



97%

of corporate counsel worldwide say regulators have become more interventionist in the last 12 months.

(Norton Rose Fulbright)

FATCA Clarification Bill Introduced

A bill was introduced in the U.S. House of Representatives in the final week of September to clarify that property-casualty insurance premiums have nothing to do with tax evasion and shouldn't be included as part of the Foreign Account Tax Compliance Act. The bill, HR 6159, would ease hundreds of millions of dollars in projected compliance costs for the insurance industry. It was introduced by Rep. John Larson, D-Conn., and Rep. Ed Royce, R-Calif. The Council has been working with the Department of Treasury and members of Congress on this issue and applauded the bill.

LICENSING > SCOTT SINDER AND JOHN FIELDING

Crossing the Pond

Non-U.S. brokers need a U.S. license to solicit business in the U.S.

The world seems to shrink a bit every year. Recent machinations related to London brokers crossing the pond to meet with retail firms and their clients is the latest example. The U.S. firms that directly participate in the London markets generally do so through offices they have established there with locally licensed agents and brokers. Although U.S. and U.K. licensure rules are substantively indistinguishable, some London brokers appear to be coming to the United States to meet with clients and prospects without being appropriately licensed.

As a general matter, each individual who is meeting in person with a U.S.-based client and/or a local agent or broker and is discussing in any way a specific insurance contract with a U.S. risk (selling them,

soliciting purchase orders, discussing the terms or conditions, etc.) needs to be licensed in the United States.

General marketing meetings during which the agent, broker or firm is being marketed but no specific insurance contracts are discussed do not require a license. To the extent your firm is sending producers to the U.S. or is hosting them, you may want to ensure your people are abiding by the law; otherwise, you are risking regulatory repercussions.

Recently The Council, Lloyd's, the Lloyd's Market Association, the London & International Insurance Brokers' Association and NAPSLO issued an alert to remind stakeholders of the requirements of U.S. producer licensing laws. The following is a summary of the alert.

LICENSE REQUIREMENTS FOR DOING U.S. BUSINESS

As a general rule, all U.S. states require a license for the solicitation of insurance within the state. The National Association of Insurance Commissioners' Producer Licensing Model Act defines "solicit" as "attempting to sell insurance or asking or urging a person to apply for a particular kind of insurance from a particular company." Although state laws differ slightly on the definition of "solicit," the NAIC's definition serves as a helpful and generally applicable benchmark.

In addition to solicitation, the following types of activities generally trigger state producer licensing requirements: negotiating insurance contracts, transacting insurance and selling insurance. Again, the states have adopted minor variations on these broad categories of licensable activities. For example:

In California, a license is required for anyone who solicits, negotiates or effects contracts of insurance in the state.

In Florida, a license is required for anyone who solicits or transacts insurance in the state.

REGULATORY NEWS TICKER

NEW MEXICO Insurance superintendent John Franchini says his office will audit portions of premium tax collections and bill for unpaid balances, which state auditor says probably exceed \$200 million based on sampling of underpayments by five insurers. Civil investigation into insurers and non-payment of premium taxes continues, but Franchini is keeping details under wraps. Tax filing errors blamed on agency's computer software problems, lax internal

agency controls and inadequate staffing. www.osi.state.nm.us

NEW YORK Floats first-of-its-kind cyber-security regulation to allow insurers, banks and other financial institutions to create and enforce their own programs as long as they meet minimum state standards and train employees to avoid cyber error. Goal is to reduce reliance on government regulations that can quickly become outdated.

Companies must file annual certification with state confirming compliance with regulations and responsiveness to own risk profile. Public comment period went through Oct. 31. www.dfs.ny.gov

OKLAHOMA State Supreme Court rules 7-2 that workers comp opt-out system is unconstitutional. Supports state Workers Compensation Commission's conclusion in *Vasquez v. Dillard's*. Court

says its decision applies to all similar cases before the commission, including appeals and future cases. Sent Vasquez case back for determination of benefits. » National Council on Compensation Insurance filed overall loss cost decrease of 10.2%, expected to take effect Jan. 1 after state review. » Gov. Mary Fallin names attorney Jordan Russell to state Workers Compensation Commission, which handles claims of injured workers. He fills

In New York, a license is required for anyone who sells, solicits or negotiates insurance in the state.

