



The Actuarial Profession

making financial sense of the future

The Role of the Independent Expert

John Jenkins

What is a Part VII transfer?

- Insurance business transfers are subject to Part VII of the Financial Services and Markets Act 2000 (FSMA) and must be approved by the Court under section 111
- Section 18 in the Supervision Manual (SUP 18) of the FSA Handbook provides guidance

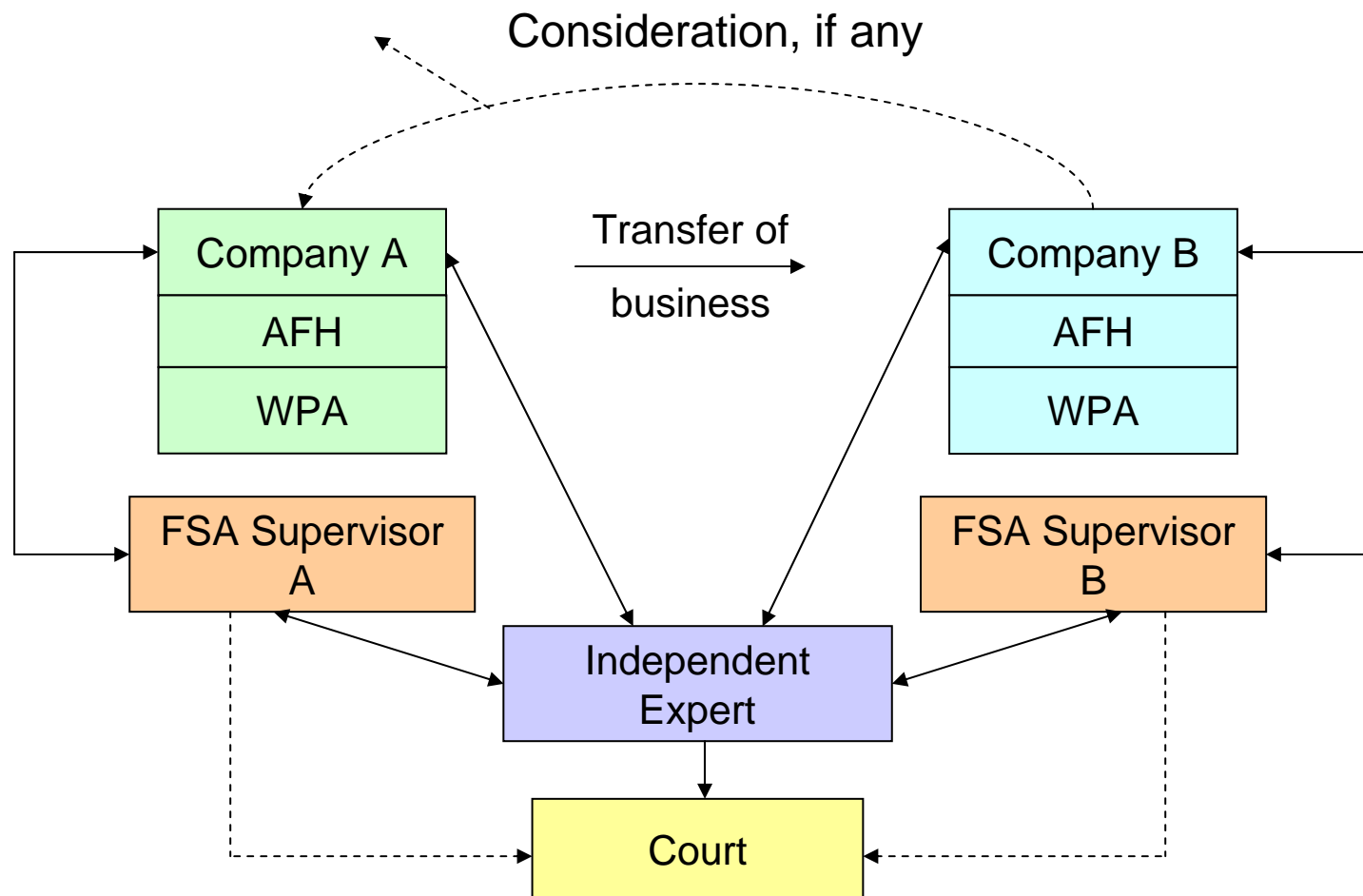
Process for a Part VII transfer

- Appoint lawyers
- Consult with the FSA
- Appoint the Independent Expert
- Planning of the Scheme and preparation of legal documentation
- Independent Expert's report
- FSA feedback
- Preliminary Court hearing
- Notification and objections
- Final Court hearing

Role of the Independent Expert

- Application made to the Court must be accompanied by a report on the Scheme by an Independent Expert
- Need to consider the effects of the Scheme on
 - transferring policyholders
 - policyholders not transferring
 - policyholders of the transferee
- Independent Expert has a duty to the Court

