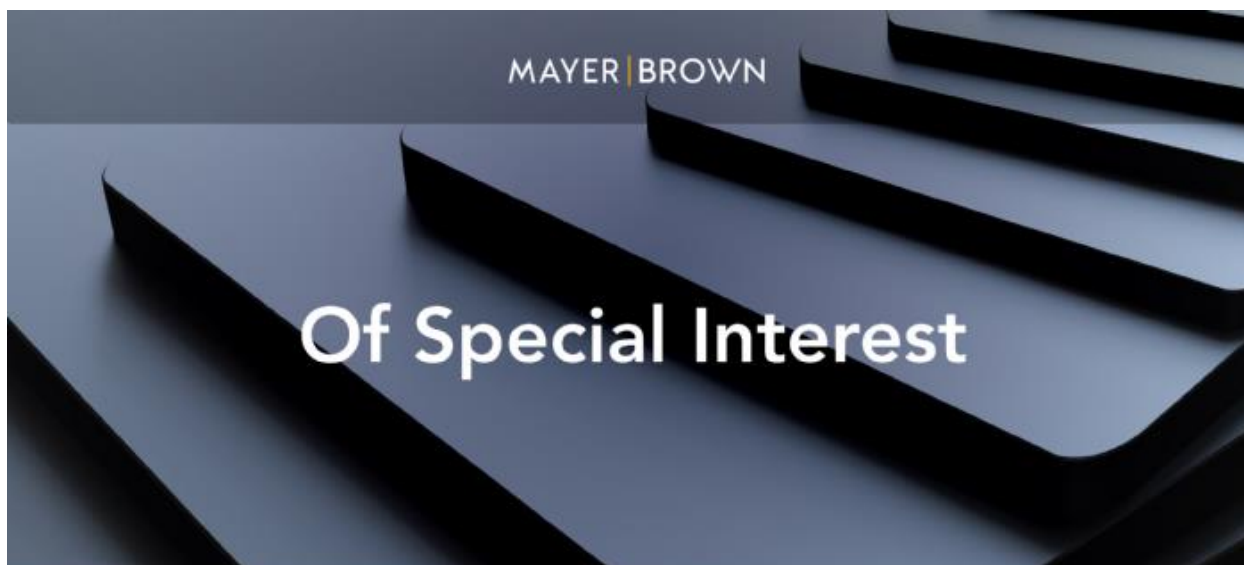




Mayer Brown Year-End Update on US Property/Casualty Runoff

2023 was a busy year in the property/casualty runoff sector, and our team at Mayer Brown continued to be at the forefront of transactions and thought leadership in the sector. We are pleased to share the following recent highlights since our [2023 Mid-Year Runoff Update](#).

Mayer Brown/AIRROC Runoff Deal Forum – February 7, 2024

We are very pleased to host the [Mayer Brown/AIRROC Runoff Deal Forum](#) again in our New York office on Wednesday, February 7, 2024. The Forum will open with a lunch and learn session, “Legacy Transactions – Terminology, the Process and Contract Terms,” and will include a two-part State of the Market segment covering the broader financial and insurance markets as well as the property/casualty runoff market. We will close the program with a panel on regulatory topics presented by Mayer Brown lawyers. View the [event webpage](#) for additional details.

For those interested in attending, please contact Grace O’Toole (gotoole@mayerbrown.com).

Recent Mayer Brown Runoff Deals

We have included below a selection of our runoff deals announced in 2023. View our latest [Runoff Solutions brochure](#).

- **KB Financial Group, Inc.** in the sale of the insurance business of the US branch of KB’s subsidiary, Kookmin Best Insurance Co., Ltd., to Swiss Reinsurance America Corporation. The transaction was structured as a loss portfolio transfer reinsurance.
- **R&Q Insurance Holdings Ltd.** in the sale of R&Q’s program management business, Accredited, to Onex for \$465 million. The announcement followed a corporate restructuring by R&Q to separate the Accredited program business from its legacy business, on which Mayer Brown also advised R&Q. View [Press Release](#).