In Texas, a license is required for anyone who sells or solicits insurance or procures or collects premiums in the state.

NON-U.S. BROKER BEST PRACTICES

General advertising, marketing and promotion of services (i.e., without reference to specific insurance products, terms or conditions) typically do not fall within the above-referenced categories of licensable activities. The distinction between marketing and solicitation turns in part on whether the broker appears to be extending an offer of a particular kind of insurance to an insured or group of insureds or simply offering brokerage services to the general public. To the extent a broker has any direct contact with an insured (or group of insureds) in a state, however, a state regulator is more likely to find that a license is required.

To the extent your firm is sending producers to the U.S. or is hosting them, you may want to ensure your people are abiding by the law; otherwise, you are risking regulatory repercussions.

Some states are more aggressive than others in enforcing their licensure laws. For instance, in California, without a surplus lines broker license, “aiding a nonadmitted insurer to transact business” in the state is a misdemeanor offense.

So be mindful of these parameters

when conducting insurance-related activities in the United States. Anything that can be construed as the sale, solicitation or negotiation of an insurance contract needs a license. Because the states’ specific approaches vary, we advise you to review each state’s laws, regulations and guidance to ensure you are not engaged in impermissible activities.

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Feds Make Play for Workers Comp Oversight

“Working people are at great risk of falling into poverty as a result of workplace injuries and the failure of state workers’ compensation systems to provide them with adequate benefits.” So says the U.S. Department of Labor report on workers compensation released Oct. 5.

The report cites a decline in states’ voluntary compliance with recommendations from the National Commission on State Workmen’s Compensation Laws, formed by congressional act in 1970. The commission set forth 19 “essential elements” of quality workers compensation that employers should adopt. “Perhaps acting under fear of federal intervention, states’ compliance with the 19 essential recommendations increased, and the adequacy of some benefits unquestionably improved,” the report says. “By the mid-1980s, however, it became clear that federal intervention was improbable, and the motivation to conform to the National Commission’s recommendations dwindled,” it says.

The DOL says that it has become more difficult to successfully apply for workers compensation and that “statutory amendments that restrict workers’ benefits or access have become increasingly bold.” The report specifically spotlights opt-out programs.

The first policy area the DOL lists under its roster of areas that “deserve exploration” is an increased federal role in the oversight of workers compensation, including the appointment of a new National Commission and the “establishment of standards that would trigger increased federal oversight if workers compensation programs fail to meet those standards.”

The DOL also wants to study increased data sharing of workers compensation incidents, the development of programs that use evidence-based standards to help manage long-term disabilities, and the coordination of Social Security Disability Insurance and Medicare benefits with workers comp to reduce the transfer of costs associated with work injuries to social insurance programs.

spot vacated by Dr. LeRoy Young, who left to spend more time in medical practice. Russell was policy director and counsel to state House speaker Jeff Hickman.

» Insurance commissioner John Doak clarifies that earthquake insurers in the state don’t have six-month moratoria on policy purchases after quakes hit. Maximum delay Doak found was 60 days to clearly separate one event from another, and most small tremblors would not trigger additional

waiting period. » U.S. Environmental Protection Agency shuts down 32 oil and gas wastewater disposal wells in northeastern part of state after discovery of new fault line that produced state’s strongest earthquake on record Sept. 3—5.8 magnitude. www.oid.ok.gov

OREGON Approves average 6.6% drop in workers comp pure premium rates effective Jan. 1. Workers comp premium

assessment to rise to 6.8% from 6.2% last year. Payroll assessment drops from 3.3 cents to 2.8 cents per hour worked. <http://dfr.oregon.gov/Pages/index.aspx>

PENNSYLVANIA Reduces mandated annual increase in coverage limits under inflation protection provisions for long-term care partnership policies to at least 1%, down from at least 3%. Under state law, insurers must still offer 5% compound annual

inflation protection on long-term care policies. New minimum became effective Sept. 16. www.insurance.pa.gov

TENNESSEE Blue Cross Blue Shield of Tennessee quits ACA exchange in Nashville, Memphis and Knoxville. Will continue serving 80,000 or so insureds primarily in rural areas. www.tn.gov/commerce/section/insurance