

Schemes of Arrangement and Business Transfers

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Schemes of Arrangement and Business Transfers

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INTRODUCTION

1.1 Background and rationale for the paper

This paper is designed to provide a reference source for actuaries and others carrying out work in relation to Schemes of Arrangement and Business Transfers (including Part VII Transfers) in non-life insurance.

The working party felt that such a reference source would fill what we consider to be a surprisingly large gap in the actuarial literature. Although there have been numerous articles and conferences on these two subjects areas, we are not aware of any actuarial papers on these topics. We think that filling this gap will be helpful, for two key reasons. First, significant volumes of work has been done by actuaries in the areas of both Schemes of Arrangement and Business Transfers, and hence there is an opportunity to share with others some of the experience of actuaries when carrying out work in these two areas. Second, these two roles represent major areas of non-life actuarial work where a large part of the actuary's work product can become available in the public domain. It is the second of these reasons which is the main reason for grouping these two topics into a single paper.

By producing a paper on this subject for debate amongst practitioners in these areas, perhaps a consensus of approach might begin to emerge in some key areas, leading to some degree of consistency for such high-profile roles.

For Schemes of Arrangement, the work of the actuary can in part be subject to public scrutiny through the references to the actuarial roles in the Scheme Documents and also in part by the possibility of providing written evidence as part of the Court procedures. In Part VII Transfers, the report prepared by the Independent Expert (who is very often, but not always, an actuary) is usually available on the relevant company's website, but in any event must be made available free of charge to anyone who requests a copy. In both cases, the work of the actuary could be discussed in open Court, so that there is potential for wider disclosure than is usually the case for most other types of non-life actuarial work.

For those who are experienced in these fields, we hope the paper provides a useful reminder of the key issues that arise in practice when carrying out this work. For those less familiar with the subject, we hope the paper provides a good introduction to the subject.

1.2 A very important caveat

Most actuarial documents have at least one important caveat or limitation in them (and some many more than one!) and this paper is no exception. In particular, the paper does not represent guidance, formal or otherwise, from the Faculty and Institute of Actuaries or the Board for Actuarial Standards, or anyone else. It is also not a prescriptive recipe book, and so does not describe "how to" or what "should" or "should not" be done in practice. Where we do give views about what might be done or not done in certain circumstances, we are merely expressing the views of the working party members and no-one else, on what they believe "should/should not normally" be done.

1.3 Structure for the remainder of the paper

Part B covers Schemes of Arrangement and Part C covers Business Transfers. Each of these parts of the paper is effectively a self-contained paper in itself (and hence we have simply started the paragraph numbering as if they were separate papers). There is a separate list of contents at the start of each part of the paper. Hence, if the reader is only interested in one of these subject areas, they can easily skip the other part of the paper. References to paragraphs and sections within each part of the paper are to the relevant paragraphs and sub-sections within that part, unless stated otherwise. Each part of the paper contains appendices relating to their respective subjects.

1.4 Thanks

We thank the following people for their very helpful comments on drafts of the paper:

Donald Brignell
Steve Goodlud
Philip Hertz
Allan Kaufman
Mark Lawson
Paul Murray
Chris Short
Clare Swirski
Daniel Sykes

In addition, we thank Mark Conlon, Justin Cooper, Beth Rees and Paul Taylor of the FSA for their comments, but their input does not imply any form of endorsement of the paper by them individually, collectively or on behalf of the FSA.

The views represented in this paper are those of the authors alone and not necessarily those of their firms or employers, or of the Faculty and Institute of Actuaries. The authors alone are responsible for any errors, omissions or other deficiencies within the paper.

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1 BACKGROUND AND INTRODUCTION

Introduction

- 1.1 This part of the paper is intended to provide a reference source for actuaries carrying out work in relation to Schemes of Arrangement for general insurance/reinsurance companies. It is divided into seven sections and a number of appendices, as detailed on the contents page for this part of the paper. The Glossary (found in Appendix F to this part of the paper) contains a number of terms which are referred to in the remainder of this part of the paper. This first section of this part of the paper provides some general background related to Schemes of Arrangement and then explains the major stages in the lifecycle of a Scheme of Arrangement, including how they have evolved over time.
- 1.2 A Scheme of Arrangement (“Scheme”) is a compromise or arrangement under Part 26 of the Companies Act 2006 (formerly section 425 of the Companies Act 1985), between a company and its creditors or its members. In this paper only Schemes between a company and its creditors are considered. Part 26 is reproduced in Appendix E to this part of the paper. Schemes are not unique to insurers, but when used for insurers they can effectively achieve the same result as a global commutation between a company and all of its creditors or a sub-group of creditors. Schemes can be used by insurance companies with portfolios in run-off to reach finality by providing a mechanism to estimate and pay future contingent liabilities. They can be used for an entire company or for a subset of its business. However, certain types of business such as UK Employers’ Liability, cannot usually be included within a Scheme. As discussed in more detail below, Schemes were originally used by the insurance industry to wind-up insolvent companies. Following the successful implementation of insolvent Schemes, Schemes have since been used as an option for solvent insurers with run-off portfolios.
- 1.3 As well as in the UK, a Scheme can typically be implemented in countries where the legislation stems from UK law, such as Bermuda, Hong Kong, Singapore, Gibraltar and Australia. Similar solutions are also possible in some US states. In particular, Rhode Island has enacted statute to enable scheme-like solutions.
- 1.4 Schemes can also be implemented in the UK (and possibly elsewhere) in relation to business where the Court deems that there is a “sufficient connection” to the UK. For example, it might be possible to establish a sufficient connection to the UK for business placed through an underwriting unit or agency based in London, but with the actual policies being underwritten by an overseas insurer. In practice, each case will be different and legal advice will be required to establish if a sufficient connection is likely to allow the Court jurisdiction to sanction a proposed Scheme. Business Transfers (discussed in Part C of the paper) can in theory be used to move business into the UK, so that a Scheme could then, at least in theory, be considered as a mechanism for achieving finality.

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- 1.5 In order for a Scheme to proceed it needs to be approved by the relevant creditors and sanctioned by the Court. The approval of the relevant creditors is achieved by them voting at a specially convened meeting. At this meeting, a vote of the relevant creditors needs to take place, with specified majorities amongst those voting (both in terms of the value of claims and the number of creditors) in favour of the proposed Scheme being required for each class of creditors (discussed further below in paragraph 1.11), in order for the vote to be successful. The process of obtaining sanction of a proposed Scheme is discussed further in paragraph 1.17. Once the Scheme is sanctioned by the Court and the sanction order lodged with the Companies Registrar, the proposed Scheme becomes legally binding on the creditors that are subject to the Scheme.
- 1.6 Schemes are effective tools and have become increasingly popular as an exit strategy from run-off business as they are very flexible with few statutory requirements (other than being subject to creditor and Court approval, of course), which mean that they can be designed in such a way so as to receive adequate support from creditors and offer real benefits to the various stakeholders. All other currently available exit solutions (with the exception of some sort of voluntary winding-up) simply transfer the risk to another party (which may of course be somewhere within the same group or external to the group). Schemes are currently unique in offering a practical way of repatriating risk with creditors.

Scheme of Arrangement lifecycle

- 1.7 This sub-section describes the lifecycle of a typical Cut-Off Submission Scheme from the decision of the insurance company to consider proposing a Scheme with its creditors through to the Scheme's termination when all of its liabilities have been extinguished. Cut-Off Submission Schemes (described in paragraph 1.32) make up the vast majority of the Schemes proposed today. In the following sub-sections we consider each of the following stages of the lifecycle of a Scheme:
- a) Scheme preparation (i.e. feasibility and design);
 - b) Scheme approval;
 - c) Scheme post approval; and
 - d) Scheme termination.

Appendix B to this part of the paper shows, in diagrammatic form, a typical lifecycle for a Cut-Off Submission Scheme, with the key milestones and activities at each stage being highlighted.

a) Scheme preparation

- 1.8 Before the formal process of seeking approval for a Scheme can begin, a number of preparatory steps need to be taken. The first step will usually be to assess whether a Scheme is feasible, taking into account various factors such as the type and age of the business involved. Some form of interaction with creditors is also often appropriate at this early stage, to assess their level of

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support for a Scheme. There will then be various design aspects to be considered, such as the number of “classes” of creditors and the process for determining the creditors’ vote values and subsequent claims. It may also be appropriate at an early stage to determine whether any pre-Scheme commutations of inwards or outwards business are necessary or desirable. Section 2 of this part of the paper considers various aspects of Scheme feasibility and design in more detail.

1.9 If an authorised firm is proposing to implement a Scheme, it must inform the FSA about it. In addition, companies proposing a Scheme usually notify creditors of their intentions at an early stage, covering factors such as:

- That a Scheme is being promoted;
- The purpose the proposed Scheme is designed to achieve;
- The meetings of the creditors of the company that the company believes are required for the purposes of voting on the proposed Scheme; and
- The constitution of those meetings.

This communication is commonly referred to as the Practice Statement Letter.

b) Scheme approval

1.10 The approval of a Scheme usually revolves around two Court hearings and a meeting of the creditors in between the two hearings, where the creditors vote on the proposed Scheme. At the first Court hearing, called the “leave to convene” or “directions” hearing, the company asks the Court for approval to call a meeting of its creditors to vote on the proposed Scheme. Typically, the company will need to demonstrate to the Court at the hearing that:

- The company has sufficient plans to identify and notify its creditors of the proposed Scheme through direct contact and advertising;
- The proposed timetable for the Scheme process is appropriate (including, for example, the notice period given to creditors of the Creditors’ Meeting and the period between the Effective Date and the Bar Date);
- The Scheme documents are appropriate;
- The proposed class structure (as discussed further below) to group creditors for the vote is appropriate; and
- The proposed voting procedures and arrangements are appropriate, including how the convened meeting of creditors will be conducted, who will chair the meeting, how creditors’ vote values will be assessed and adjusted and how the results of the meeting will be reported to the Court.

1.11 If the Court is satisfied with the company’s proposals then it will likely grant the company permission (or leave) to hold a meeting(s) of its creditors to vote on the proposed Scheme [i.e. “leave to convene” the meeting(s)]. For the purposes of voting, creditors need to be grouped into sufficiently homogeneous “classes” such that the rights of all creditors against the relevant company within a particular class, are sufficiently similar as compared with the rights of other creditors within the same class, as well as in terms of the impact of the proposed Scheme on such rights. There is no statutory definition of

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“class” but the Courts have interpreted the class requirement to mean “a group of creditors whose rights are sufficiently similar such that they can properly consult together with a view to a common interest”. Historically creditors were typically grouped into a single class for the purpose of voting on both insolvent and solvent Schemes. Since the ruling by Mr Justice Warren in 2006 at the WFUM Pools’ leave to convene hearing, solvent Schemes with significant long-tail business (both direct and reinsurance) and without liquidation as a comparator (i.e. if the Scheme were not implemented the relevant company would not go into liquidation and would simply carry on in run-off), have tended to use two classes: one for creditors with IBNR claims and one for creditors with non-IBNR claims. In these cases, creditors with both IBNR and outstanding claims would be able to vote in more than one class. However, in delivering his judgement Mr Justice Warren recognised that each case would need to be decided on its own facts.

