Insurance Company Ownership and the Impact on Existing Policyholders Contract/Policies

Courtesy: ALIRT Insurance Research (October 2021)

The significant and continuing level of change among the owners of insurance companies has created some concern among distributors, advisors, and policyholders regarding the ongoing viability of both in-force and future insurance policies or contracts. When an insurance company is sold there is less immediate change than meets the eye, for the following reasons:

1. A policyholder's legal claim for any claim or policy benefit is to the assets of the specific insurance company that issued the contract. This is true regardless of whether the policy is a life insurance contract, annuity of any kind, long-term care, disability, or other health insurance product. It also includes funding of a policyholder's living or death benefit guarantee associated with a variable and fixed indexed annuity, which is provided (if needed) by the issuing insurer's general account.

2. This legal claim DOES NOT extend to the parent company of the issuing insurer, whoever the parent company is and whatever the organizational ownership structure may be. The claim also DOES NOT extend to any affiliated entity.

3. Policyholders retain the same legal rights with their contract, and a change in ownership of the insurer does not alter this in any way. The acquirer is not able to make changes (policy terms and conditions, crediting rates, etc.), other than what is already contractually permissible. The only possible exception to this would be an insurer that is under state regulatory control and then transferred to a new owner.

4. The financial and operational profile of an insurer does not automatically change purely as a result of a change in the insurer's ownership.

5. However, there are often changes to public rating agency ratings when insurance companies are sold. This is the result of public rating agency methodology, which is heavily influenced by the rating agency's opinion of an insurer's parent company and especially the parent's ability to service its senior debt obligations. As a result, the insurance company ratings are often directly linked to the parent senior debt rating.

6. Hence, when a company is announced for sale or deemed a "non-core" subsidiary of a group, the public rating agency ratings are often adjusted. If the new parent company is smaller, this almost always results in a ratings downgrade (sometimes substantial) of the transacted insurer.

7. ALIRT believes that the public rating agency emphasis on parent company financial profile assumes that the parent is "backing" the insurance company(ies) that it owns. However, this "backing" is almost always entirely implicit and carries no legal weight, and thus it is not guaranteed and can change at any time. Indeed, the sizable number of insurance companies sold in the years since the financial crisis exhibit that insurers can be sold or de-emphasized at any time and without notice.

8. This makes it even more critical to focus attention on the standalone financial profile of the insurance company that issued the contract, and place as little emphasis as possible on the insurer's parent company.

9. The change in ownership of any insurer must be approved by the insurance regulators in the insurer's state of domicile.

10. The prospective new owner must present their "case" to the regulators as to why they are suitable owners for the insurer. As part of this process, regulators can request information from the proposed buyer as to their plans for the insurer in question. This can include management's projections and plans in terms of the insurer's capitalization, investments, hedging activities, risk management, and other factors.

11. In many states, the state insurance regulator also requires that a public hearing is held on the proposed transaction. In all likelihood, the acquirer and the regulators have already had extensive dialogue before a public hearing, and any material conditions and concerns the regulators expressed would be incorporated into their filings before a public hearing takes place.

12. After an acquisition, the insurer continues to be regulated by the insurance regulators in its state of domicile (if the insurer is merged into another insurer it may come under a different state's regulatory regime).

13. The insurer must continue to file the same regulatory financial statements with state insurance regulators, every quarter, regardless of who happens to own the insurer at a given time.

In summary, a policyholder's legal positioning does not change in the event an insurer is sold, and there are considerable policyholder protections in place when an insurer is being sold. A new owner does not become more able to change policy terms and conditions (absent the insurer being under state rehabilitation or conservatorship), and regulators must approve the sale of any insurance company.

However, the new owners do have the ability to make changes to the investment portfolio, new product offerings (if any), capitalization levels, and can also sell or acquire business lines. In addition, as the last 12 years have evidenced insurers can be sold at any time, and indeed a few privately held insurers (and their organizations) were sold twice in the 2010s.

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