may not transfer effectively to the assuming entity, potentially resulting in suboptimal claims outcomes.

Costs of running off the business may be increased where the transferring company has been efficient at handling claims and reinsurance collections. Many companies have experienced adverse consequences from loss of access to documents or witnesses.

H. Reputational Risks

A transfer perceived by the market, regulators, or policyholders as motivated by a desire to avoid obligations may damage the insurer's or cedant's reputation and affect its ability to write new business. Policyholders, brokers, and regulators may view a transfer as a signal that the cedant is unwilling to stand behind its commitments, potentially affecting the cedant's competitive position in new business markets.

This concern is particularly acute in specialty lines where long-term relationships and reputation for claims-paying integrity are essential to market position.

I. Tax Consequences

Transfers may trigger unexpected gains or losses for tax purposes, alter the timing of deductions, or create adverse tax positions that reduce the net economic benefit of the transaction.

J. Disclosure of Financial and Business Information

Financial and business information, including the reserve setting process, the adequacy of reserves, internal risk modeling, and other business practices or information, may become part of the public court record during the process of seeking court or regulatory approval, which could prevent approval and, regardless of approval, may present issues for the involved companies on various fronts. It creates an avenue for discovery for the plaintiffs' bar and claimants.

K. Costs

Many of the mechanisms discussed above involve substantial transactional costs, premiums paid to run-off entities or commuting policyholders or cedents, and financial consequences depending upon the adequacy of reserves.

IV. Regulatory Framework And Reporting Requirements

The regulatory framework governing legacy liability transactions is multi-layered, involving NAIC, state insurance departments, and, in certain instances, federal oversight bodies. Practitioners and companies must navigate these overlapping requirements with precision, as regulatory non-compliance can invalidate transactions, trigger enforcement actions, or expose parties to significant financial penalties.

A. NAIC Annual Statement Reporting

A detailed discussion of the regulatory and reporting issues is beyond the scope of this treatise, but we highlight a few potential issues. For example, the NAIC Annual Statement provides the foundational reporting framework for reinsurance transactions, including those arising from or affected by legacy liability management activities. Schedule F (Ceded Reinsurance) requires detailed disclosure of all ceded reinsurance arrangements, including the identity of reinsurers, amounts recoverable, collateral held, and any overdue balances.

When a commutation or loss portfolio transfer extinguishes a ceded reinsurance relationship, the cedent must reflect the termination in Schedule F and recognize the financial impact on its balance sheet in the period of execution. Schedule S (Assumed Reinsurance) imposes parallel requirements on assuming reinsurers, requiring disclosure of all assumed business, premium volumes, and reserve obligations. For entities assuming legacy liabilities through portfolio transfers or novation agreements, Schedule S entries must accurately reflect the nature and quantum of assumed obligations that may be impacted. Impacts of the Annual Statement extend beyond Schedules F and S.

B. State Notification and Approval Requirements

State insurance departments exercise primary regulatory authority over insurance companies domiciled within their jurisdictions, and their notification and approval requirements vary significantly across states. The domiciliary regulator—the insurance department in the state where the insurer is organized—typically exercises the most comprehensive oversight, while ancillary regulators in states where the insurer is licensed may impose additional requirements for transactions affecting policyholders within their borders.

Notification requirements for commutations and other legacy transactions may depend on both the size and nature of the transaction. Many states require advance notification of commutations exceeding specified threshold amounts, which may be defined as absolute dollar figures or as percentages of the insurer's surplus. These thresholds vary considerably among jurisdictions, and practitioners must identify all applicable notification requirements at the outset of transaction planning.

Prior approval requirements apply to transactions deemed material to the insurer's financial condition or potentially adverse to policyholder interests. Several states require affirmative regulatory approval before an insurer may execute a commutation, loss portfolio transfer, or assumption reinsurance agreement above specified materiality thresholds. The approval process typically involves submission of detailed actuarial analyses, financial projections, and legal opinions regarding the transaction's impact on the insurer's ability to meet its obligations.