- 1.12 The treatment of unpaid paid claims (i.e. where a request for payment has been agreed by the Scheme Company but not yet paid) can vary from Scheme to Scheme, with the individual circumstances of each particular Scheme needing to be taken into account. As this treatment is somewhat complicated, we have not gone into any further detail in relation to unpaid paid claims in this paper.
- 1.13 Where, for voting purposes, there is more than one class of creditor, the relevant voting thresholds referred to below must be passed within each class. Hence, this represents a relatively higher overall voting hurdle than where there is a single class (other things being equal).
- 1.14 At the convened meeting, the creditors can vote for or against the proposed Scheme. In order to do so, they each need to estimate their individual liabilities against the Scheme (called their vote values) in each of the classes in which they are entitled to vote. In order for a Scheme to be approved the following majorities amongst those creditors who vote must be in favour of the proposed Scheme for each class:
- Greater than 50% by number; and
 - At least 75% by value.
- 1.15 The value of the liabilities estimated by the creditors for the purpose of voting may involve claims that are contingent (such as outstanding and IBNR claims) and therefore need to be estimated by the creditors. In such circumstances, it is therefore entirely possible for creditors to submit vote values that do not necessarily represent a “fair” value commensurate with their proportionate interest in the proposed Scheme. Therefore, where a proposed Scheme receives a mixture of for and against votes, there may be a need for a process to be set-up to review the reasonableness of the submitted vote values. This process may, for example, involve the use of a Vote Adjudicator/Vote Valuer who could review each or a subset of the submitted vote values that involve contingent claims and assess their reasonableness, perhaps in accordance with the proposed Scheme’s Estimation Guidelines. The Estimation Guidelines will usually be detailed in the Scheme Document and will typically assist

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creditors with how to derive their claims under the proposed Scheme. The Scheme Document will also usually contain details of the information that creditors should supply to support their submitted claim value. Further details on the roles of Vote Adjudicator/Vote Valuer, and other roles, are given in Section 4 of this part of the paper.

- 1.16 The Estimation Guidelines will usually be used by one or more of the Scheme Company, the Scheme Advisors and, if appropriate, the Actuarial Advisor or the Scheme Actuary, when reviewing creditors' claims.
- 1.17 If the company achieves a successful result from the vote then it can proceed to the second hearing where it asks the Court to sanction and approve the proposed Scheme, called the "sanction" hearing. At the sanction hearing the Court will review how the voting procedures have been conducted in practice, whether the requisite majorities have been achieved and consider any objections made by creditors. As part of this process, the company will need to demonstrate how it has complied with the Court Order issued following the leave to convene hearing. Following a successful sanction hearing the Scheme will be registered with Companies House and become effective. The date of registration is usually referred to as the Effective Date of the Scheme.
- 1.18 It is important to bear in mind that at either of the two Court hearings, creditors and other affected parties may attend to ask the Court to consider their views on the proposed Scheme. It is usual for the leave to convene hearing to consider the voting and Creditors' Meeting arrangements, including any issues related to classes of creditor. Issues related to the fairness of the proposed Scheme are usually not considered at the leave to convene hearing, but rather are dealt with at the sanction hearing.
- 1.19 If a proposed Scheme does not obtain the Court's approval either at the leave to convene or sanction hearings, or it does not obtain the necessary voting majorities in favour of it, then, in principle, there is nothing to stop the company from trying again with another Scheme. In these circumstances, the company may decide to modify the proposed Scheme to take into account the concerns raised by either the creditors or the Court, or both. If material changes are made to a proposed Scheme after the creditors have voted in favour of it but prior to the sanction hearing, then it is likely that the creditors will need to vote again on the revised proposed Scheme.

c) Scheme post approval

- 1.20 Following the sanction of the Scheme by the Court in the UK the company may also decide to obtain Chapter 15 protection in the US (or indeed recognition in other jurisdictions). Chapter 15 protection is achieved through a hearing in a US Court that allows the Scheme to become effective in the US and also provides a forum in order to seek an injunction against any further litigation in the US courts in relation to the Scheme.
- 1.21 Once the Scheme is effective, the company will begin the process by distributing claim forms to its known creditors, possibly including pre-populated

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information such as the known policy details. An example claim form is given in Appendix C to this part of the paper. The claim form may also be made available on the company's Scheme website and / or be made available as part of the Scheme Document. The creditors will then need to submit their completed claim forms to the company by the Bar Date; any claims submitted after this date are not valid, except in very exceptional circumstances. The effect of this "cut-off" at the Bar Date means that creditors who do not submit a claim before then have no future claim against the company in respect of the relevant business. It is important to note here that the FSA has said that a Scheme cannot take away a company's obligation to settle unpaid paid claims (claims that were agreed by the Scheme Company before the Scheme became effective), so these will need to be paid regardless of whether or not a claim form has been submitted. The Courts normally impose quite strict notification/advertising requirements on the Scheme Company, to ensure that, as far as is reasonably possible, all relevant policyholders become aware of the need to consider whether they wish to make a claim before the Bar Date. In practice, for a variety of reasons, some policyholders may decide not to make a claim against the Scheme (for example, some policyholders may conclude that there are no claims developments that will give rise to potential claims on their relevant insurance/reinsurance policies in the future). Once the Bar Date has been reached, the population of creditors for which claims need to be evaluated should be known in its entirety.

- 1.22 The claim form will be customised to each individual Scheme but will usually need to include details of policies, outstanding claims and IBNR claims as at the Valuation Date of the Scheme. There may also be an option to allow information submitted by creditors as part of the voting process to be automatically transferred to their claim forms.
- 1.23 Once claims have been submitted they will then be reviewed and agreed with each creditor in line with the procedures outlined in the Scheme Document. The review and agreement process may involve an actuary as an Actuarial Advisor or as the Scheme Actuary, but an actuary is not necessarily always involved in the process. If agreement of a claim cannot be reached between the company and the creditor then the creditor's claim is typically referred to an Adjudicator (see Section 4 of this part of the paper for further details).
- 1.24 Some Schemes may also include a reversion to run-off clause, which allows the company to abandon the Scheme process and revert back to ordinary run-off. Where such clauses have been used in recent Schemes, they have tended to apply in restricted circumstances which are prescribed in the Scheme Document.
- 1.25 Upon agreement of a claim, some form of statement will normally be issued to the creditor detailing the specifics of the agreement, following which payment will be made to the creditor. For an insolvent Scheme the agreed claim will be reduced according to the declared dividend percentage. In such cases, if the declared dividend subsequently increases, creditors will receive a further dividend.

d) Scheme termination/finalisation

- 1.26 Once all creditors' claims have been agreed and settled the Scheme can begin the process of termination/finalisation. This will involve the necessary legal procedures, collection of any remaining outwards reinsurance recoveries, and for Schemes relating to a whole company the payment of any other outstanding liabilities (e.g. salaries, rent etc.) along with the distribution of any remaining assets. If an authorised firm has schemed its entire business, then it will remain authorised and subject to FSA regulatory requirements until it is wound-up, although it might be possible for the entity to seek certain modifications/waivers (e.g. from reporting) from the FSA.

Parties involved

- 1.27 The main stakeholders involved in a Scheme are the shareholders, the directors of the company, the run-off managers, the policyholders (including those affected and those not affected by the Scheme), other creditors (i.e. non-insurance creditors), the reinsurers, the regulators (usually the FSA), the company's staff and the Court.

The evolution of Schemes of Arrangement

Schemes in the beginning

- 1.28 Originally, the insurance industry used Schemes to wind-up insolvent companies. A Scheme provides a number of advantages over a traditional liquidation for an insolvent insurer:
- Creditors receive their payments earlier;
 - Each Scheme can be uniquely designed, which gives a Scheme more flexibility over a liquidation;
 - Funds under a Scheme would not be required to be deposited with the Bank of England; and
 - There is no need to convert all claims to Sterling thus avoiding the currency risk.
- 1.29 Run-off Schemes, used in relation to insolvent companies, were the first types of Scheme to come into operation. These Schemes are operated in a similar way to that of a solvent run-off insurer with claims processed and then agreed. However, creditors receive a percentage of their agreed claims at a rate declared by the Scheme Administrator. The unpaid balance remains as a debt that the insurer owes to the creditor. If the payment percentage rises in the future then an additional dividend is paid in relation to these unpaid balances. The Run-off Scheme would essentially continue indefinitely until all claims are paid.

Cut-off Schemes

- 1.30 Cut-off Schemes then evolved, which were designed to terminate and wind-up an insolvent insurance company. Therefore, many of the historical Run-off Schemes were subsequently converted to Cut-off Schemes, possibly through a special resolution meeting to amend the terms of the existing Run-off Scheme. Under this type of Scheme the future liability from each creditor would be assessed at a given date (typically called the Valuation Date or Ascertainment Date) and the assets distributed accordingly. This type of Scheme is particularly useful for companies with long-tailed liabilities, like asbestos and pollution, as the eventual run-off of these liabilities may take many decades.
- 1.31 The first Cut-off Schemes originally determined each creditor's IBNR claims by way of an allocation of the company's estimated total IBNR. These are typically referred to as "Allocation" Schemes. Under an Allocation Scheme, the aggregate IBNR claims for the insurer are estimated (usually by the Scheme Actuary using standard actuarial techniques) and then allocated to individual policies according to a pre-agreed formula (e.g. a very simple example might be a multiple of the outstanding claims or the incurred claims on each policy). The Scheme Actuary would typically be responsible for determining this formula. Values are then aggregated across policies to obtain a creditor's gross claim value under the Scheme, before deduction for any reinsurance liabilities owed by the creditor to the Scheme Company. It should be noted that, where such deductions are made in relation to an insolvent Scheme Company, the amount deducted would normally be 100% of the relevant amount (as opposed to the amount paid by the Scheme Company to the creditor, which would have the relevant payment percentage, which is usually less than 100%, applied to it).
- 1.32 Allocation Schemes evolved into "Submission" Schemes, where creditors estimate their own outstanding and/or IBNR claims at the Valuation Date of the Scheme. Creditors are required to submit their claim prior to a specified date (usually called the Bar Date). Any creditors who fail to submit a claim by the Bar Date would usually forfeit their right to any claim under the Scheme. Depending on the terms of the Scheme, creditors would typically be required to submit suitable information to support their claim. There would then be a defined process whereby creditors' claims would be reviewed and then agreed. This review and agreement process may involve the Scheme Company, the Scheme Advisor, the Actuarial Advisor and/or the Scheme Actuary. In an insolvent Scheme, a Scheme Actuary usually reviews all creditors' IBNR claims on the same consistent basis to help the Scheme Administrator to ensure fairness between creditors, as explained in paragraph 4.5.