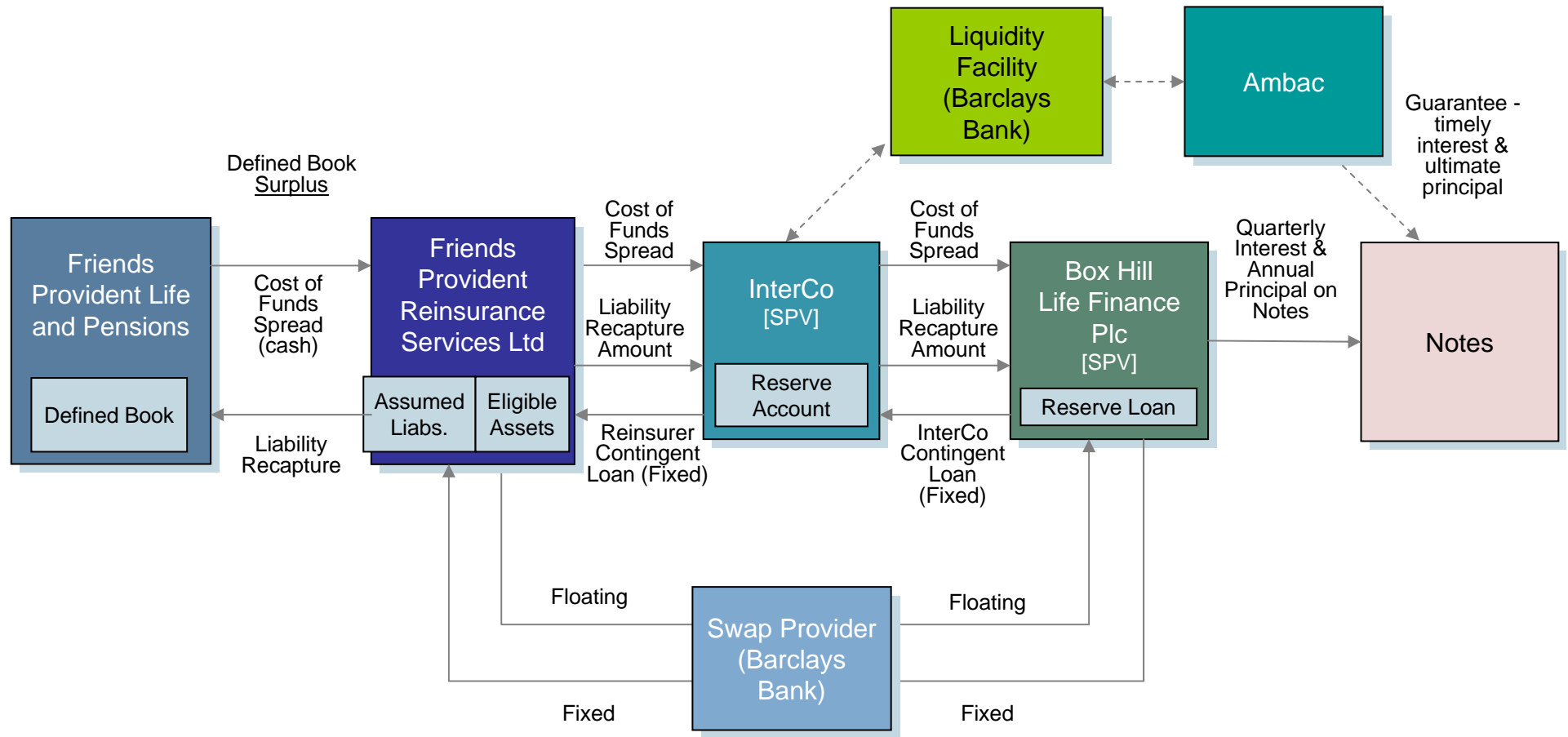
Interactions in a Part VII transfer



Commercial background

- Important to understand commercial aspects
- Legal input
 - transfer may involve complicated transactions
e.g. securitisations
 - will all transactions occur as planned?
- Alternative schemes

Securitisation: simplified transaction structure!



Appointment of the Independent Expert

- Suitability depends on the nature of the Scheme and firms involved
- FSA considers skills required to make the report
- Intended applicant to the Court nominates Independent Expert to FSA, with reasons for choice
- FSA may itself nominate the Independent Expert
- Joint engagement letter signed by both parties

Qualifications of the Independent Expert

- Independence
 - personal and firm independence
 - other work done by firm may or may not be an issue
- Relevant knowledge of types of business transacted
- Usually actuary with a practising certificate, although no formal requirement
- Credibility