C. Holding Company Filings and Run-Off Oversight

Depending upon the transaction, Form A and/or Form D filings under the Insurance Holding Company System Regulatory Act may be required. Also, there may be impacts to letters of credit and/or reinsurance credits. Insurance companies operating in run-off may face enhanced regulatory scrutiny reflecting the heightened risk of insolvency and the absence of ongoing premium income to absorb adverse development.

Many state insurance departments impose enhanced financial reporting requirements on run-off entities regulators to monitor deterioration in real time and intervene before surplus is exhausted. Reserve adequacy demonstrations are a cornerstone of run-off regulation.

D. SSAP No. 62R Accounting Treatment

SSAP No. 62R, Property and Casualty Reinsurance, is the principal accounting standard governing the statutory treatment of reinsurance transactions, including the retroactive reinsurance structures commonly used in legacy liability management.

SSAP 62R distinguishes between prospective reinsurance (covering future events) and retroactive reinsurance (covering events that have already occurred) and establishes specific accounting treatment for each. Key exceptions to retroactive reinsurance accounting include commutations (paragraph 36.c), novations (paragraph 36.b), and run-off agreements meeting specified criteria (paragraph 36.e).

V. Compare UK Part VII TransfersThe United Kingdom's (UK) Part VII transfer mechanism, established under the Financial Services and Markets Act 2000, sections 104 through 116, has served as the model and inspiration for many of the US IBT statutes.[\[xlvii\]](#) Under Part VII, an insurance or reinsurance portfolio may be transferred from one authorized insurer to another by order of the High Court, achieving a statutory novation of policyholder obligations without requiring individual consent.

The process requires an independent expert report, involvement of the Prudential Regulation Authority (PRA) and Financial Conduct Authority ("FCA"), and court approval following a hearing at which affected parties may be heard. Reportedly, more than 300 successful Part VII transfers have been completed since the mechanism's introduction. However, the process is not without complexity. In the high-profile *In re Prudential and Rothesay* litigation, the proposed transfer of Prudential's annuity portfolio to Rothesay Life was initially rejected by the High Court in August 2019, overturned on appeal in December 2020, and ultimately approved in November 2021.[\[xlviii\]](#)

VI. Conclusion

A. Market Trends Driving Legacy Solutions

The market for legacy liability solutions is evolving rapidly, driven by several converging trends. Casualty reserve deterioration—particularly from the 2013–2019 soft market underwriting years—has created a new supply of

legacy portfolios.

Further, the emergence of dedicated run-off consolidators with significant capital bases is expanding the capacity available to assume legacy liabilities. They are actively marketing their services to insurers and reinsurers.

Additionally, the proliferation of IBT and corporate division statutes across the United States is providing new tools that were previously unavailable. The management of legacy insurance and reinsurance liabilities is a complex and evolving discipline that requires careful analysis of legal, regulatory, actuarial, and business considerations.

B. Selecting the Right Tool

The mechanisms described in this commentary—commutations, run-off management, loss portfolio transfers, adverse development covers, novations, insurance business transfers, and corporate divisions—each offer distinct advantages and limitations. The continued development of IBT and corporate division statutes across US jurisdictions, the emergence of new categories of long-tail exposures such as PFAS and sports-related head injuries, and the growing sophistication of the run-off specialist market are all contributing to a dynamic, rapidly evolving landscape for legacy liability management.

Practitioners advising on legacy liability transactions should consider the full range of available tools, taking into account the specific characteristics of the liabilities at issue, the regulatory environment, the counterparties involved, and the client's strategic objectives. As the market continues to mature, the availability of new solutions and the increasing body of precedent from completed transactions will provide greater flexibility and confidence in structuring these important transactions.

C. In-House Run-Off Versus Engaging a Provider

Notwithstanding the extensive marketing of run-off services, often the best and most cost-effective approach for companies—particularly those companies that are well-versed and efficient in resolving legacy claims—is to continue to handle the run-off of all or substantial parts of their legacy books.

