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This article first appeared in a slightly different form in *Insurance Day*, 30 July 2010

DODD-FRANK ACT

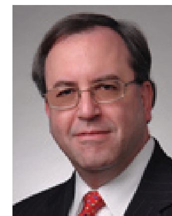
By Lawrence R. Hamilton, David W. Alberts and Vikram Sidhu

On July 21, 2010, President Obama signed the Dodd-Frank Wall Street Reform and Consumer Protection Act. The Act generally preserves state-based regulation of insurance in the US, but it also creates a Federal Insurance Office ("FIO"). FIO will cover all lines of insurance except health, most long-term care and crop insurance. While the power and responsibilities that the Act assigns to FIO are relatively limited, its creation represents a new foray of the federal government into the world of insurance regulation.

One of FIO's primary responsibilities will be to monitor the insurance industry, including identifying issues or gaps in current insurance regulation that could contribute to a systemic crisis in the insurance industry or the US financial system. FIO will recommend to the new federal Financial Stability Oversight Council any insurer that should be subject to supervision as a systemically risky nonbank financial company. FIO will be empowered to seek information directly from insurers.

FIO will also coordinate US federal efforts on, and develop policy regarding, international insurance matters. The Act provides for preemption of state insurance regulations to the extent they are inconsistent with agreements between the US and other nations, or discriminate against non-US insurers operating in the US insurance market. However, the Act exempts various types of state insurance regulations from preemption (e.g. measures regarding insurers' rates, premiums, underwriting or sales practices, or capital and solvency requirements that do not discriminate against non-US insurers).

The big question is how the Act will affect the state-based regime that is the hallmark of insurance regulation in the US. To some, FIO represents the "camel's nose under the tent" that will lead to increasing federal involvement in insurance regulation. However, the Act does not come close to implementing the more radical initiatives sought by advocates of federal insurance regulation, such as an optional federal charter for insurers. So, it is fair to say that the Act takes the small step of building on the broad consensus that enabling the US to speak with one voice in the international insurance arena and enabling non-US regulators to address a single federal office rather than 51 independent state regulators will provide benefits in both directions, particularly given the importance of equivalency assessments under Solvency II. Where this leads will depend on: (i) how well the FIO works in practice; if it yields commercial benefits, its role may be expanded in the future; (ii) whether the FIO's reports on how to modernize and improve the system of ins-urance regulation in the US leads Congress to enact further expansions of the federal role.



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