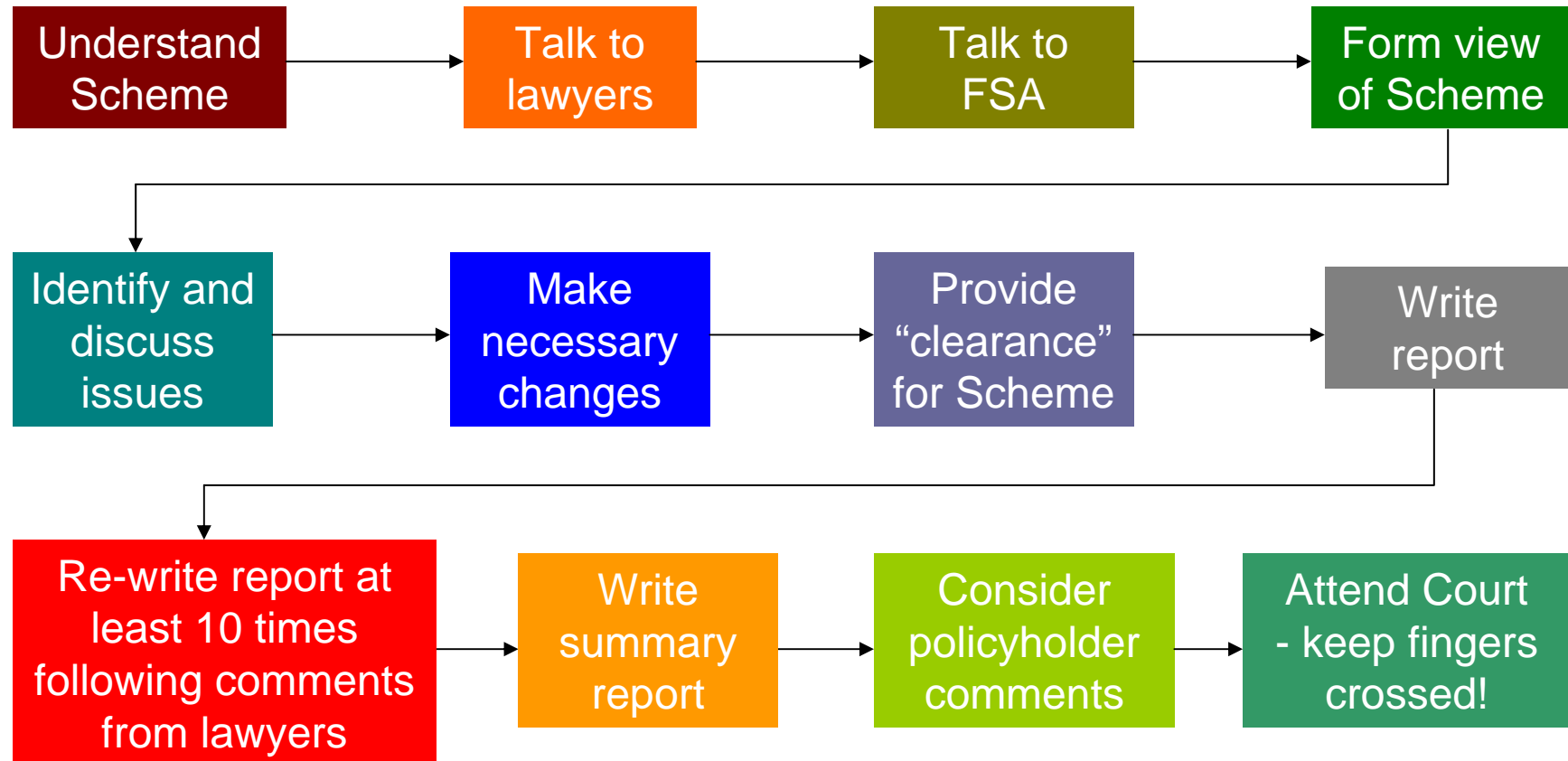
The Independent Expert and the Court

- Judge really does rely on the Independent Expert
 - evident from the number of times 'Independent Expert' appears in judgements
- More common now for the FSA to be represented in the Court

The Independent Expert and the FSA

- FSA must approve form of the Scheme report
- Important to contact FSA at an early stage
 - FSA may wish to highlight matters relating to the Scheme or parties to the transfer
 - FSA may wish the report to address particular issues
 - Independent Expert's view on such issues may differ to the FSA's opinion
- Found FSA to be perfectly reasonable

The Independent Expert in practice



The Independent Expert's report

- Appointment of the Independent Expert
- Scope of the report
- Purpose and summary of the Scheme
- Documents considered
- Extent of reliance on others
- Opinion of likely effects of the Scheme on policyholders
- Matters not considered but which may be relevant for policyholders

The Independent Expert's report

- For a Scheme involving long-term insurance business, should consider
 - rights of policyholders to participate in profits
 - approach used to determine non-guaranteed benefits and the levels of any discretionary charges
 - reasonable expectations of long-term insurance business policyholders
 - whether the Scheme is equitable to all classes and generations of policyholders
 - safeguards in place to ensure the Scheme operates as presented

The Independent Expert's opinion

- Likely effects if the Scheme is or is not implemented
- Any alternative arrangements considered?
- Are different groups of policyholders likely to be affected differently?
- Security of policyholders' contractual rights
- Levels of service provided to policyholders
- Reasonable expectations of policyholders
- Cost and tax effects of the Scheme

The Independent Expert's opinion

- The Independent Expert is not
 - expected to comment on the likely effects of the Scheme on new policyholders
 - required to ensure capital position of the receiving firm after the transfer is at least as strong as the transferor
 - need to be satisfied capital position after transfer is adequate for security of benefits of transferring policyholders
 - for with-profits business need to consider benefit expectations