When a company decides to transition a portfolio or to engage a run-off service provider, it is important to consider the skills, capabilities, experience, and track record of the party it is retaining. In particular, it is important to understand their philosophy to ensure it is compatible with the company's goals and expectations. This will reduce reputational costs and frictions with policyholders, brokers, regulators, and the market.

[i] PwC, Global Insurance Run-Off Survey 2025, at 12 (Sept. 2025).

[ii] *Id.* at 14.

[iii] *Id.* at 16.

[iv] *Id.* at 18.

[v] *Id.* at 22–24 (discussing casualty reserve deterioration from the 2013–2019 soft market underwriting years).

[vi] *Id.* at 26–28 (reporting that, in 2024, 33 publicly disclosed non-life run-off transactions were announced with approximately \$6.6 billion in gross liabilities transferred).

[vii] PwC, Global Insurance Run-Off Survey 2025, at 6 (Sept. 2025) (noting that 88% of respondents selected LPTs as the most likely transaction type over the next 18 months).

[viii] *Id.* at 8 (reporting that 87% of respondents anticipate new capital inflows into the run-off market over the next three years).

[ix] Scott Seaman and Jennifer Arnold, “Insurers Prepare for Large Exposures from PFAS Claims,” *Law360*, August 23, 2023. See also Scott Seaman & Gar Lauerma, “2025 Updated Primer on PFAS/Forever Chemical Claims Regulation, Litigation & Insurance Coverage Issues,” *Mealey’s Emerging Toxic Torts*, Vol. 34, #18, (December 16, 2025); Scott Seaman & Gar Lauerma “A Primer On PFAS/Forever Chemical Claims: Regulation, Litigation, Large Losses & Insurance Coverage Issues,” *Mealey’s Pollution Liability Report*, Vol. 37, #8, (May 2024).

[x] PwC, Global Insurance Run-Off Survey 2025, at 30 (Sept. 2025) (identifying PFAS and sports-related head injuries as significant emerging exposures driving run-off activity).

[xi] See <https://www.irmi.com/term/insurance-definitions/commutation-agreement>.

[xii] N.Y. Ins. Law § 1321 (McKinney) (defining commutation as “elimination of all present and future obligations between the parties, arising from the reinsurance agreement, in exchange for a current consideration”).

[xiii] For one perspective on pricing, see Brian E MacMahon, “Commutation Pricing – Cedent and Reinsurer Perspectives” *CAS Forum* (May 2025). Pricing – Cedent and Reinsurer

[xiv] SSAP No. 62R, Property and Casualty Reinsurance, ¶ 36.c (NAIC 2024) (providing that commutations are an exception to retroactive reinsurance accounting).

[xv] *Id.* (providing that commuted balances are written off through the accounts where originally recorded, with net gain or loss reported as underwriting income).

[xvi] See, e.g., *Unigard Sec. Ins. Co. v. North America. Reinsurance Corp.*, 4 F.3d 1049 (2d Cir. 1993) (addressing reinsurance contract interpretation in the commutation context).

[xvii] PwC, Global Insurance Run-Off Survey 2025, at 12 (Sept. 2025) (reporting U.S. non-life run-off reserves of \$523 billion).

[xviii] *Id.* at 38.

[xix] See generally Scott Seaman and Jason Schulze, *Allocation of Losses in Complex Insurance Coverage Claims* (13th Ed. Thomson Reuters 2025); Scott Seaman, Pedro Hernandez, Peter Lewis, *America 250: The History Of Insurance & Insurance Law & Litigation In The United States* (Xlibris 2026).

[xx] SSAP No. 62R, ¶ 36.e (NAIC 2024) (defining the run-off agreement exception as limited to lines no longer actively marketed, where the transferring entity remains primarily liable, and the agreement is non-cancellable and non-affiliate only).

[xxi] See NAIC, Restructuring Mechanisms White Paper, at 8–10 (Dec. 11, 2025) (discussing regulatory considerations for run-off entities).

[xxii] Benjamin Franklin never actually said this adages most often attributed to him. He did, however, write in the 1737 *Poor Richard's Almanack*: “A penny saved is two pence clear.”

