

# CLIENT UPDATE

## NEW YORK INSURANCE HOLDING COMPANY LAW AND REGULATION AMENDMENTS 2013

### NEW YORK

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New York has recently enacted and promulgated amendments to its insurance holding company laws and regulations and related laws. The changes in regulation were made by the Third Amendment to Insurance Regulation 52 effective June 23, 2013. The changes in law were made by Chapter 238 of the Laws of 2013, most of the provisions of which were effective July 31, 2013 but some of which will become effective October 29, 2013.

While all of these amendments affect New York domestic controlled insurers, many of these amendments affect New York commercially domiciled insurers and some of these amendments even affect New York foreign licensed insurers. Therefore, all New York licensed insurers should be aware of the impact of these changes on their (and their parent's) New York reporting and compliance requirements.

A table setting forth (i) the key laws and regulations before and after the amendments, (ii) whether they affect domestic, foreign or commercially domiciled insurers, and (iii) the applicable effective dates of the amendments is attached to this Client Update.

## **BACKGROUND**

The New York insurance holding company law, originally enacted in 1969, was among the first such laws enacted in the U.S. While it covers the same major regulatory subjects as the NAIC Insurance Holding Company System Regulatory Act, it has done so with substantial deviations from the NAIC Model Act, including:

- Insurance holding company registration for all controlled insurers, domestic and foreign.
- Low materiality thresholds for prior notice of certain affiliate transactions entered into by a domestic controlled insurer.
- No materiality threshold for prior notice of affiliate reinsurance transactions entered into by a domestic controlled insurer.
- Exemption from the prior notice of affiliate transactions for an affiliate transaction between a domestic controlled insurer and its subsidiary.

## **MAJOR 2013 AMENDMENTS**

The 2013 amendments are designed to bring New York insurance company regulation into compliance with the insurance holding company accreditation standards of the National Association of Insurance Commissioners and thus include many of the amendments made to the NAIC's Insurance Holding Company System Regulatory Act and Insurance Holding Company System Model Regulation With Reporting Forms and Instructions adopted in 2010. Among the major amendments made in New York are the following:

- New holding company notice to the domestic controlled insurer and the Superintendent of any proposed divestiture of the domestic controlled insurer at least 30 days prior to the cessation of control.
- New notice of material changes to information in a registration statement within 30 days following the change, applicable to domestic, foreign and commercially domiciled insurers.
- New annual enterprise risk report filing by a holding company that controls a domestic, foreign or commercially domiciled insurer.
- Liberalization of the affiliate transaction materiality thresholds for sales, purchases, exchanges, loans or extensions of credit, or investments involving a domestic or commercially domiciled controlled insurer and its non-subsiary affiliate.

- Increase in the prior notice period for affiliate reinsurance agreements involving a domestic or commercially domiciled controlled insurer and its non-subsidiary affiliate from 30 to 45 days.
- New prior notice requirement for the following affiliate transactions between a domestic or commercially domiciled controlled insurer and its non-subsidiary affiliate: tax allocation agreements, guarantees and cost-sharing agreements.
- New prior notice requirements for certain affiliate transactions between a domestic insurer and its subsidiary.

Again, a table setting forth (i) the key laws and regulations before and after the amendments, (ii) whether they affect domestic, foreign or commercially domiciled insurers, and (iii) the applicable effective dates of the amendments is attached to this Client Update.

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Please do not hesitate to contact us with any questions.

September 5, 2013

**2013 Amendments to New York Holding Company Laws and Regulations and Related Laws**  
**D = Domestic Insurer; F = Foreign Insurer; CD = Commercially Domiciled Insurer**

Prior Law/Reg	As Amended by Ch. 238/Reg 52 (Third Amendment)	D	F	CD	Effective Date
<b><u>Acquisition of Control</u></b>					
Regulatory approval required to acquire control of a domestic insurer	None	X		X	
None	Acquiring person must agree to provide annual enterprise risk report (1506(a)(1)(a))	X		X	7/31/13
<b><u>Divestiture of Control</u></b>					
None	Holding company must provide Department and insurer with at least 30 days prior notice of cessation of control (1506(f))	X		X	7/31/13
<b><u>Registration by Controlled Insurer</u></b>					
Controlled insurer must file annual holding company registration statement ( <i>See Note 1</i> )	None	X	X	X	
Controlled insurer must amend the registration within 30 days of any change in its holding company	Controlled insurer must amend the registration within 30 days of any change in its holding company or any other material change (1503(a)) ( <i>See Note 2</i> )	X	X	X	7/31/13
<b><u>Annual Enterprise Risk Report</u></b>					
None	Holding company must adopt a “formal enterprise risk management function” and file an annual enterprise risk report by April 30 (1503(b)) ( <i>See Note 3</i> )	X	X	X	7/31/13