Solvent Schemes

- 1.33 Following the successful implementation of insolvent Schemes within the insurance industry, Schemes have since been used as an option for solvent insurers with run-off portfolios.

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- 1.34 The considerations for the design and implementation of a solvent Scheme can typically be unique to that insurer and quite different from that of an insolvent insurer. In particular, for solvent Schemes, once agreement has been reached between the Scheme Company and/or the Scheme Advisor and the creditor as to the value of the creditor's claim under the Scheme, then this value is paid in full by the Scheme Company.
- 1.35 Schemes have also been used by pools of insurance companies where some insurers are insolvent and some are solvent (e.g. the WFUM Pools' Schemes of Arrangement which consists of fourteen solvent Schemes and one insolvent Scheme).
- 1.36 There are a number of reasons why a solvent insurer and its creditors may find a Scheme preferable to the natural run-off process:
- Finality – all parties can receive certainty and any potential doubts about the future solvency of the company and payment of future claims can be removed;
 - Flexibility – Schemes can be modified to deal with the specific requirements of each company to meet each stakeholder's objectives;
 - Early Payment – creditors can receive payments earlier than they otherwise would and can use the amounts received as they see fit;
 - Cost Savings – costs that would have otherwise been incurred in the normal course of the run-off of a portfolio will be avoided;
 - Financial Incentive - there may be a facility included within the Scheme to provide creditors with an "enhanced value" for agreeing to receive a payment under the Scheme and re-assuming their policies (for example, some Schemes have used an undiscounted basis for valuing claims as a proxy for such an enhancement); and
 - Capital Releases – Any capital released by the Scheme can be effectively deployed by the company or released to its shareholders earlier.
- 1.37 There has been some opposition to solvent Schemes, particularly from US direct creditors, who have presented a range of arguments when opposing such Schemes.

British Aviation Insurance Company Limited ("BAIC")

- 1.38 A high profile failure of a proposed solvent Scheme was the BAIC Scheme. At the sanction hearing in July 2005, Mr Justice Lewison held that he did not have jurisdiction to sanction the Scheme as, in his view, its class structure was inappropriate. In other words, he was unable to sanction the Scheme because he felt that the proper classes of creditors had not been convened and consequently that the voting had not been properly carried out. He also commented on a number of other aspects of the proposed Scheme including the following:
- The process of notifying creditors of the proposed Scheme;
 - The information provided to creditors relating to the proposed Scheme;

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- Whether the Creditors' Meeting was properly and fairly conducted;
- Whether the votes cast adequately represented the views of the creditors; and
- Whether the terms of the Scheme were fair, including the content of the proposed Estimation Guidelines and the proposed reversion to run-off clause.

1.39 Following the failure of the proposed BAIC Scheme a number of developments occurred to the design and implementation of Schemes including the following:

- Extensions to the notification periods given to creditors - commonly a period of at least 6 months between the Effective Date and the Bar Date of a Scheme is now used;
- Where considered appropriate, more sophisticated voting arrangements are used. In some cases the new roles of a Vote Adjudicator/Vote Valuer and an Independent Chairman of the Creditors' Meeting have been introduced;
- The design of more detailed, comprehensive and flexible Estimation Guidelines, to allow creditors to clearly see how, where necessary, their claims will be valued as part of the claims agreement process. This will often be accompanied by a detailed description of what supporting information will be required to support creditors' claims; and
- The modification of the circumstances in which a reversion to run-off clause can be employed, or the entire removal of the clause.

Post BAIC

1.40 Despite the BAIC judgement, solvent Schemes have, due in large part to their flexibility, continued to obtain sanction by the Court. One of the first solvent Schemes to be sanctioned following BAIC was the Dutch Aviation Pool of 18 insurance companies in October 2005. It was also one of the first Schemes to be sanctioned for non-UK EU companies. It is possible for a Scheme to be proposed by a non-UK company if sufficient connection can be shown with the UK, as explained in paragraph 1.4.

1.41 The FSA does not approve Schemes as such but, if they are satisfied with the terms of the proposed Scheme, they will provide the company with a no objection letter. In July 2007, the FSA published a document entitled "FSA process guide to decision making on Schemes of Arrangement for insurance firms" (a copy of which is given in Appendix D to this part of the paper). The guide explains the FSA's process for reviewing Schemes and the criteria it will use to determine its position. Also in response to some of the previous criticisms of Schemes, such as those raised in the BAIC case, the document indicates that there may be circumstances in which the appointment of a Policyholder Advocate may be appropriate, such as where a proposed Scheme will affect private or small commercial creditors. The role of the FSA and its process guide is described in more detail in Section 3 of this part of the paper.

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- 1.42 Other notable Schemes to be sanctioned in recent years have been the WFUM Pools' Schemes, sanctioned in September 2007. This pool Scheme consisted of 14 solvent companies and one insolvent company and included a very detailed Estimation Guidelines section (referred to as an "Estimation Methodology" in that case). More recently, the EW Payne Pool Scheme, sanctioned in July 2008, involved 82 London Market insurers, and is the largest Scheme sanctioned to date in terms of the number of Scheme Companies involved.
- 1.43 Schemes have evolved and continue to evolve in response to an increasingly varied and challenging marketplace. Schemes have been successful and are likely to continue to be, due to their flexibility, which allows them to be designed to meet the needs of all of the relevant stakeholders.

2 SCHEME PREPARATION

Introduction

2.1 This section discusses the various stages of Scheme preparation which occur prior to implementation of the Scheme. These stages comprise:

- Assessing whether a Scheme is feasible;
- Designing the Scheme; and
- Wider aspects of Scheme preparation which could include pre-Scheme commutations and/or business transfers (e.g. Part VII transfers in the UK).

2.2 As mentioned in Section 1 of this part of the paper, Schemes are very flexible procedures. Provided the Court is satisfied with the proposed Scheme and the creditors vote for the proposed Scheme with the required number and value of votes then the Scheme can be designed to suit many different purposes.

2.3 In practice, as discussed in Section 3 of this part of the paper it is normal for the FSA to provide the company with a no objection letter; although in theory this is not a legal requirement to implement a Scheme.

Scheme feasibility

Factors to consider

2.4 Generally the factors that should be considered in assessing whether a Scheme is a feasible option for bringing closure to a run-off portfolio are common between insolvent and solvent portfolios, but where there are differences these have been highlighted in the relevant paragraphs below. An important example where there is a big difference is the solvency level of the company proposing the Scheme as this is much more relevant to the decision making process for a solvent company than for an insolvent company, as discussed in paragraphs 2.21 to 2.23.

2.5 One of the main factors to consider in assessing the feasibility of a Scheme is whether the liabilities can be valued in a robust manner. Considerations in this case would be the classes of business involved, the age of the business and whether there are any specific characteristics of the business to be subject to the Scheme that would make valuation particularly difficult.

2.6 Other factors which may impact the feasibility of a Scheme include the following:

- The amount of reinsurance remaining;
- The solvency level of the company proposing the Scheme;
- The existence of compulsory insurance;
- Whether the Scheme is being proposed for a pool arrangement;
- The quantity and quality of the data available;
- The creditor base;
- The cost of implementing the Scheme;
- The timescales for the Scheme; and
- The likely views of the FSA.

- 2.7 The above factors are discussed further below.

Classes of business

- 2.8 Different classes of business have different claim characteristics which can become particularly relevant when valuing the claims. In particular some classes such as liability are long tailed in nature and therefore it can be many years before an estimate can be placed on the claims with any certainty. If, therefore, a portfolio includes a large number of long-tailed classes a decision will need to be taken as to whether the claims are sufficiently mature to allow a robust valuation for the purposes of a Scheme.

Age of the business

- 2.9 The longer the business has been in run-off, the greater the level of information that should be available on the claims and therefore the more certain any estimate of the remaining liabilities should be. It can also mean, however, that policy records are less complete and this is relevant for the data quality considerations discussed in paragraphs 2.26 and 2.27.
- 2.10 It is also worth highlighting here that this factor is considered by the FSA when making their assessment of a proposed Scheme as discussed further in Section 3 of this part of the paper. In particular, it is not usually appropriate to include a policy in a proposed Scheme with an unexpired exposure period remaining (e.g. 10 year contractors' liability business). Furthermore, the FSA have stated that they would normally expect the business for which a Scheme is proposed to have been in run-off for at least five years.

Specific characteristics

- 2.11 Sometimes the circumstances of a particular claim may mean that there are legal issues which need to be resolved before an estimate can be placed on the value of the claim with any certainty. Examples of claims in the past where this may have been relevant are the Exxon Valdez loss, the Kuwait Airlines loss and the World Trade Centre loss. It should be highlighted that the existence of legal issues surrounding such claims does not automatically prevent a Scheme from being proposed, but it can impact the design of the proposed Scheme and how, or if, the policies on which these claims have arisen are included in the proposed Scheme.

Reinsurance remaining

- 2.12 Where the company proposing the Scheme has a large amount of reinsurance in place there is a risk that some or all of this asset will be lost when the Scheme is implemented as reinsurers may refuse to pay out on claims settled under the Scheme. Since the loss of some or all of this asset could jeopardise the viability of the Scheme, careful consideration needs to be given as to how this asset is managed as part of the overall Scheme process.
- 2.13 There are two main ways in which the risk above can be mitigated.

