

INSURANCE REGULATORY

OVERVIEW

Our Insurance Team includes lawyers (and a former insurance regulator) who focus exclusively on insurance industry compliance and regulatory approvals. Our Insurance Regulatory lawyers advise clients under the insurance laws of the U.S., U.K., EU and countries with BCLP offices, as well as Model Laws and other regulatory guidance issued by regulatory organizations and tribunals including the National Association of Insurance Commissioners (NAIC) and International Association of Insurance Supervisors (IAIS). We keep clients up to date on the ever-increasing changes to their insurance compliance obligations under these laws, and represent clients in the legislative/regulatory process.

Our Insurance Regulatory practice generally falls within the following categories.

Insurance Regulatory Filings and Approvals

Because our Insurance Team includes both transactional and insurance regulatory experts, we can incorporate regulatory considerations into insurance market deal structures and then quickly shepherd them through the regulatory approval process. We have substantial experience preparing regulatory filings with insurance regulators for the following types of transactions, and negotiating for their approval.

Insurance Company and Producer Acquisitions, Mergers and other Changes in Control

Our Insurance Regulatory lawyers are part of our Insurance M&A team and they coordinate with their transaction-focused team members to ensure a smooth and successful process for obtaining regulatory approval of transactions involving changes in control, including Form A Statements Concerning Acquisitions of Control filed in a domestic insurer's statutory and commercial domiciles. Our work in this area ranges from simple shell acquisitions to highly-negotiated regulatory approvals for complex private equity deals, multi-jurisdictional change in control filings and cross-industry mergers.

In jurisdictions that require hearings to approve changes in control, we represent both acquiring parties and domestic insurers in the administrative process and work closely with BCLP litigators to address third-party intervenors to the filing and approval process and other administrative law issues. Where changes in control involve a material increase in insurance market share, we handle

regulatory approvals associated with anti-competitive impact legislation (including U.S. “Form E” notifications and Hart-Scott-Rodino filings).

Our substantial experience with the regulatory approval process enables us to work at a high level with regulators, anticipate regulatory requests for information and to efficiently manage the process from both a cost and time perspective.

Affiliate Transactions and Material Transactions

Our Insurance Regulatory specialists coordinate with transactional colleagues to ensure that agreements among insurance company affiliates (such as Cost-Sharing, Tax Allocation and Pooling Agreements) are drafted to comply with each jurisdiction’s unique insurance regulatory requirements, including appropriate costs and terms and necessary filings and approvals. We also structure material transactions to comply with insurance law, such as extraordinary dividends and contributions, and surplus note transactions, and obtain regulatory approvals where necessary.

Annual Registration, Enterprise Risk and Other Filings

We routinely assist clients with annual registration, enterprise risk, and ORSA (Own Risk and Solvency Assessment) filings with insurance regulators in our clients’ statutory/commercial domiciles and non-resident jurisdictions, as well as insurance policy rate and form filings. We bring a unique perspective to these filings, as our Insurance Regulatory experts have filed them with insurance regulators directly in their former roles as in-house lawyers and have evaluated them as (former) insurance regulators.

Multi-Jurisdictional Regulatory Advice and Compliance

Our Insurance Regulatory practice is much broader than insurance transaction filings and approvals. We closely partner with clients to guide them through the myriad of insurance statutes and regulations that may apply to their business operations. For clients outside the insurance industry, we advise on whether insurance laws such as insurance company and producer licensing could be triggered by certain activities and arrangements, including affinity and sponsor arrangements and arrangements involving referral fees from insurance producers.

For insurance industry clients, we address application of multi-jurisdictional insurance requirements, such as quantitative and qualitative limitations on insurer investments, what constitutes unlawful “rebating” and requirements for reinsurance collateralization and obtaining statutory credit for reinsurance. Our experience with insurance laws and proposals across numerous jurisdictions enables us to help clients choose the best regulatory domicile for their business, or potential locations for a change in domicile.

In addition to more complex regulatory representations, we routinely provide practical, business-friendly advice on routine regulatory matters for which our in-house insurance clients reach out for

assistance.

Regulatory Compliance Programs and Enforcement

Compliance is a key part of our Insurance Regulatory practice and we routinely advise insurance clients on their internal and external compliance obligations, including those arising under insurance laws as well as state, federal and international laws governing anti-money laundering, data security and data privacy. We have substantial experience helping our clients establish compliance programs and recommending “best practices” to prevent compliance problems.

Working with staff at all levels within a client’s organization (from in-house call center personnel, through executive management), we help clients identify, organize and manage the many compliance obligations associated with their operations. We create compliance manuals and internal training programs for them and help them identify potential regulatory risk and compliance gaps.

Our compliance advice frequently relates to obligations of insurance producers who are operating in both the admitted and non-admitted markets. Our work for insurance producers includes drafting internal guidelines on how best to address compliance obligations, including “gray areas” such as brokering cannabis-related risks, adhering to the unique rules governing surplus and excess lines insurance placements, restrictions related to affinity/sponsorship agreements with non-insurance entities, and unique distribution channels, such as insurance aggregators.

