

**INTERSTATE INSURANCE COMPACT
GOVERNANCE REVIEW**

EXECUTIVE SUMMARY

NOVEMBER 18, 2020

Our Governance Review Report includes many suggestions and recommendations for the ICC to improve its governance practices and mitigate risk associated with governance matters. Each suggestion is based on legal or best practice analysis that includes evaluation of the law triggered by the action, the risks associated with the proposed action, and the time and resources the new action would take for busy Commissioners, as their respective state's ICC representative, or Member, and ICC staff.

Our recommendations are summarized below, followed by several sections detailing our complete analysis on each topic.

Governance

- The ICC should conduct annual Governance Effectiveness evaluations, prepare a calendar to reflect the various committee, Management Committee and plenary meetings necessary for the year, conduct governance and compact-related training, and take a variety of actions to improve the operation of the Management Committee, and draft and annually update committee charters. Suggested issues of inquiry, a suggested calendar and related templates are included with the Report and its Appendices.
- We found that Members had numerous questions regarding functions and purpose of the ICC and its Management Committee. We suggest a variety of actions to respond to these questions and also to improve the efficiency of the Management Committee meetings. Our suggestions include maintaining a charter for the Management Committee, providing summary material with complex agenda items before the Management Committee, adopting a Consent Agenda and designating certain decisions that require full Commission approval. We also propose utilizing electronic meetings and providing a process for Actions Taken without /in Lieu of a Meeting to facilitate more efficient governance.
- Each Commissioner, as their state's statutorily designated ICC representative, is a leader for the ICC. The Compact Statute identifies a variety of roles for certain representatives to assume various types of leadership within the ICC, including Management Committee and officer roles. We suggest developing written descriptions of these roles to clarify duties and responsibilities for each Commissioner, as Member.
- Insurance department staff Designees for Commissioners are authorized by each state insurance code and are key to operation of each state's involvement with the ICC. The Compact Statute is silent on the role of designees, but references Commissioners in their individual capacity with no limitation on designee involvement. The Report suggests that the ICC adopt written policies and procedures to address issues such as the role of Designees, conflict of interest and ethics matters, attendance and training options.
- As ICC state representatives, Commissioners serve in a governance role that varies significantly from their executive role with their respective insurance departments, and in their role with the NAIC. Therefore, in the Governance and Compact Law sections, we discuss some critical areas of

understanding regarding the ICC that would benefit all commissioners. We propose targeted orientation for new Commissioners and Designees to facilitate this understanding.

- We reviewed various policies and procedures for the ICC, and provide suggestions on improvements to the ICC's Code of Ethics, Advisory Opinion process and process for membership dispute resolution.
- We suggest preparing a written description of how the Compact Statute addresses immunity, and how the ICC will provide indemnification and legal defense to Commissioners in the event of an action brought against them for issues associated with their service on behalf of the ICC.
- We include a suggestion for a Table of Decision Authorities to provide Commissioners with a clear understanding of the source of ICC actions.
- We look at the “opt out” process, as outlined in the Compact Statute and operating procedures, and we provide guidance on its future use.
- We address communications issues raised in our stakeholder interviews and provide suggestions for providing clarity to issues being discussed and proposals before the ICC.
- We conducted a gap analysis on the ICC committee structure and identified several unaddressed areas now common for most governing bodies, including risk, technology and governance issues. We provide observations and suggestions on how ICC might address these identified gaps.
- The ICC has an administrative service agreement with the NAIC and, as a result, it utilizes the same audit firm as the NAIC. We propose updates to the ICC Audit Committee Charter to update it for best practices such as audit partner rotation, auditor communication with the Audit Committee and periodic bidding of audit firms. We include suggested revisions to the Audit Committee Charter.
- Our stakeholder interviews and review of materials identified confusion and concern regarding the relationship of the NAIC and the ICC. We provide suggestions as to how some of these issues might be clarified in the future.
- As a result of our analysis of the Compact Statute, we identified two requirements in the Compact Statute – certain state filings and issues regarding the Administrative Procedures Act – that may require additional attention from the ICC.
- We suggest analysis associated with the unique issues associated with 2020 and also provide a comparative analysis of other compacts and the ICC.

Compact Law Issues and Governance

- The ICC is a joint public agency formed through unique and special action of the legislatures in each of the Compacting States. We provide background on compacts, their formation and their unique intersection between state and federal law. We discuss the methods that federal consent can be provided to state compacts, including implied and express consent, and also the law associated with compacts not obtaining federal consent. We analyze this law in the context of the Compact Statute and congressional action take regarding the ICC.
- We opine that the ICC received implied congressional consent in 2006 when Congress approved the District of Columbia joining the ICC. We discuss the meaning of implied consent for the ICC, how the ICC might go about recognizing this implied consent, and we address the issues associated with acknowledging implied consent.
- We discuss the implications of the *Amica Life Insurance Co. v. Wertz*, the need for the ICC to embrace implied congressional consent in order to avoid erosion of the ICC's various Uniform Standards to be effective in all member states in the future. We discuss strategies for the ICC to recognize its implied congressional consent. We also discuss the risks to the ICC of not acknowledging implied consent. We also discuss risks and benefits of seeking express congressional consent.

Tax Exempt Status

- We review the background of the ICC's tax exempt status and its prior efforts to obtain a private letter ruling from the IRS. We outline the ICC's options to maintain its tax exempt status and discuss the pros and cons of alternative options.
- We suggest a strategy for the ICC to seek a private letter ruling from the IRS if it is inclined and provide cost estimates to inform the ICC's decision on whether to do so.

Contacts

Squire Patton Boggs (US) LLP has been honored to provide this Governance Assessment to the ICC. Should you have any additional questions, please contact Mary Jo Hudson, Partner, at mj.hudson@squirepb.com or 614-365-2732, Pat Hatler, Of Counsel, at pat.hatler@squirepb.com or 614-365-2728 (Governance) or George Schutzer, Partner, at george.schutzer@squirepb.com or 202-457-5273 (Tax).