Part B: Schemes of Arrangement

- 2.14 Firstly, the reinsurance can be commuted before the Scheme is implemented. This can be particularly relevant for insolvent companies where the reinsurance can be the greatest asset of the estate. In this case a Scheme may not be feasible until most or all of the remaining reinsurance has been commuted so that the company has sufficient cash with which to pay out the claims.
- 2.15 The second way in which the risk of losing the reinsurance asset can be mitigated is by applying set-off within the Scheme. Under this mechanism a reinsurer which is also a creditor of the Scheme will have its inwards claim netted off against its outwards claim to give an overall net position for the reinsurer under the Scheme. Consider the simplified examples below which involve Company A (the company proposing the Scheme) and one of its reinsurers, Reinsurer B, which are assumed to be affected by a Scheme in which set-off applies.
- 2.16 Example 1
- Company A has a claim against Reinsurer B of £100,000; and
 - Reinsurer B has a claim against Company A of £130,000.
- 2.17 Points to note from Example 1:
- Under a Scheme, Reinsurer B becomes a net creditor of the Scheme for an amount of £30,000;
 - Company A effectively receives 100% of the value of its reinsurance asset from Reinsurer B as under set-off this has been netted off against the inwards claim from Reinsurer B; and
 - Given that Reinsurer B is a net creditor of the Scheme it is entitled to a vote and would also be bound by the Scheme rules once the Scheme is implemented.
- 2.18 Example 2
- Company A has a claim against Reinsurer B of £100,000; and
 - Reinsurer B has a claim against Company A of £80,000.
- 2.19 Points to note from Example 2:
- Under a Scheme, Reinsurer B becomes a net debtor of the Scheme for an amount of £20,000;
 - As an overall net debtor, Reinsurer B is not bound by the Scheme but any amounts due from Company A will be valued in accordance with the terms of the Scheme; and
 - Although Reinsurer B is a net debtor, legal opinion is such that normally Reinsurer B would be entitled to a vote as it is only a net debtor by virtue of Company A's contingent asset of £100,000. If this was not the case Reinsurer B could be bound to a process on its outwards claim without being permitted to voice its views.
- 2.20 The issues in respect of set-off can be complex and largely fall outside the scope of this paper. For this reason the value of votes where set-off exists is not discussed further in this paper.

Solvency level

- 2.21 The solvency level of the company proposing the Scheme may affect the level of creditor support for the Scheme and therefore whether the Scheme will ultimately be successful. For an insolvent or marginally solvent company this will not generally be an issue as most creditors will welcome the opportunity to receive (with certainty) an accelerated payment from a company where they may have been expecting only a partial recovery. In addition, for an insolvent company the Scheme may result in cost savings which might lead to a higher overall dividend percentage being declared, which is also likely to be welcomed by creditors.
- 2.22 For substantially solvent companies however, the creditors may not be prepared to give up the cover they have at all, in which case they would likely vote against the proposed Scheme, or they may not be prepared to give up the cover unless they are offered appropriate compensation which covers them sufficiently for the risk they are accepting back on to their balance sheets. This will need to be factored into the Scheme planning, otherwise the Scheme may not be ultimately successful.
- 2.23 Solvency level is also considered by the FSA when making the decision on whether to object to a proposed Scheme or not. This is discussed in more detail in Section 3 of this part of the paper.

Compulsory insurance

- 2.24 Compulsory insurance policies, such as UK Employers' Liability policies, cannot normally be included in a Scheme and therefore need to be identified at the feasibility stage. They can then be specifically excluded from the Scheme at the design stage or transferred to a different authorised entity.

Pool arrangements

- 2.25 Where the business being proposed for a Scheme is part of a pool arrangement this can impact the feasibility, and potentially the design of the Scheme in a number of ways:
- All pool members will need to buy in to the proposal before it is announced to the creditors and this may prove difficult if the members have different priorities and attitudes to a Scheme;
 - Given the complexity of some pool arrangements it may be easier to secure creditor support for a Scheme even if the pool consists of some substantially solvent participants;
 - It may be difficult for a creditor to identify which pool participant(s) insured its liabilities which can be a problem for the Scheme voting process; and
 - There can sometimes be a mixture of insolvent and solvent pool members, who might therefore have different considerations regarding the design of the Scheme.

Data

- 2.26 As discussed in Section 1 of this part of the paper creditors need to vote on the proposed Scheme before it can be sanctioned. For a Scheme to be

feasible, therefore, the company needs to have sufficient details on its policyholders to ensure that they can be notified about the proposed Scheme. Indeed, before the Court grants the company permission to hold the vote it needs to be satisfied that the company will be able to contact sufficient policyholders either directly, through brokers or via advertising.

- 2.27 Having a large quantity of good quality data also means that a valuation at creditor level can be performed. This can assist with the identification of key creditors who can then be contacted directly about the proposed Scheme, so as to then assess whether the vote is likely to be successful. This valuation can also benefit the Scheme vote process as the company has an initial view of the vote values to compare against those subsequently submitted by the creditors.

Creditor base

- 2.28 The mix of creditors (e.g. between direct and reinsurance, by territories, etc.) of the company proposing the Scheme together with their vote preferences will have a direct impact on the success of the Scheme vote and therefore the feasibility of the Scheme.

Cost of implementing the Scheme

- 2.29 There is a cost in implementing a Scheme and the company will need to weigh this up against the potential financial outcome of the Scheme, the company's objectives for the Scheme (e.g. finality) and the cost of other available options which could also meet the same objectives (e.g. a sale of the portfolio).

Timescales for implementing the Scheme

- 2.30 As discussed in Section 1 of this part of the paper implementing a Scheme takes time and the company proposing the Scheme will need to consider whether the timescales involved are consistent with its overall objectives for the Scheme and the strategy of the company. When a decision has been made to progress with a Scheme, the timeline of the Scheme should be designed so that the stakeholders are given sufficient time to be able to perform their tasks. For example, a claims submission period of at least 6 months is typically now given between the Effective Date and the Bar Date. For portfolios where there are unusually detailed data provision requirements then the Scheme may be designed with a longer time period between the Effective Date and the Bar Date.

The likely views of the FSA

- 2.31 As discussed in Section 3 of this part of the paper, the support of the FSA is key to the success of a Scheme. In particular, the FSA will object to a Scheme which it believes to be unreasonable in the context of its statutory objectives of maintaining confidence in the financial system and securing the appropriate degree of protection for consumers.

Scheme design

- 2.32 A Scheme will be designed to suit its purpose. As discussed previously, Schemes have generally been used as a mechanism to run-off or cut-off (terminate) the liabilities of an insurance portfolio. However, due to their flexibility, Schemes can be used for all types of company, not just insurance companies. For example, the purpose of the Scheme of Arrangement for Cape Plc was to provide long term financing of Scheme Creditors' claims in a manner which provided Cape with protection from the risk of insolvency and also increased the likelihood that Cape would be able to discharge its liabilities to Scheme Creditors in full.
- 2.33 Prior to the Scheme the company may engage with the creditors to obtain their views on the design of the Scheme.
- 2.34 Over time, Cut-off Schemes have moved away from 'Allocation' type Schemes to 'Submission' type Schemes. A Submission Scheme allows the creditor to influence the value of their claim under the Scheme through submission of their view of claim valuation and subsequent negotiations with the company.
- 2.35 A Scheme will need to be designed to allow for different classes of policyholder. Creditors need to be grouped into sufficiently homogeneous classes such that the rights of creditors within each class are sufficiently similar. Post the BAIC and WFUM judgements, insolvent schemes and reinsurance only solvent Schemes may still have one class of creditor, but other Schemes are likely to have at least two classes of creditor: 1) an IBNR class, and 2) a non-IBNR class.

Scheme proposal

- 2.36 Generally an insolvent Cut-off Scheme will be beneficial to creditors if the discounted costs of implementing the Scheme are less than the discounted future administration costs of managing the run-off or better than the cost of liquidation. An insolvent Cut-off Scheme that results in a higher dividend percentage payment than the alternative run-off will generally be to the financial benefit of creditors. Under an insolvent Cut-off Scheme creditors will obtain their money earlier compared to run-off and will obtain certainty in the value of their policies.
- 2.37 For a solvent Cut-off Scheme creditors will generally benefit if the Scheme is designed to offer benefits that are greater than those benefits available under a solvent run-off. In a solvent Cut-off Scheme, creditors are being asked to give up the cover provided by their policies and take the risk of future liabilities under those policies back on their balance sheets. Therefore, creditors may want to be compensated for giving up the cover provided by the schemed policies. Different creditors may value this loss of coverage differently depending on their individual circumstances, including the nature of the insurance coverage concerned.
- 2.38 In some situations the incentive offered to creditors under a solvent Scheme has been to pay claims without discounting for the time value of money or by discounting them at a reduced discount rate. In deciding whether to vote for such a Scheme, creditors must consider whether the discounting concession being offered is adequate compensation for the risk they are accepting back

on to their balance sheet. This is one example of how a solvent Cut-off Scheme can be designed to enhance the benefits for creditors, but the flexibility of design of a Scheme allows other alternative incentives.

- 2.39 In all cases it is important that the Scheme Document clearly states the arrangement that is being offered to creditors. This is particularly important for a substantially solvent company where the FSA will normally object to a Scheme unless the Scheme offers benefits designed to ensure that the policyholders are in no worse a position than in a solvent run-off.

Estimation Guidelines

- 2.40 The Estimation Guidelines should be designed to be appropriate for the portfolio of business that is subject to the Scheme. Section 5 of this part of the paper sets out the factors that should be considered in designing the Estimation Guidelines for a Scheme.

Discounting

- 2.41 Where discounting is to be applied, the discounting section in the Scheme Document should explain how and what rates of interest will be used to discount claims. It should cover how the mean terms have been selected (if these are fixed) and give guidance on the production of mean terms / payment patterns if the creditor can select their own.

Adjudicators / Vote Valuer

- 2.42 It is now common for a Cut-off Scheme to have a Vote Adjudicator/Vote Valuer to assist the Chairman of the Creditors' Meeting in placing a value on the votes. Furthermore, nearly all Schemes have some form of independent Adjudicator to determine the value of claims that cannot be agreed between the creditor and the Scheme Company. Section 4 of this part of the paper sets out the key aspects of these roles.
- 2.43 The number and types of Adjudicator used in a Scheme will be designed to resolve the likely issues that may occur under the Scheme. Section 4 of this part of the paper describes the different types of Adjudicator.

FSCS

- 2.44 An insolvent Scheme may need to be designed to allow for the FSCS as a creditor under the Scheme in addition to the usual policyholders. The FSCS will then continue to guarantee to make payments in the future to both protected policyholders and to claimants who have a protected claim against the insolvent insurer under the Third Parties (Rights Against Insurers) Act 1930. We understand that a new/updated Third Parties (Rights Against Insurers) Act is currently in the process of being produced.
- 2.45 The FSCS will only be a creditor in an insolvent Scheme. In this case the FSCS will be given a vote in the Scheme like other creditors, although they may not choose to use it.