- **SiriusPoint** in its agreement with Compre for a loss portfolio transfer covering approximately \$1.3 billion of reserves underwritten by SiriusPoint's international reinsurance business in Sweden and its Lloyds Syndicate 1945. View [Press Release](#).
- **QBE** in the sale of its diversified portfolio of business covering International and North America financial lines, European and North American reinsurance portfolios and several US discontinued programs to Enstar Group Limited through a \$1.9 billion loss portfolio transfer. View [Press Release](#).
- **R&Q Insurance Holdings Ltd.** in the formation of a new joint venture with Obra Capital and the acquisition of a wholly owned subsidiary from global safety equipment manufacturer MSA Safety Incorporated, covering product liability claims relating to coal dust, asbestos, silica and other exposures. View [Press Release](#).

Mayer Brown Runoff Thought Leadership

We briefly summarize the following developments below:

- Developments in insurance business transfer and corporate division legislation and at the National Association of Insurance Commissioners ("**NAIC**");
- Guidance from the Bermuda Monetary Authority ("**BMA**") for Bermuda regulated legacy insurance groups entering into transactions involving corporate liabilities;
- Recent UK restructuring developments, including expanded write-down power; and
- Other related developments of interest to the insurance industry.

Developments in Insurance Business Transfer and Corporate Division Legislation and at the NAIC

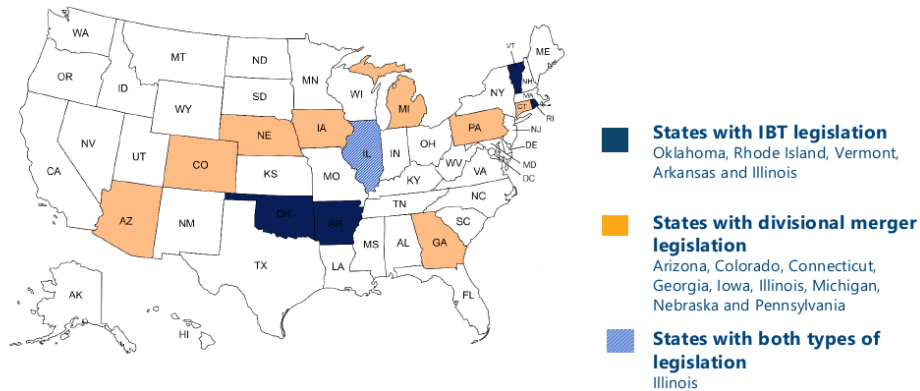
Although insurance business transfer ("**IBT**") and corporate division ("**CD**") transactions were permitted in several US states in 2023, and several additional states considered adding such transactions under their insurance laws, IBT and CD transactions were not much utilized in the legacy/runoff space during the past year.

IBT transactions are most similar to transactions pursuant to Part VII of the United Kingdom's Financial Services and Markets Act of 2000, which allows UK insurers to transfer portfolios of in-force insurance policies to other legal entities (commonly referred to as a "**Part VII Transfer**"). Similarly, US IBT laws allow an insurer to transfer blocks of insurance policies to a different insurer following the statutorily required process. In comparison, CD transactions allow an insurer to divide itself into two or more legal entities, with assets, liabilities, and insurance policies split amongst the insurers resulting from the division. US insurers may only undertake an IBT or CD where permitted under state law.

To date, IBT legislation has been adopted in Arkansas, Illinois (in 2023), Oklahoma, Rhode Island, and Vermont. IBT legislation was also proposed in Texas last year, although the bill died in committee.

The states that have adopted CD laws are Arizona, Colorado, Connecticut, Georgia, Illinois, Iowa, Michigan, Nebraska, and Pennsylvania.

Below, is an illustration of the IBT and CD legislation to date.



As states slowly adopt IBT and CD legislation, the NAIC continues to engage in discussions regarding developments and considerations at the state level, including by seeking to draft its best practices framework for IBTs and CDs, which we described in our Legal Update, "[US NAIC Update: Restructuring Mechanisms \(E\) Working Group](#)."

However, the NAIC's Restructuring Mechanisms (E) Working Group, which is leading that effort, has not done any updates since April 2023.

Bermuda Monetary Authority Guidance for Bermuda Regulated Legacy Insurance Groups Entering into Corporate Liabilities Transactions

On December 28, 2023, the BMA issued its [Guidance Note - Legacy Insurance Groups Accounting and Capital Treatment for Corporate Liabilities](#) (the "**Guidance Note**") outlining its expectations for Bermuda regulated legacy insurance groups and insurers acquiring non-insurance companies' legacy liabilities ("**corporate liabilities**").