Prior Law/Reg	As Amended by Ch. 238/Reg 52 (Third Amendment)	D	F	CD	Effective Date
<b><u>Affiliate Transactions with Non-Subsidiary Affiliates – Prior Approval (See Note 4)</u></b>					
Sales, purchases, exchanges, loans or extensions of credit, or investments that involve 5% or more of admitted assets at last 12/31	None	X		X	
<b><u>Affiliate Transactions with Non-Subsidiary Affiliates – Prior Notice (See Note 4)</u></b>					
Sales, purchases, exchanges, loans or extensions of credit, or investments that involve more than ½% but less than 5% of admitted assets at last 12/31 (30 days’ prior notice)	Sales, purchases, exchanges, loans or extensions of credit, or investments that involve less than 5% of admitted assets at last 12/31 but equal or exceed - for A&H insurers, lesser of 3% of admitted assets or 25% of capital and surplus at last 12/31 - for life insurers, 3% of admitted assets at last 12/31 - for P/C insurers, lesser of 3% of admitted assets or 25% of surplus to policyholders at last 12/31 (30 days’ prior notice) (1505(d)(1))	X		X	7/31/13
Reinsurance treaties and agreements (30 days’ prior notice)	Reinsurance treaties and agreements (45 days’ prior notice) (1505(d)(2))	X		X	7/31/13
Rendering of services on a regular or systematic basis (30 days’ prior notice)	None	X		X	
Sales, purchases, exchanges, loans or extensions of credit, or investments that involve ½% or less of admitted assets at last 12/31 that when added to the respective aggregate of any such sales, purchases, exchanges, loans or extensions of credit, or investments made during the preceding 12 months that exceed - for life insurers, ½% of admitted assets at last 12/31 - for all other insurers, 1% of admitted assets at last 12/31 (30 days’ prior notice)	None (See Note 5)	X		X	

Prior Law/Reg	As Amended by Ch. 238/Reg 52 (Third Amendment)	D	F	CD	Effective Date
Any lease of real or personal property which does not provide for the rendering of services on a regular and systematic basis and where the aggregate payments to be made, including any renewal or extension thereof, exceeds - for life insurers, ½% of admitted assets at last 12/31 - for all other insurers, 1% of admitted assets at last 12/31 (30 days' prior notice)	Any lease of real or personal property which does not provide for the rendering of services on a regular and systematic basis and where the aggregate payments to be made, including any renewal or extension thereof, exceeds - for life insurers, 1% of admitted assets at last 12/31 - for all other insurers, 2% of admitted assets at last 12/31 (80-1.5(c)(2)) (30 days' prior notice) ( <i>See Note 5</i> )	X		X	6/23/13
None ( <i>See Note 6</i> )	Any management agreements, service contracts, tax allocation agreements, guarantees, or cost-sharing arrangements (30 days' prior notice) (80-1.5(c)(3))	X		X	6/23/13
<b><u>Acquisition of Control (Domestic Insurer Acquires Domestic Insurer)</u></b>					
P/C insurer acquires a domestic insurer – 90 days' prior notice	P/C insurer acquires a domestic insurer – 90 days' prior notice and regulatory approval (1603(a))	X			7/31/13
<b><u>Divestiture of Control (Domestic Insurer Divests its Controlling Interest in a Domestic Insurer)</u></b>					
None	P/C controlling insurer – insurer must provide Department and insurer with at least 30 days' prior notice of cessation of control (1603(d))	X			7/31/13
None	Life controlling insurer – insurer must provide Department and insurer with at least 30 days' prior notice of cessation of control (1710(a))	X			7/31/13
<b><u>Registration by Domestic Insurer</u></b>					
None	P/C domestic insurer must register within 30 days of becoming subject to registration and amend the registration within 30 days following any material change (1604(a))	X			10/29/13
None	Life domestic insurer must register within 30 days of becoming subject to registration and amend the registration within 30 days following any material change (1717(a))	X			10/29/13

Prior Law/Reg	As Amended by Ch. 238/Reg 52 (Third Amendment)	D	F	CD	Effective Date
<b><u>Annual Enterprise Risk Report (Domestic Insurer)</u></b>					
None	P/C domestic insurer must adopt a “formal enterprise risk management function” and file an annual enterprise risk report by April 30 (1604(b)(1))	X			10/29/13
None	Life domestic insurer must adopt a “formal enterprise risk management function” and file an annual enterprise risk report by April 30 (1717(b))	X			10/29/13
<b><u>Domestic P/C Insurers – Affiliate Transactions with Subsidiary Affiliates – Prior Notice</u></b>					
None	Sales, purchases, exchanges, loans, extensions of credit, or investments that equal or exceed the lesser of 3% of admitted assets or 25% of surplus to policyholders at last 12/31 (30 days’ prior notice) (1608(e)(1))	X			7/31/13
None	Loans or extensions of credit to any person who is not a subsidiary, where the insurer makes loans or extensions of credit with the agreement or understanding that the proceeds of such transactions, in whole or in substantial part, are to be used to make loans or extensions of credit to, purchase assets of, or make investments in, any subsidiary of the insurer making the loans or extensions of credit, that equal to or exceed the lesser of 3% of admitted assets or 25% of surplus to policyholders at last 12/31 (30 days’ prior notice) (1608(e)(2))	X			7/31/13
None	Reinsurance treaties or agreements that have not otherwise been submitted to the Superintendent No need to submit a copy of a reinsurance agreement unless requested by the Superintendent where the reinsurance premium or a change in the insurer’s liabilities, or the projected reinsurance premium or a change in the insurer’s liabilities in any of the next three years, is less than 5% of surplus to policyholders at last 12/31 Includes agreements that may require, as consideration, the transfer of assets from an insurer to a non-subsiary, if an agreement or understanding exists between the insurer and non-subsiary that any portion of the assets will be transferred to one or more subsidiaries of the insurer (45 days’ prior notice) (1608(e)(3))	X			7/31/13