Design compromise

- 2.46 Each Cut-off Scheme should be designed to best suit the particular portfolio of insurance that is subject to the Scheme. Scheme design, however, needs to balance the potential benefit of using complex Estimation Guidelines and detailed Supporting Evidence requirements against the additional time and cost involved for all parties. As the use of Schemes develops further, and new design features are created, Scheme design will continue to evolve in the future.

Wider aspects

- 2.47 Outside of Scheme feasibility and Scheme design there can be other aspects to Scheme preparation. For example, the Scheme feasibility stage may have identified certain policies which are not going to be schemed and these can be carved out of the scheme or transferred to another entity using a Part VII transfer or other form of business transfer. Alternatively, business transfers may be used to move different businesses into one entity before they are all subject to a single Scheme.
- 2.48 In addition to commuting reinsurance, as discussed in paragraph 2.14, some inwards creditors may be subject to settlements/commutations in advance of the Scheme vote.

3 ROLE OF THE FSA IN THE SCHEME PROCESS

Introduction

- 3.1 The FSA has issued a document titled “FSA process guide to decision making on Schemes of Arrangement for insurance firms”. This document was issued in July 2007 and is the latest advice that the FSA has published on Schemes. This document is set out in full in Appendix D to this part of the paper.
- 3.2 The guide explains the FSA’s process for reviewing Schemes and the criteria the FSA uses in its assessment.

Regulatory issues

- 3.3 Schemes are a Companies Act procedure and are not governed by the Financial Services and Markets Act 2000 (FSMA). However, if an authorised firm is proposing to implement a Scheme, it must inform the FSA about it (PRIN 11). The firm should tell both its normal FSA supervisor and the FSA Schemes contact in the Wholesale Insurance Run-Off team that it is planning to implement a Scheme. Early engagement of the FSA will be helpful and is likely to be encouraged by the FSA.
- 3.4 The FSA recognise that Schemes are available to firms under company law, and is not against them in principle. The FSA will review all Schemes to reduce the risk to their objectives of maintaining confidence in the financial system and securing the appropriate degree of protection for consumers.

FSA role

- 3.5 The FSA do not approve Schemes, but will object to Schemes that pose a risk to the achievement of their objectives. If the FSA is satisfied with a proposed Scheme then the FSA will issue a letter of no objection to the Scheme.
- 3.6 It is unlikely the FSA will object to a proposed Scheme if it is satisfied that the firm’s proposed course of action is reasonable, and fair in the circumstances.

Review process

- 3.7 The FSA requires Scheme documentation at least eight weeks before the leave to convene hearing to allow sufficient time for review and any consultation, and it may require longer in more complex cases. While the FSA consider each case on its own merits, they also try to apply a consistent approach. With this in mind they have set up a specialist committee within the FSA (the Schemes of Arrangement Review Committee).
- 3.8 Once satisfied, the FSA will consider issuing a letter of no objection to the Scheme. The Court does not require a firm to have this letter, but FSA non-objection is usually mentioned in the Scheme documentation; and both the Court and the creditors will almost certainly take this into consideration.
- 3.9 A Scheme may be proposed for an entire firm, a branch, a subsidiary or a portfolio of business. The FSA will look at the reasons why a firm is proposing a Scheme. The factors the FSA will consider include the type of firm, the type

of policyholder, the type of liabilities, the intended purpose and shareholder intention, including the firm's financial position and degree of solvency.

- 3.10 The FSA considers that greater protection and therefore greater FSA scrutiny is usually needed for direct policyholders, and in particular individual direct policyholders who may be less experienced in insurance claims and Schemes.
- 3.11 The FSA will not normally object to a proposed Scheme for an insolvent firm providing the Scheme treats policyholders fairly.
- 3.12 For solvency purposes the FSA define a firm as 'marginally solvent' if its capital resources are below the lower of its own Internal Capital Assessment (ICA) and the FSA's Individual Capital Guidance (ICG). In the FSA Insurance Sector Briefing (September 2008) 'Risk and capital management update', the FSA give the following explanation of their assessment of the capital adequacy of general insurers in run-off:

"Confidence level for non-life firms in run-off

Under ICAS, insurers are required to include an assessment of capital adequacy comparable to a 99.5% confidence level over a one year time frame.

For a non-life firm in run-off that selects a time horizon over the entire outstanding duration of its business, we normally consider an ICA to be comparable if the confidence level used is less than 99.5% by 0.5% for each year that the mean outstanding term of the business is greater than one, up to five years in total.

The lowest confidence level that we normally consider to be comparable is therefore 97.5% for a run-off portfolio whose liabilities have a mean outstanding duration of five years or greater. A firm should be prepared to justify its choice of confidence level and to provide the explanations and demonstrations set out in INSPRU 7.1.45G."

Source: FSA Insurance Sector Briefing: Risk and capital management update (September 2008) Appendix A

INSPRU 7.1.45G (31/12/2006) states that:

“If a firm selects a longer time horizon than one year it may choose to use a lower confidence level than 99.5%. In such a case, the firm should be prepared to justify its choice and explain why this confidence interval is appropriate and how it is comparable to a 99.5% confidence level over a one year timeframe. An assessment based on a longer timeframe should also demonstrate that there are sufficient assets to cover liabilities at all future dates. This may be illustrated by future annual balance sheets.”

Source: <http://fsahandbook.info/FSA/html/handbook/INSPRU/7/1> INSPRU 7.1.45G (31/12/2006)

- 3.13 The FSA will not normally object to a proposed Scheme for a marginally solvent firm providing, having regard to the firm's resources, the Scheme treats policyholders fairly.
- 3.14 Unless a ‘substantially solvent’ firm (one which has capital resources above its own Internal Capital Assessment) offers benefits designed to ensure that policyholders are in no worse a position than in a solvent run-off, the FSA have said that they would normally object to a proposed Scheme. In these situations the FSA will be keen to ensure that the arrangement offered to creditors is clearly articulated and justifiable.
- 3.15 Compulsory insurance policies, such as UK Employers' Liability, cannot usually be part of a Scheme. The FSA states that “Employers’ Liability business cannot be schemed for statutory reasons”.
- 3.16 The longer business has been in run-off, the more stable and suitable for the scheme process it is likely to be. The FSA have stated that “the business usually should have been in run-off for at least five years before it may be considered suitable for a Scheme unless there are exceptional circumstances”.
- 3.17 In the case of pool Schemes, the FSA recognises the potential benefits to policyholders of pool members acting together. The FSA will therefore base its decision on the pool as a whole.

Policyholder advocate

- 3.18 Where a firm is proposing a Scheme which affects the interests of private retail policyholders or small commercial policyholders or is likely to be complex or controversial, the FSA may ask the firm to appoint a Policyholder Advocate.
- 3.19 The Policyholder Advocate should have the necessary skills and knowledge and be free from any conflict of interest that might or might appear to be detrimental to the interests of policyholders. The precise role of the Policyholder Advocate will depend on the type of firm and its proposed Scheme. Typically, the Policyholder Advocate will liaise with the firm on behalf of the relevant policyholders, for instance over the individual/aggregate value of the benefits the firm is offering to them in exchange for the interests they are asked to give up. The Policyholder Advocate will also advise policyholders on

issues such as the Estimation Guidelines and the criteria used for determining their claims. S/he will also prepare a report on these issues.

Conclusion

- 3.20 The “FSA process guide to decision making on Schemes of Arrangement for insurance firms” provides a clear explanation of how the FSA approaches Schemes.
- 3.21 The guide provides a rationale for the varying degrees of engagement with which the FSA approaches individual Schemes, which is consistent with the FSA’s principles based approach to regulation.

4 ROLES OF ACTUARIES IN SCHEMES OF ARRANGEMENT

Introduction

4.1 This section introduces the various roles that an actuary may take on in connection with a Scheme. It provides a brief description of the role and the key considerations/issues that may arise in carrying out these roles in practice.

4.2 The roles considered are as follows:

- Scheme Actuary (mainly for an insolvent Scheme);
- Actuarial Advisor (mainly for a solvent Scheme);
- Vote Valuer/Vote Adjudicator;
- Scheme Adjudicator;
- Actuarial Adjudicator;
- Advisor to a Scheme Creditor;
- Expert Witness; and
- Other Roles.

Although we have described the Scheme Actuary and Actuarial Advisor role as two distinct roles in the sub-sections below, in practice the actual work performed by individuals in these roles may be very similar. The two terms have generally evolved to apply in insolvent schemes and solvent schemes respectively. There is no formal requirement for either role.

Scheme Actuary (mainly for an insolvent Scheme)

Role description

4.3 The Scheme Actuary is usually responsible for assisting the Scheme Administrator in ensuring that the assessment of each creditor's claim against the Scheme Company is valued equitably when compared to all other creditors' claims.

4.4 Key aspects of the role to note:

- Reimbursed from the funds of the Scheme Company as an expense of the insolvency;
- Generally responsible for drafting the Estimation Guidelines and Supporting Evidence requirements;
- Named in the Scheme Document which will also define any powers and duties of the Scheme Actuary;
- May also encompass the role of Vote Valuer; and
- Usually responsible for assisting the Scheme Administrator in ensuring equity between insurance creditors, by reviewing referred claims and estimating a value for them in accordance with the Estimation Guidelines for consideration by the Scheme Administrator.

Key considerations

4.5 The key point for a Scheme Actuary to bear in mind in an insolvent Scheme is the requirement for the Scheme Administrator to ensure equity and fair

treatment between creditors. As the assets of the Scheme Company are limited and each creditor will nearly always receive only a proportion of their full claim, any over-valuation of one creditor's liability from the Scheme Company, relative to all the other creditors, will reduce the amount that the other creditors receive.

- 4.6 The role of the Scheme Actuary will vary for an Allocation Scheme versus a Submission Scheme.
- 4.7 For an Allocation Scheme, the Scheme Actuary will usually be responsible for both the estimation and allocation of claims liabilities to individual creditors and will describe these processes in the Scheme documentation. The estimation involves producing the aggregate reserve estimate at which the liabilities will be crystallised. The allocation involves formulating an approach for dividing the crystallised liabilities down to a policyholder level in order to assess the liability of the Scheme Company to each creditor.
- 4.8 For a Submission Scheme, the Scheme Actuary will usually draft the Estimation Guidelines and Supporting Evidence requirements, to assist creditors in formulating their claims. The Scheme Actuary will then review each referred claim to ensure that it has been submitted and supported in accordance with the Estimation Guidelines, or via another methodology that is also adequately supported. Where the Scheme Actuary does not consider the creditor's claim is justified by the information submitted s/he will normally re-estimate the claim and inform the creditor of the revised value. If the creditor does not agree with the revised value and is unable to provide additional information to change the Scheme Actuary's view, then the claim will typically go to adjudication (where this process exists in an insolvent scheme). In some insolvent schemes there is no adjudication process and the Scheme Actuary's view is final.
- 4.9 In considering the equity between creditors it is relevant to examine the nature, timing and extent of each creditor's claims against the company. Discounting should normally be applied to ensure that creditors with short-tailed liabilities are not disadvantaged in favour of creditors with long-tailed liabilities.
- 4.10 Where no adjudication process exists, the assessments of the Scheme Actuary are usually binding on creditors under the Scheme unless the creditor can show manifest error.
- 4.11 The Scheme Actuary can also fulfil the role of Vote Valuer. This role is described separately below.