Under the Guidance Note, the BMA emphasizes that Bermuda regulated legacy insurance groups and insurers must obtain prior regulatory approval from the BMA before entering into any transactions to conduct legacy business. The BMA will require that a pre-approval application for a corporate liabilities transaction include adequate documentation, such as:

- (a) An assessment showing that exposures from the assumed liabilities will be limited to 15% of the existing total net insurance reserving of the acquiring Bermuda regulated insurance group, as of the most recent year-end;
- (b) An independent/third-party solvency or financial opinion on the "LLC" (i.e., the company structured to facilitate the managing of corporate liabilities); and
- (c) A runoff plan, which details how management will run down the corporate liabilities, inclusive of stress scenarios under a baseline and alternative stress scenarios and expenses/cost projections verified by the risk management function.

In addition, the Guidance Note provides guidance regarding accounting and capital treatment as well as reporting requirements for corporate liabilities transactions. Finally, the Guidance Note sets forth the list of requirements and documents for the pre-approval application.

UK Government Introduces Expanded Write-Down Power

The UK Government has amended the [Financial Services and Markets Act 2000](#) ("FSMA") to introduce an expanded write-down power, under which the Court may reduce the value of an insurer's liabilities when it is—or is likely to become—unable to pay its debts. The new statutory provisions (sections 377A to 377K and Schedules 19A to 19C FSMA) replaced the existing write-down power in section 377 FSMA, which had never been used in practice.

A new moratorium has also been introduced, which temporarily prevents suppliers and some financial contract counterparties from relying on *ipso facto* clauses while an insurer is in administration, during a write-down process, and while there is an outstanding petition for winding-up in relation to the insurer (but not once a winding-up order is made). Certain arrangements in financial contracts will be excluded from the moratorium to protect parties' risk management practices. In particular, the moratorium will not affect 'protected arrangements' under the United Kingdom's Banking Act 2009. A temporary moratorium on life insurance policyholder surrender and switching rights is also introduced.

The Bank of England and the Prudential Regulation Authority published a [statement of policy](#) on dealing with insurers in financial difficulties in relation to these expanded write-down powers.

UK Government's Proposed Introduction of a Bespoke Insurer Resolution Regime

In a 2023 [Consultation](#), the UK Government sought views from the market on the proposed introduction of a new resolution regime for insurers, which would provide the relevant UK regulatory authorities with new powers and greater flexibility to resolve a systemic insurer in the event of its failure. As matters stand, large, systemic insurers in the United Kingdom are subject to recovery and resolution planning. A failing insurer is managed through modified versions of the United Kingdom's standard corporate insolvency arrangements and other restructuring procedures.

In its [Response](#), the UK Government confirmed that it plans to introduce legislation for a bespoke insurer resolution regime when Parliamentary time allows. It is proposed that this resolution regime would apply to UK-authorized insurers (with the exception of certain smaller insurers, friendly societies, and Lloyd's of London) and certain of their holding companies and group companies; UK branches of foreign insurers; and certain Gibraltarian insurers with a UK branch.

The Consultation and Response suggest that any resolution regime would include a number of stabilization options:

- Transfer of the insurer's shares or business to a private sector third-party purchaser.
- Transfer of the insurer's shares or business to a temporary bridge insurer (e.g., to facilitate the warehousing of a "good" book of business, pending due diligence, valuation and eventual sale to a third party).
- Bail-in of all or part of the unsecured creditor claims, including policyholder claims, in a manner which respects the hierarchy of claims in a liquidation (e.g., to facilitate safe runoff of the business—it is not proposed that bail-in would recapitalize an insurer so that it could continue to write new business).
- Temporary public ownership, as a last resort.

These stabilization options would be accompanied by a number of ancillary tools:

- The power to establish asset management vehicles for the management and runoff of non-performing or difficult-to-value assets.
- An insurer administration procedure which would facilitate the continued operation of the insurer's critical functions in the context of a transfer to a third-party purchaser or bridge insurer.

