

## Dodd-Frank Does Not Preempt All California's § 1011(c) Reinsurance Approval Requirements Applicable to Foreign Insurers

February 14, 2012 by [Michael Rosenfield](#) and [Chris Burusco](#)

Prior to the [Dodd-Frank Act](#), [California Insurance Code § 1011\(c\)](#) required all California-admitted insurers to obtain prior approval from the [California Department of Insurance](#) for any reinsurance transaction that exceeded a 50% or 75% threshold.

In other words, even if each insurer that was a party to the reinsurance agreement was only licensed in California and was domiciled elsewhere, § 1011(c) approval was nonetheless required.

On its face, the Dodd-Frank Act appears to preempt those California approval requirements as they pertain to reinsurance transactions involving only foreign insurers.

The CDI appeared to acknowledge this preemptive effect in [CDI Bulletin No. 2011-2](#) when the CDI stated that it:

*“will not exercise its discretion to conserve a non-domestic insurer for failure to obtain prior consent to such reinsurance transactions.”*

In the CDI's view, however, **assumption reinsurance** transactions **do not** fall within the category of Dodd-Frank preempted reinsurance transactions.

The CDI has confirmed to us that it does not view assumption reinsurance to be a true “reinsurance” transaction, but rather a “purchase” or “sale.” Moreover, assumption reinsurance transactions are expressly included within the definition of “sale” and “purchase” in [California's Reinsurance Oversight Regulations](#).

Accordingly, California-admitted insurers domiciled outside California appear, at least in the CDI's view, to remain subject to the prior approval requirements of § 1011(c) with respect to any sale or purchase transaction (including a sale or purchase involving assumption reinsurance) that exceeds the regulatory specified thresholds.

For further information, please contact **Michael Rosenfield** at [mrosenfield@bargerwolen.com](mailto:mrosenfield@bargerwolen.com) | (213) 614-7321 or **Chris Burusco** at [cburusco@bargerwolen.com](mailto:cburusco@bargerwolen.com) | (213) 614-7332.