Actuarial Advisor (mainly for a solvent Scheme)

Role description

- 4.12 The Actuarial Advisor in the context of a solvent Scheme is employed by the Scheme Company. S/he is responsible only to the Scheme Company and, as such, this role is not in the public domain (except if witness statements are required as part of the Court proceedings). As noted in paragraph 4.2, the role of the Actuarial Advisor can be very similar to that of the Scheme Actuary in the context of an insolvent Scheme.

4.13 Key aspects of the role to note:

- Appointed by the Scheme Company;
- Generally responsible for advising the Scheme Company on the Estimation Guidelines and Supporting Evidence requirements;
- May advise the Scheme Company on the various features of the Scheme, including the approach to discounting creditors' claims;
- May advise the Scheme Company of the extent to which a creditor's claim is supported by the information provided;
- May advise the Scheme Company on the value of a creditor's claim;
- Not necessarily named in the Scheme Document; and
- May or may not have formal powers under the scheme.

Key considerations

4.14 The role of the Actuarial Advisor to a solvent Scheme is not a public domain role (except as noted above if a witness statement is required). The actuary is responsible to his/her client and typically has no duties or responsibilities to creditors beyond his or her normal professional standards.

4.15 In a solvent Scheme, as noted in paragraph 1.34, once agreement has been reached between the Scheme Company (and / or the Scheme Advisor) and the creditor as to the value of the creditor's claim under the Scheme, then that value is paid in full by the Scheme Company.

4.16 The Actuarial Advisor will usually advise the Scheme Company, where relevant, on the Estimation Guidelines and Supporting Evidence requirements included in the Scheme Document.

4.17 The Actuarial Advisor can assist the Scheme Company in identifying areas where the claims submitted by the creditor are not adequately supported and justified, bearing in mind that alternative methodologies beyond those included in the Estimation Guidelines can usually be considered assuming they are adequately supported. In solvent Schemes, the amount paid under the Scheme will, however, be a matter between the Scheme Company and the creditor.

4.18 As the Actuarial Advisor is not independent s/he cannot perform the role of Vote Adjudicator/Vote Valuer.

Adjudication Roles

4.19 The role of Adjudicator has evolved over time and now commonly exists in two principal areas: Scheme Adjudication and Vote Adjudication/Vote Valuer.

4.20 When Schemes first evolved during the 1990's the role of Scheme Adjudication was designed to resolve claims which could not be agreed, after due process, between a creditor and the Scheme Company and/or the Scheme Actuary. Scheme Adjudication is typically performed by one person who adjudicates on a fair claim valuation where the creditor and company cannot reach agreement. In one Scheme, this role has been split into two roles such that an Actuarial Adjudicator considers issues relating to the Estimation Guidelines, and a Scheme Adjudicator considers all other issues

under dispute. The Actuarial Adjudicator's role included ensuring the appropriateness of the actuarial methods described by the Scheme Actuary in the Estimation Guidelines as well as providing an adjudication role, when the creditor does not agree with the value determined by the Scheme Actuary (by assessing whether the Scheme Actuary has applied the Estimation Guidelines appropriately).

- 4.21 Following the BAIC judgement in 2005, the role of Vote Adjudicator/Vote Valuer and/or an Independent Chairman of the Creditors' Meeting became commonplace to assess the value of creditors' claims for voting purposes at the Creditors' Meeting to approve the proposed Scheme.
- 4.22 For many of the adjudication roles, the Adjudicator is often chosen prior to a Scheme's Court approval and may be named in all relevant documentation. The Adjudicator's CV may then form part of the Scheme documentation.
- 4.23 Before accepting any adjudication role the Adjudicator must ensure that s/he is competent to carry out the role prescribed by the Scheme, is sufficiently independent of the Scheme Company, concurs with the adjudication procedures outlined in the Scheme documentation and accepts that the time constraints imposed on the process are fair to the Scheme Company, creditor and the Adjudicator.

Vote Adjudicator / Vote Valuer

Role description

- 4.24 The roles of Vote Valuer and Vote Adjudicator are so similar they are discussed together in this sub-section. Historically, the Vote Valuer role has typically been present on insolvent Schemes and the Vote Adjudicator role has typically been present on solvent Schemes. In some Schemes the Vote Valuer may also act as the Chairman of the Creditors' Meeting. In practice, of course, companies proposing Schemes can use whatever roles and associated descriptive terms that they wish, as long as they clearly define what those roles and terms mean in the specific context of their Scheme.
- 4.25 For a proposed Scheme to be sanctioned it must be voted for by the creditors. In each class of creditor, at least 75% by value and greater than 50% by number of the creditors that vote must vote in favour of the Scheme for it to be sanctioned by the Court. In many instances the vote happens before the creditors formally value their claims under the Scheme. In these situations, the votes they submit are often a high level assessment of the value of their claim against the Scheme Company, although there have been Schemes where some creditors have submitted detailed supporting analysis for their vote values.
- 4.26 It is usually the Vote Valuer's role to assist the Chairman of the Creditors' Meeting in the reasonable valuation of the vote values submitted by each creditor. The Vote Adjudicator on the other hand may be asked by the Chairman of the Creditors' Meeting to only opine on the votes of those creditors referred to her/him. Furthermore the Vote Valuer usually reports directly to the Chairman of the Creditors' Meeting (and may even be the same person) whereas the Vote Adjudicator may report to the Court on whether the

Chairman of the Creditors' Meeting has been fair and reasonable in his/her determination of the creditors' votes.

4.27 If the Vote Adjudicator/Vote Valuer considers a creditor's claim to be inappropriate s/he will adjust it to a value that s/he considers is appropriate. It is the value of votes after this adjustment process that go towards assessing whether the vote is successful on the amounts basis (subject to Court approval, of course).

4.28 Key aspects of the role to note:

- Sufficiently independent of the Scheme Company;
- Reimbursed by the Scheme Company;
- The Vote Valuer usually reports to the Chairman of the Creditors' Meeting; and
- The Vote Adjudicator may report to the Court either directly or via the Chairman of the Creditors' Meeting.

Variations on the above are possible in practice.

Key considerations

4.29 So that the Vote Adjudicator/Vote Valuer cannot be accused of applying bias in considering each vote, s/he may not be informed which way the creditors voted when the vote values are submitted for assessment. In practice, this can require the Scheme Company to apply careful scrutiny and possibly redaction of the supporting evidence for each vote value before submitting it to the Vote Valuer / Vote Adjudicator, to ensure that the material does not disclose the direction of each vote.

4.30 In many instances votes are submitted without the more detailed information that is required to support a claim under a Scheme, therefore the Vote Adjudicator/Vote Valuer may have limited information upon which to assess the votes. In such cases, the information will be limited to some high level comments from the creditor and the policyholder level reserve amounts and limits of exposure held by the Scheme Company. However, as noted above, in some cases, the extent of the supporting information for vote values can be similar to that which might normally be more often seen to support actual claim values.

4.31 Although relatively rare, sometimes extra information may be requested from creditors for the purpose of clarification where their submitted vote value looks clearly in error or unusual. It could be argued that it is unreasonable for creditors to have to spend undue time and effort justifying vote values for a proposed Scheme before it is approved and even exists, although a balance needs to be struck to ensure that the final vote values used to determine the outcome of the overall voting process properly represent a fair and reasonable assessment of each creditor's interest in the proposed Scheme.

4.32 The Vote Adjudicator/Vote Valuer should be sufficiently independent of the Scheme Company, and should be able to give comfort to the Court that a robust and unbiased process has been carried out in assessing the vote values. As such, the Vote Adjudicator/Vote Valuer cannot perform the role of

Actuarial Advisor to a solvent Scheme and would not usually be the Scheme Adjudicator or Actuarial Adjudicator.

- 4.33 The Scheme Actuary in an insolvent Scheme context contributes to the process of ensuring equity between creditors, therefore it is not usually inappropriate for the Scheme Actuary to perform the role of Vote Valuer in addition to the Scheme Actuary role, although this does not necessarily have to be the case.

Scheme Adjudication

Role description

- 4.34 For most schemes, the vast majority of all submitted claims get resolved and there is no call on the services of the Scheme Adjudicator. As the Scheme Adjudicator has to take time at the pre-scheme stage to become familiar with the proposed Scheme it is usual for her/him to charge a small retainer. In the event that adjudication services are required, the Scheme Adjudicator will usually charge fees based on a pre-agreed hourly rate set out in his/her terms of engagement. It should be noted that the Scheme Adjudicator in past Schemes has not necessarily been an actuary, although more often than not has been an actuary.
- 4.35 Only when the Scheme Company and creditor have exhausted all meaningful exchanges to resolve a submitted claim in the timeframe prescribed by the Scheme will the Scheme Company refer the matters in dispute to adjudication. Some Schemes may allow an issue to be immediately referred to an Adjudicator if it is clear that it will never be agreed without it first being referred to adjudication. Once the adjudication process has been invoked the Adjudicator takes control of determining the final value of the creditor's claims.
- 4.36 Key aspects of the role to note:
- Recognised as experienced in the market;
 - Appointed by and must be sufficiently independent of the Scheme Company;
 - Have no actual or perceived conflicts of interest;
 - Reimbursed by the Scheme Company for any retainer;
 - Concurs with the Scheme Adjudication procedures outlined in the Scheme;
 - When a dispute is referred to the Scheme Adjudicator, s/he typically carries out the following tasks:
 - (a) Reviews the papers and documents referred to her/him by the Scheme Company and creditor within the time specified by the Scheme;
 - (b) Within that timeframe requests further documents, data or information of either party for the purpose of clarification and sets a deadline for compliance by each party in keeping with the Scheme rules;

- (c) Considers any further information requests arising from the above process and raises further queries if necessary to enhance his/her understanding of the issues in dispute;
 - (d) Requests a meeting (or series of meetings), if required, with the Scheme Company and/or the creditor to discuss the matters deemed appropriate by the Scheme Adjudicator;
 - (e) Calls upon other professional advisers including actuaries, legal advisers, claims adjusters and other experts as deemed necessary to assist her/him to reach a decision;
 - (f) Once s/he has obtained as much information and understanding as possible within the time constraints imposed by the Scheme (the Scheme Adjudicator normally has the discretion to extend timeframes when required) makes a determination of the dispute; and
 - (g) Writes a letter, jointly addressed to both the Scheme Company and the creditor, to communicate that determination.
- Reimbursed by the Scheme Company or the creditor or both in accordance with the Scheme Adjudicator's instructions set out in the determination letter.