Financial and Market Conduct Examinations and Proceedings

Our financial regulatory guidance includes insurance company annual and quarterly financial statements and financial reporting. Our guidance is bolstered by a team member being a former insurance regulator and statutory accounting professional. Our Insurance Regulatory lawyers also monitor the continuing changes to financial statement and reporting, valuation of insurer investments, risk-based capital, accounting permitted practices and changes to guidance used by insurance regulators including the Accounting Practices and Procedure Manual and Financial Examiners Handbook.

We also help prepare clients for both financial and market conduct examinations or anticipated regulatory intervention. We sometimes structure internal, confidential examinations with clients on a preemptive basis in order to assess potential regulatory risk and to prevent or close compliance gaps. During examinations (or when clients are facing disciplinary proceedings) we help negotiate appropriate consent orders and settlements. Our work on pre-emptive risk assessments (anticipating intervention by insurance regulators) and financial and market conduct examinations is spearheaded by a team that includes a former insurance regulator.

Tracking Federal and International Insurance Laws

Members of our Insurance Team actively participate in the regulatory & legislative process for state, federal and country-specific insurance laws, as well as model insurance laws and regulations formulated by industry organizations and tribunals such as the NAIC (National Association of Insurance Commissioners) and the IAIS (International Association of Insurance Supervisors). We represent clients before all state insurance departments and international regulators, including the UK, EU authorities and monetary authorities in Asia.

We also track proposed and amended insurance laws to help our clients best respond to the challenges and opportunities these changes present. Overall, we partner with our clients to help them identify, organize and manage the growing number of regulatory and insurance operational requirements set forth in both regulations/laws as well as the numerous bulletins and advisory letters issued to our insurance clients from all jurisdictions. In this regard, we create in-house webinars, presentations and compliance manuals to mitigate risk, guide best practices and assist with investigations to ensure continuing compliance.

Data Privacy and Security

Our Insurance Team's Data Privacy and Security specialists are led by two internationally-recognized cybersecurity and privacy experts who operate a 24/7 Data Breach Response Program and hotline. Data Privacy and Security specialists advise insurance companies and other firm clients on all aspects of data privacy and security issues that arise under the laws of multiple jurisdictions, including the EU's GDPR, the California Consumer Privacy Act, the Children's Online Privacy Protection Act, Gramm-Leach-Bliley Act Privacy and Safeguards Rules, the Fair Credit Reporting Act, state privacy and data breach laws (particularly the NY Cybersecurity Regulations) and FTC and state law enforcement precedent.

Our Data Privacy and Security specialists partner with clients to maintain strong privacy and data protection programs, routinely conducting gap assessments so that clients can better align their programs with international privacy standards. They also advise insurers and other clients regarding the international sharing and mobilization of data, policies, and procedures, and on complex transactions involving monetization and licensing of data. Our Insurance Regulatory (and Fintech) specialists coordinate closely with our Data Privacy and Security experts when coordinating a response to regulatory investigations and inquiries.

When matters escalate, BCLP litigators handle enforcement and other actions in court and before governmental agencies and tribunals. Our Data Privacy and Security specialists are known for their strong "preventive" strategy for avoiding privacy and data security issues and they work closely with executive leadership of insurance and other client groups to assess company or group-specific risk, draft policies and procedures and training materials, and conduct data breach tabletop exercises.

MEET THE TEAM



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EXPERIENCE

Examples of our regulatory representations include:

- For numerous multi-national insurance, private equity and other clients, preparing and negotiating change in control regulatory filings and approvals, including Form A Statements for Acquisition of Control of Insurers, Form E market share analysis and disclaimers of control.
- Other Holding Company Act filings in U.S. jurisdictions, including Form B Registration Statements and Form D Affiliate Transaction approvals, including on-site at a multi-national property-casualty insurer;
- Insurance Investigations, including:
- Pre-emptive internal market conduct examination performed for large multinational life insurer, anticipating imminent regulatory intervention (vanishing premiums).
- State insurance department investigations and disciplinary proceedings on specific market conduct or licensing issues.
- Structuring material transactions to comply with regulatory requirements, including extraordinary dividends, surplus notes, indemnity and assumption reinsurance and other insurance-related agreements.
- Inter-company agreements, including cost-sharing, tax allocation and investment manager agreements.

- Structuring insurance intermediary arrangements to comply with commission-sharing, licensing triggers, premium trust fund account and compensation disclosures.
- Comparative, multi-jurisdictional analysis of state insurance compliance requirements, to assist with choice of domicile or potential redomestications.
- Representing Surplus Lines Associations
- Drafting proposed insurance legislation and submitting interested party letters to the NAIC and other tribunals
- Credit for reinsurance – compliance with trust and collateral requirements
- Unfair Trade Practices issues, such as rebating, tie-in sales, advertising and commission-sharing with non-licensees.
- Analysis of state insurance licensing triggers, especially in the Affinity Program and InsureTech contexts.
- Insurance company investment limitations.
- Advising on compliance with, and conducting gap assessments with respect to, insurance laws governing data privacy and cybersecurity.
- Preparation of Compliance manuals, including synthesizing insurance law requirements into business-friendly formats/manuals.
- In connection with acquisition of insurance company, advising private equity firm on insurance regulatory implications and determination of “control” under state’s Insurance Holding Company laws for complex LLC structures.
- Advising banking/financial services company on purchase of entities within insurance holding company and opportunities to restructure reinsurance arrangements post-closing.

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