The exercise of the stabilization options would be subject to a number of protections, including independent valuation of the insurer's assets and liabilities and protection of creditors through a "no creditor worse off" safeguard (which may trigger a right to receive compensation). There would also be protections for set-off, netting and title transfer arrangements.

The United Kingdom's proposed resolution regime demonstrates further regulatory divergence with the European Union, which issued its own proposal for the resolution of European insurers in 2021 (which we anticipate will be adopted in the first half of 2024, and then adopted into national law and regulation). This means that, where cross-border insurance and reinsurance groups are failing, they will have to navigate two different regulatory frameworks, if the group has a presence in both the United Kingdom and the European Union.

Other Related Mayer Brown Thought Leadership

At the NAIC's 2023 Fall National Meeting, members of our Insurance Industry Group attended and published [a series of articles](#) providing highlights and takeaways on what the committees, task forces, and working groups discussed and reported on. Notably, there were a number of important investment-related initiatives that were addressed in sessions at the Fall National Meeting, which we summarize in our Legal Update, "[US NAIC Fall 2023 National Meeting Highlights: Major Investment-Related Initiatives](#)."

Also in November 2023, the NAIC's Cybersecurity (H) Working Group (the "**Cybersecurity Working Group**") met virtually to discuss activities and updates relating to cybersecurity, which are detailed in our Legal Update, "[US NAIC Fall 2023 National Meeting Highlights: Cybersecurity \(H\) Working Group](#)." The Cybersecurity Working Group announced that it will be circulating a revised draft of its Cybersecurity Event Response Plan ("**CERP**"), which is intended to govern multi-state coordination when multiple states are investigating a significant cyber incident at an insurer. Amongst other items, notable revisions to the CERP include the introduction of a lead state concept, guidance regarding notifications to state insurance regulators, and tools available to state insurance regulators that are investigating an insurer's response to a cyber incident.

In addition, the New York State Department of Financial Services also finalized amendments to its cybersecurity regulation (the "**Amendment**") in November 2023. The Amendment expands cybersecurity requirements across various areas—from governance to incident response to access to controls. Notable changes set forth in the Amendment include: (1) new requirements for larger companies; (2) expanded governance requirements for boards, senior officers, and chief information security officers; (3) expanded cyber incident notice and compliance certification requirements; (4) new requirements for incident response and business continuity planning; and (5) an expanded multi-factor authentication requirement for user access to a company's network. For further details regarding the Amendment, please refer to our Legal Update, "[NYDFS Releases Amendment to Cybersecurity Regulation](#)."

Recap of Mayer Brown Participation in the Runoff Events

Mayer Brown engaged in various runoff industry events and forums last year. A few notable mentions include:

1. **Fifth AIRROC & Mayer Brown Runoff Deal Forum.** In February 2023, AIRROC and Mayer Brown hosted its [fifth annual runoff deal forum](#). Panelists (major players and senior executives in the runoff market) shared their insights, lessons, highlights and tips for success. Amongst the forum's speakers were Mayer Brown partners Stephen Rooney, Vikram Sidhu and David Alberts, and associate Juliana Toes.
2. **AIRROC Legacy Transactions & Networking Forum.** Mayer Brown was a proud sponsor of the [AIRROC Legacy Transactions & Networking Forum](#) held on October 15-17. Mayer Brown partner David Alberts served as panel chair for a program titled, "The Legacy Dealmaking Landscape – Fall 2023: What do YOU Think?"—an interactive session on considerations for the current legacy deal landscape.
3. **Demystifying Insurance Legacy.** Mayer Brown was pleased to participate in *Demystifying Insurance Legacy*, hosted by the AIRROC NextGen Council, Re40 and Dentons. Mayer Brown associate Juliana Toes served as a panelist to discuss trends in the legacy market and different career opportunities for emerging professionals in the runoff market.
4. **Chicago Regional Education Day:** Mayer Brown participated in the AIRROC Chicago Regional Education Day on May 24. Mayer Brown associate Juliana Toes served as a panelist for the program, "Legacy Market Overview and the Nuts and Bolts of Legacy Transactions."
5. **AIRROC's The Legacy Life Podcast.** Mayer Brown associate Juliana Toes was featured on AIRROC's "The Legacy Life," a podcast asking "what does a career in runoff insurance or reinsurance actually look like?" which can be found [here](#).

Contact Us

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