Key considerations

- 4.37 The Scheme Adjudicator's determination is usually final, binding on both parties and neither party has the right of appeal, or review, or the right to commence any proceedings in respect of either the Scheme Adjudicator or the procedure(s) employed.
- 4.38 Scheme Adjudication is not common and most Schemes complete their exit strategy without any claims being referred to adjudication. Experience to date suggests that fewer than 1 in 100 claims are referred to adjudication, which in itself reflects the efficiency of the Scheme process. Creditors usually prefer to negotiate a settlement in a manner akin to a commutation rather than go to the trouble of preparing further documentation for the adjudication process and incur further uncertainty and time delays. Of course, should a creditor insist on a full policy limit settlement when the Scheme Company believes the potential for future claims is remote, the parties are very unlikely to agree to compromise and adjudication is the one option left.
- 4.39 The sheer variety of disputes makes adjudication interesting. Apart from typical APH (Asbestos, Pollution and Health Hazards) exposure/allocation issues the Scheme Adjudicator could be faced with a diverse number of disputes. Examples of some issues presented for adjudication are:
- Gem robberies;
 - Surge and subsidence property claims caused by tunnelling;
 - Foreign bank collapses causing professional PI claims;
 - Allocation of international compensation awards;
 - Pharmaceutical latent claim exposures;
 - Child abuse claim exposures;

- Catastrophic ice storms; and
- Fraud.

- 4.40 Experience to date indicates that over half of all Scheme adjudications require actuarial input to resolve the probability and quantum of a dispute whilst a further quarter require legal input to interpret policy wordings or time bar issues. Sometimes it is necessary to obtain input from other professionals such as surveyors and/or claim adjusters before a determination can be made.
- 4.41 The adjudication process typically takes about three months to complete. A letter setting out the adjudication determination is then usually addressed jointly to the Scheme Company and creditor. Typically, the letter will be concise and because the Scheme Adjudicator's role is solely to provide an impartial determination of a dispute it will normally contain no discussion or reasoning of the issues at stake or the logic developed to determine the outcome. This is quite different to an arbitration decision where a full discussion of the issues at stake will take place. Indeed most Schemes state that the Scheme Adjudicator must act as an expert and not an arbitrator. A typical decision might read as follows:

Scheme Company address	Date
Creditor address	
Dear Scheme Company and Creditor	
Disputed Claim between Company and Creditor	
In accordance with Section X.x – Adjudication of Disputed Scheme Claims of the Company Scheme of Arrangement ("Scheme") and subsequent to my review of the documentary evidence supplied respectfully by Company and Creditor, I determine the (un)discounted (<i>depending on whether the claim is to be discounted or undiscounted</i>) aggregate liabilities of Company in respect of its protection (<i>may have to specify the policies or refer to a listing</i>) of Creditor to be £Y.	
In accordance with Clause X.x.x, I direct that all remuneration, costs, charges and expenses of the Scheme Adjudicator to be paid equally (<i>or as otherwise directed</i>) by the Company and Creditor.	
Yours sincerely	
Scheme Adjudicator	

- 4.42 All this may seem straightforward. However, because the decision necessarily involves the payment of monies and is usually final and not appealable it imposes a great responsibility on the Scheme Adjudicator to have acted impartially, to have requested and reviewed as much relevant information as time allows and to be fair and reasonable to both parties. Quite often the Scheme Adjudicator may disappoint both the creditor and the Scheme Company but this is the nature of the role s/he has been appointed to discharge. The Scheme Adjudicator is likely to think very carefully before reaching his/her final determination and to search his/her professional conscience and ensure that all relevant matters (including using a peer review

where appropriate) have been considered in a fair, reasonable and measured way.

- 4.43 One of the most sensitive issues that the Scheme Adjudicator usually has to decide upon is how the costs of adjudication are to be apportioned between the Scheme Company and the creditor. Some Adjudicators adopt the view that because they see the Scheme Company as having imposed the Scheme on the creditors (albeit with the majority consenting via the vote process), the Scheme Company should always pay the costs of adjudication.
- 4.44 For many cases though the Scheme Adjudicator adopts the view that because the creditors en masse have voted for the Scheme they too should share in any adjudication costs. Typically these are apportioned on the basis of relative culpability in causing the Scheme adjudication process to be invoked. For example, where a creditor has been non-communicative throughout and provides no supporting evidence for a submitted claim, the Scheme Adjudicator may decide that the creditor bears the whole cost on the basis that had communication taken place the dispute would never have arisen in the first instance. Likewise, had the Scheme Company been deemed to have been non-cooperative the costs may fall entirely on the Scheme Company itself. In most cases though costs are apportioned on a less extreme basis and could be shared equally.

Actuarial Adjudication

Role description

- 4.45 We are aware of at least one Scheme which has to date prescribed a separate role of Actuarial Adjudicator, which is similar to the actuarial peer review role in early insolvent Schemes. Whether this will set a trend for future Schemes remains to be seen.
- 4.46 Key aspects of the role to note:
- Reviews the Estimation Guidelines proposed by the Scheme Actuary at the pre-sanction stage;
 - Suggests enhancements to the Estimation Guidelines if appropriate;
 - Approves the final Estimation Guidelines;
 - Is reimbursed by the Scheme Company for any pre-sanction work;
 - Resolves certain disputes relating to the application of the Estimation Guidelines by the Scheme Actuary; and
 - Reports to both the Scheme Company and the creditor at the same time when a determination is given.

Key considerations

- 4.47 At the pre-Scheme stage the Actuarial Adjudicator would review the Estimation Guidelines proposed by the Scheme Company and Scheme Actuary. After careful consideration of all the issues and after a constructive dialogue with the Scheme Company and the Scheme Actuary on any amendments to the process, the Actuarial Adjudicator would approve the Estimation Guidelines and issue a statement to that effect.

- 4.48 Where the Actuarial Adjudicator is required to resolve a dispute, his/her decision would normally be binding on all parties.
- 4.49 The costs of the Actuarial Adjudicator during the pre-scheme stage of approving the Estimation Guidelines are paid by the Scheme Company. However, should an actuarial dispute arise with a creditor once the Scheme is effective, the costs of the Actuarial Adjudicator would normally be apportioned along similar principles to those discussed above for the costs of the Scheme Adjudicator.

Advisor to a Scheme Creditor

Role description

- 4.50 Sometimes an actuary may be asked to support a policyholder whose insurer/reinsurer is proposing a Scheme. In these cases the actuary may either be an employee or a consultant of the creditor. There are a number of areas where an actuary can provide support. Examples include:
- Highlighting and explaining the key features of a Scheme to a creditor;
 - Helping the creditor decide whether the Scheme makes financial sense for the creditor, including the capital cost of risk repatriation;
 - Assisting a creditor cleanse policy and financial records;
 - Assisting a creditor estimate IBNR and latent claims exposures;
 - Determining an appropriate vote value;
 - Assisting in agreeing a pre-scheme commutation;
 - Assisting in deriving and/or submitting a claim to a Scheme;
 - Assisting in negotiations with the Scheme Company;
 - Carrying out analysis and / or providing witness statements as part of the Court process; and
 - Assisting the creditor in preparing and arguing objections (if required).
- 4.51 Where an actuary is providing assistance in submitting a claim to a Scheme the objective should be to ensure that the creditor's claim is appropriately estimated and supported under the terms of the Scheme for agreement by the Scheme Company. The actuary would normally support the creditor in responding to any questions or requests for additional information from the Scheme Company. The actuary may also support the creditor in making a presentation to the Scheme Adjudicator if a value cannot be agreed with the Scheme Company.
- 4.52 Key aspects of the role to note:
- Not usually a public domain role;
 - Responsible to the creditor only;
 - Acts as directed by the creditor (subject to the applicable relevant professional standards) in valuing policies and/or estimating and supporting the creditor's claim under the Scheme; and
 - Should ensure s/he is aware of the Scheme rules and timescales, especially the Bar Date.

Key considerations

- 4.53 Unless this involves presenting evidence in Court (as described in 'Expert Witness' sub-section below) this is not usually a public domain role. The actuary is responsible only to the creditor retaining his or her services.
- 4.54 A question arises where a policyholder asks an actuarial adviser for assistance in maximising the value of its policies under, for example, a pre-scheme commutation. In such circumstances it may be appropriate to provide alternative scenario based valuations where there are legal or other uncertainties, and to communicate these alternatives as such. It may also be appropriate to help the client understand which assumptions have a large or small impact on the value assessed.

Expert Witness

Role description

- 4.55 Sometimes it is necessary for an actuary to present evidence to a Court in the context of a Scheme. This can be as part of any of the other roles described above or independently.
- 4.56 Key aspects of the role to note:
- Reimbursed by the party proposing the actuary as an expert;
 - Reports to the Court;
 - Must present arguments in a clear and robust fashion appropriate to a non-actuarial audience; and
 - Must be comfortable with potential cross-examination in Court.

Key considerations

- 4.57 An example here is dealing with objections. Where a creditor wishes to object to the proposed Scheme at the leave to convene or sanction hearing, it may seek the assistance of an actuary in articulating the objections to be raised. Similarly an actuary involved with the Scheme may be called to respond to the objections raised. Both actuaries may be called as expert witnesses to present evidence in court. The issues under discussion will usually be aspects of claim valuation.
- 4.58 More on this topic is covered in the separate section on Dealing with Objections.
- 4.59 In addition, in Section 4 of Part C of this paper on Insurance Business Transfers, details are provided of the guidance that is relevant to actuaries acting as experts in the context of business transfers. Many of these matters will also be relevant to an actuary acting as an expert witness in the context of a Scheme.

Other roles

4.60 There are numerous other roles that may be performed by actuaries in connection with Schemes which are not necessarily in the public domain. Some of these are listed below:

- Performing the role of the Chairperson for the Creditors' Meeting;
- Performing the role of Policyholder Advocate appointed by the FSA;
- Presentations, both formal and informal to meetings of Creditors and the Creditors' Committee; and
- Pre-scheme data cleansing of the Scheme Company's policy and financial records.