[xxiii] SSAP No. 62R, ¶¶ 24–30 (NAIC 2024) (setting forth the accounting requirements for retroactive reinsurance, including loss portfolio transfers).

[xxiv] PwC, Global Insurance Run-Off Survey 2025, at 44 (Sept. 2025) (noting that 47% of respondents identify \$250 million to \$1 billion as the greatest opportunity for deals in the next 18 months).

[xxv] SSAP No. 62R, ¶ 36 (NAIC 2024) (distinguishing between prospective and retroactive reinsurance and setting forth the accounting treatment for each).

[xxvi] *Id.* ¶¶ 31–35 (discussing risk transfer requirements and the significance of the 10-10 rule).

[xxvii] SSAP No. 62R, ¶ 36.b (NAIC 2024) (providing that novations are an exception to retroactive reinsurance accounting).

[xxviii] See generally NAIC, Restructuring Mechanisms White Paper (Dec. 11, 2025).

[xxix] Okla. Stat. tit. 36, §§ 1681–1688 (effective Nov. 1, 2018).

[xxx] NAIC, Restructuring Mechanisms White Paper, at 15–18 (Dec. 11, 2025) (detailing the Oklahoma IBT process and completed transactions).

[xxxi] Rhode Island’s Voluntary Restructuring of Solvent Insurers Act, codified at Rhode Island General Laws Chapter 27-14.5 (2002), as supplemented by Insurance Regulation 68 (2016), 230 R.I. Code Regs. § 20-45-6 *et seq.* R.I. Gen. Laws ch. 27-14.5 (2002); 230 R.I. Code Regs. § 20-45-6 *et seq.* (Insurance Regulation 68, 2016).

[xxxii] Vt. Stat. Ann. tit. 8, §§ 7111–7121 (2014).

[xxxiii] Ark. Code Ann. § 23-69-501 *et seq.* (2021).

[xxxiv] 215 ILCS 5/1701 *et seq.* (2023)

[xxxv] NCOIL Insurance Business Transfer Model Act (Nov. 2021); NCOIL Corporate Division Model Act.

[xxxvi] NAIC, Restructuring Mechanisms White Paper, at 22–25 (Dec. 11, 2025).

[xxxvii] NAIC, Restructuring Mechanisms White Paper, at 22–25 (Dec. 11, 2025).

[xxxviii] 15 Pa.C.S. §§ 361–368 (1990) (Pennsylvania corporate division statute).

[xxxix] NAIC, Restructuring Mechanisms White Paper, at 28 (Dec. 11, 2025) (discussing the Brandywine/Cigna division approved in 1995).

[xl] 215 ILCS 5/35B-1 et seq. (Illinois Domestic Stock Company Division Law, enacted 2018, amended 2023).

[xli] NAIC, Restructuring Mechanisms White Paper, at 30 (Dec. 11, 2025) (reporting that Illinois completed a corporate division in early 2021, with Allstate subsidiaries dividing Michigan automobile insurance business).

[xlii] Conn. Gen. Stat. §§ 38a-146 et seq. (Public Act No. 17-2, enacted 2017).

[xliii] Insurance Holding Company System Regulatory Act, NAIC Model § 440; Form A (change of control); Form D (prior notice of transactions).

[xliv] See NCIGF and NOLHGA comment letters to NAIC Restructuring Mechanisms (E) Working Group (discussing guaranty fund coverage concerns arising from IBTs and corporate divisions).

[xlv] NAIC, Model § 540 (amended 2023) (expanding definition of “Covered Claim” to address restructuring mechanisms).

[xlvi] *In re GTE Reinsurance Co.*, 2011 WL 7144917, at *5–8 (analyzing due process and contract clause challenges).

[xlvii] Financial Services and Markets Act 2000, pt. VII, §§ 104–116 (U.K.).

[xlviii] *In re Prudential Assurance Co.* [2019] EWHC 2245 (Ch) (rejecting transfer); [2020] EWCA Civ 1626 (overturning on appeal); [2021] EWHC 3113 (Ch) (final approval Nov. 2021).

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