Financial position before and after transfer

	Company A	Company B	Adjustments	Post Scheme
With-profit fund				
Non-profit fund				
Shareholder fund (net of liabilities)				
Total assets	A_A	A_B	A_{Adj}	$A_A + A_B + A_{Adj}$
Mathematical reserves				
Direct written (gross)				
Reassurance accepted (gross)				
Reassurance ceded				
Total liabilities	L_A	L_B	L_{Adj}	$L_A + L_B + L_{Adj}$
Long Term Insurance Capital Requirement (LTICR)				
Resilience Capital Requirement (RCR)				
Total capital required	C_A	C_B	C_{Adj}	$C_A + C_B + C_{Adj}$
Free assets	$A_A - L_A - C_A$	$A_B - L_B - C_B$	$A_{Adj} - L_{Adj} - C_{Adj}$	$A_A + A_B + A_{Adj}$ $- (L_A + L_B + L_{Adj})$ $- (C_A + C_B + C_{Adj})$

Confidentiality of ICA / ICG

- Companies must self-assess their own capital requirements – Individual Capital Assessment (ICA)
- FSA may adjust this amount through Individual Capital Guidance (ICG)
- Both ICA and ICG are confidential between a company and the FSA

Confidentiality of ICA / ICG

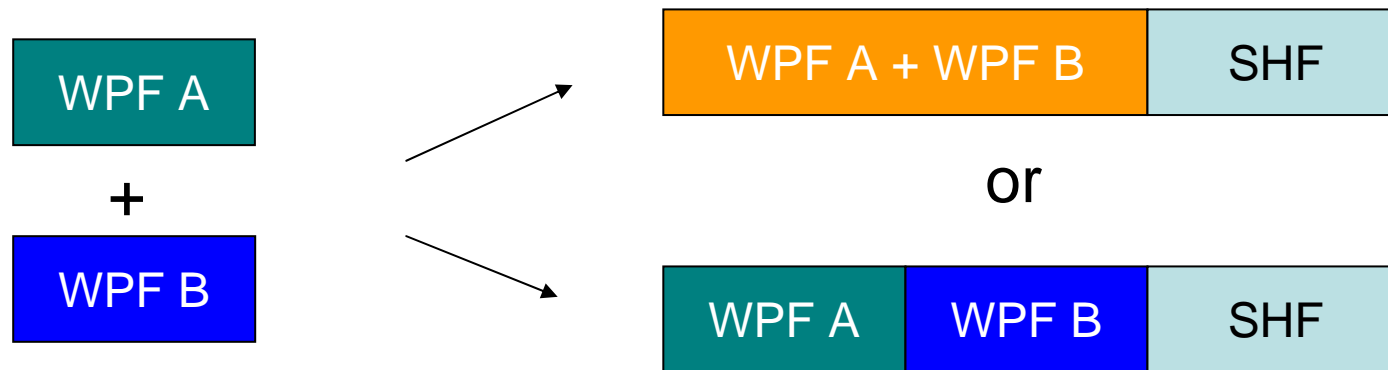
- Independent Expert needs to consider the financial impact of the Scheme
 - can be difficult to explain in the report, given the confidentiality of the ICA / ICG
 - even more difficult trying to explain to the Judge in Court without breaching confidentiality
 - consider private letter to the Court
- Confidentiality may not be an issue with Solvency II as SCR should be public under Pillar I
 - but when will Solvency II happen.....?

Merging unit-linked funds

- Closed or open to new business?
- Bid or offer pricing basis?
- Unrealised losses

With-profit funds

- Merging with-profit funds



- Deals done on behalf of the with-profit policyholders

Other considerations

- Capital strength of parents
- Reassurance arrangements
- Tax
- Credit risk
- Operational risk
- Legal risk
- Regulatory risk

Policyholder comments

- Important to consider all the comments raised by policyholders
- Independent Expert may need to write a supplementary report to address points made
- May cause delays in the Court if comments are overlooked
- If a group of policyholders are likely to raise the same point, should address the issue in the report

Contact details

John Jenkins

KPMG LLP (UK)

john.a.jenkins@kpmg.co.uk

www.kpmg.co.uk

Steven Gin

KPMG LLP (UK)

steven.gin@kpmg.co.uk

www.kpmg.co.uk