Prior Law/Reg	As Amended by Ch. 238/Reg 52 (Third Amendment)	D	F	CD	Effective Date
None	Management agreements, service contracts, tax allocation agreements, guarantees, and all cost-sharing arrangements (30 days' prior notice) (1608(e)(4))	X			7/31/13
<b><i>Domestic Life Insurers – Affiliate Transactions with Subsidiary Affiliates – Prior Notice (See Note 7)</i></b>					
None	Sales, purchases, exchanges, loans, extensions of credit, or investments that equal or exceed the lesser of 3% of admitted assets at last 12/31 (30 days' prior notice) (1712(b)(1))	X			7/31/13
None	Loans or extensions of credit to any person who is not a subsidiary, where the insurer makes loans or extensions of credit with the agreement or understanding that the proceeds of such transactions, in whole or in substantial part, are to be used to make loans or extensions of credit to, purchase assets of, or make investments in, any subsidiary of the insurer making the loans or extensions of credit, that equal to or exceed the lesser of 3% of admitted assets at last 12/31 (30 days' prior notice) (1712(b)(2))	X			7/31/13
None	Reinsurance treaties or agreements that have not otherwise been submitted to the Superintendent  Includes agreements that may require, as consideration, the transfer of assets from an insurer to a non-subsiary, if an agreement or understanding exists between the insurer and non-subsiary that any portion of the assets will be transferred to one or more subsidiaries of the insurer (45 days' prior notice) (1712(b)(3))	X			7/31/13
None	Management agreements, service contracts, tax allocation agreements, guarantees, and all cost-sharing arrangements (30 days' prior notice) (1712(b)(4))	X			7/31/13

Note 1: Insurance Regulation 52, § 80-1.7(a), provides that a foreign controlled insurer that pursuant to the laws of its domestic state is required to register, report or otherwise disclose information substantially equivalent to that required by Regulation 52, may register, report or fulfill any similar disclosure requirements hereunder by filing, within the applicable required periods, copies of the material filed with its domestic state.

Note 2: Like the existing foreign controlled insurer registration requirements referred to in Note 1, we hope that the Department amends Insurance Regulation 52 to allow a foreign controlled insurer to file in New York a copy of its material change report filed with its domestic state in lieu of any special New York material



change report, provided that the foreign controlled insurer is required to file material changes in its domestic state. Note that the New York filing requirement (30 days from the material change) is different than the comparable NAIC Insurance Holding Company System Regulatory Act filing requirement (within 15 days after the end of the month in which it learns of each material change or addition).

Note 3: Like the existing foreign controlled insurer registration requirements referred to in Note 1, we hope that the Department amends Insurance Regulation 52 to allow a foreign controlled insurer to file in New York a copy of its annual enterprise risk report filed with its domestic state in lieu of any special New York report, provided that the foreign controlled insurer is required to file an annual enterprise risk report in its domestic state.

Note 4: For “Affiliate Transactions with Non-Subsidiary Affiliates,” the term “admitted assets” has the meaning in N.Y. Ins. L. § 107(a)(3) – which includes, for life insurers, separate account assets and investments in life insurer subsidiaries.

Note 5: Since the original materiality threshold for these smaller affiliate transactions that are aggregated for a 12-month period was based on the prior ½% of admitted asset threshold in N.Y. Ins. L. § 1505(d)(1), we hope that the Department amends Insurance Regulation 52 to increase this “aggregate” threshold to the higher materiality thresholds in the newly amended N.Y. Ins. L. § 1505(d)(1).

Note 6: The Department has long required filing of original tax allocation agreements and amendments thereto under Insurance Circular Letter 33 (1979), a special report required under the authority of N.Y. Ins. L. § 308.

Note 7: For “Domestic Life Insurers – Affiliate Transactions with Subsidiary Affiliates,” the term “admitted assets” for life insurers has the meaning in N.Y. Ins. L. § 1405(b)(1)(B) – which excludes separate account assets (other than seed money) and investments in life insurer subsidiaries.