5 ESTIMATION GUIDELINES AND SUPPORTING EVIDENCE

Introduction

- 5.1 The Estimation Guidelines and Supporting Evidence sections in the Scheme Document typically detail the methodologies that the Scheme Company will apply to value any applicable claims under the Scheme and the information that the company expects creditors to submit in support of their claims. This section sets out the issues that actuaries may consider when drafting these sections for a solvent or insolvent Scheme.
- 5.2 The BAIC judgment referred to in paragraph 1.38 questioned the content of the Estimation Methodology (as it was referred to in that Scheme) presented in the Scheme Document. This has had two implications for such documents. Firstly, there has been a move towards calling this part of the Scheme Document “Estimation Guidelines”, as the term “Estimation Methodology” may appear to be prescriptive. The use of the word “Guidelines” is perhaps more consistent with the spirit of giving creditors the flexibility to use their own methodologies if they so wish.
- 5.3 Secondly, there has been a move to distinguish more clearly between the methodologies that could be used to value claims, and the data and other information that form the inputs and support for the methodologies. As a result, there is generally now a section for the methodologies usually known as the “Estimation Guidelines” and a separate section typically known as the “Supporting Evidence” section, which discusses the data and information on which the valuation is based and which should be submitted in support of the creditor’s claim.
- 5.4 In certain circumstances, for example the recent EW Payne Pool solvent Scheme, the Scheme Company may decide that a formulaic approach is the most appropriate method to determine creditors’ IBNR claims within the Scheme. If this is the case then the Estimation Guidelines may be dispensed with or limited to a brief description of the business covered by the Scheme and the formula for determining IBNR claims.
- 5.5 Inevitably, there will be a trade-off between catering for the wide range of circumstances facing creditors and minimising the content of the document to keep it accessible and relevant in most circumstances. The drafting actuary or claims professional will need to use his/her experience and knowledge of the account and the individual creditors to strike the appropriate balance.

Estimation Guidelines

- 5.6 The Estimation Guidelines typically start with a clear statement of the business covered by the Scheme. Although this is likely to be defined elsewhere in the Scheme documentation, it is useful to include this in the Estimation Guidelines, as it is likely to have a bearing on the structure and content of the guidelines. For this reason it is likely that the business classifications will need to be more detailed than elsewhere in the Scheme Document. Classifications that could be considered here are:

- Direct / Inwards Reinsurance / LMX;
- Treaty / Facultative;
- Class / Line of Business;
- Nature of Business, e.g. proportional, non-proportional, etc;
- Underwriting Years; and
- Territories / Currencies.

5.7 With reference to the above classifications, where appropriate, the Estimation Guidelines will then normally provide descriptions of relevant estimation methodologies. The drafting actuary will exercise judgment to determine the appropriate level of detail for these descriptions. Approaches to estimating liabilities at a whole account level are likely to be a useful guide here. Methodologies that will normally be considered for inclusion are as follows:

- Exposure-based techniques;
- Traditional actuarial reserving techniques, e.g. chain-ladder, average cost per claim, Bornhuetter-Ferguson (appropriately caveated for the maturity of the business), curve-fitting and market share approaches; and
- Benchmarking, for example survival ratios and other ratios such as IBNR to outstanding claims or ultimate to incurred claims.

5.8 The Estimation Guidelines may then provide more specific guidance on the application of these methodologies. We set out what we consider to be a best practice approach below but circumstances may dictate that other approaches are more appropriate. We deal first with direct involvements and then with LMX (i.e. retrocession) involvements. With regard to inwards reinsurance and facultative business, these will fit into either or both categories depending on whether the data allows analysis from the ground-up or not.

5.9 Examples of the types of methodologies and other factors that may be covered in the Estimation Guidelines for direct exposures include:

- Full ground-up exposure-based techniques (typically used for Asbestos, Pollution and Other Health Hazard (“APH”) losses). Guidance may cover the detail for estimating ground-up losses including the key assumptions needed, and the possible approaches for the allocation of these ground-up losses to available coverage;
- Less detailed exposure-based techniques, for example the application of burn rates to the coverage available. Guidance may cover how the burn rates are selected;
- Traditional actuarial reserving techniques (typically used for non-APH losses) such as chain-ladder and curve fitting techniques. Care will be needed in the inclusion of methods such as the Bornhuetter-Ferguson method, since any business included in a solvent Scheme should normally be sufficiently mature not to need an independent exposure measure;
- Benchmarking for smaller exposures and/or where there isn’t enough data for the above techniques and/or as support for other approaches; and
- Guidance on other factors that may need to be addressed such as amounts for pure IBNR where this has not been factored in above. For example, the full exposure-based technique will not include pure IBNR but the traditional techniques and benchmarking should implicitly include an allowance. Where excluded, pure IBNR can be estimated using a

benchmarking approach and/or traditional techniques such as an average cost per claim method.

5.10 Examples of the types of methodologies and other factors that may be covered in the Estimation Guidelines for LMX exposures include:

- Traditional techniques, including curve-fitting to individual catastrophe development data. Guidance may cover the use of gross data with consequent assumptions for reinsurance recoveries or the use of ceded data or, preferably, both;
- Benchmarking where guidance could also recommend this as a support for another approach to improve the robustness of the submission; and
- Allowance for the types of cover ceded, for example, proportional versus non-proportional.

5.11 Examples of the different loss types that may be addressed separately in the Estimation Guidelines and Supporting Evidence sections are given below:

- 1) US asbestos direct;
- 2) US asbestos treaty;
- 3) US pollution direct;
- 4) US pollution treaty;
- 5) US health hazard direct;
- 6) US health hazard treaty;
- 7) Non-US APH (e.g. UK asbestos);
- 8) Catastrophe losses (e.g. marine and non-marine LMX spiral losses); and
- 9) Attritional losses (e.g. non-APH casualty and medical malpractice).

Other factors to consider

5.12 As explained in the introduction, the Estimation Guidelines are not intended to be an exhaustive list of approaches that will cover every circumstance faced by a creditor. The Estimation Guidelines should explain that other methodologies exist and may well be more appropriate to the creditor's circumstances, and go on to say that it is acceptable to use alternative approaches provided that the creditor can demonstrate why they produce superior results to the approaches set out in the Estimation Guidelines.

5.13 The Estimation Guidelines will typically highlight the basis on which a creditor's claims submission should be made (e.g. a best estimate basis), with an explanation of exactly what this means (e.g. the mean of a distribution of possible outcomes). It will also explain whether the submission should be on a discounted or undiscounted basis, and if a discounted basis is to be used, the basic principles (and possibly standard discount factors and / or interest

rates) that should be used when determining the discounted claim values (e.g. relevant to claim type etc.).

5.14 The Estimation Guidelines will also normally acknowledge that claims could be valid where no history exists. In these circumstances, guidance is necessarily limited due to the widely varying nature of claims falling into this category. The Estimation Guidelines may stipulate that the creditor will at least need to provide evidence of the existence of the exposure and that any reasonable well-supported estimation approach will be accepted.

5.15 There may also be guidance on the use of external advisors in the production of a Scheme submission. For example, if a firm of actuaries is engaged to prepare the submission then the creditor may well be expected to make the resulting report available to the Scheme Company.

Supporting Evidence

5.16 The Supporting Evidence section of the Scheme Document will usually set out the type of information that the Scheme Company expects creditors to submit to support a claim based on the methodologies in the Estimation Guidelines. Where a creditor has chosen to adopt an alternative methodology, suitable evidence will also need to be submitted to support their analysis. The data provided should allow the Scheme Company, Scheme Manager and Scheme Advisors (or Scheme Actuary in some Schemes) to understand how the creditor has calculated its claim. This data should also enable these parties to determine their own valuation of the creditor's claim, where appropriate.

5.17 Examples of the different types of information that may be included within the Supporting Evidence section include:

1) Detailed policy information (e.g. inception and expiry dates, policy excess and limits, policy type, policy exclusions and the Scheme Company's share of each policy);

2) Detailed claim information (e.g. development of paid and incurred claims);

3) A full coverage chart including underlying primary layers and self insured retentions;

4) Details of the approach used to estimate ultimate claims; and

5) Justification of the assumptions used to estimate ultimate claims, including any supporting data for that justification.

Reviewing a creditor's claim

5.18 This sub-section lists some of the factors that a Scheme Actuary/Actuarial Adviser may consider when reviewing a claim submitted by a creditor under a Scheme. The list is intended to give the reader an idea of some of the factors that the actuary may want to consider. It is not intended to be either prescriptive or exhaustive since in each case the actuary will need to take into account the terms of the relevant Scheme and the specific features of each claim. Not all of the points listed will apply in every case. In some cases the

actuary may need the assistance of the Scheme Company in determining some of the points listed below. In addition, although the list focuses on the role of the Scheme Actuary/Actuarial Adviser, many of the points listed may also be relevant for actuaries to consider when carrying out other roles under a Scheme (such as the Vote Adjudicator/Vote Valuer, the Scheme Adjudicator and the Actuarial Adjudicator).

- Whether the creditor's claim has been derived in accordance with the Estimation Guidelines;
- Whether the creditor has provided sufficient evidence to support its claim, in line with the Supporting Evidence section of the Scheme Document;
- How the creditor's claim compares to market benchmarks for the claim types/policies/underwriting years under consideration;
- Whether the policy on which the claim is being made is a valid policy that falls within the scope of the business subject to the Scheme;
- Whether the policy on which the claim is being made can respond to claims from the creditor (e.g. was not issued to some other company within the same corporate structure where the creditor is not afforded any coverage);
- Whether the creditor has used the correct policy information in determining the value of its claim (e.g. signed line, policy limit and attachment point);
- Whether there is any reason why the creditor's claim is not permissible under the relevant policy (e.g. there is an exclusion prohibiting claims of this nature, the policy was subject to a previous settlement/commutation, the policy is already exhausted by previous claims, etc.);
- Whether market experience suggests that there is potential for such claims to be experienced under policies of a similar nature;
- Whether the creditor has correctly allowed for any reinstatement premiums that may be due to the Scheme Company as a result of its claim under the Scheme; and
- Whether the creditor has discounted its claim in accordance with the Scheme Document (if it is required to do so).

6 REPORTING CONSIDERATIONS

Introduction

- 6.1 This section discusses any reporting considerations that an actuary has with respect to Schemes.

Insolvent schemes

- 6.2 Generally there are no reporting requirements for Scheme Actuaries in the context of insolvent Schemes. However, each Scheme may be different. As part of his/her role, however, the Scheme Actuary may perform a reserve review where the production of a formal report is likely to be appropriate. In this case it would be expected that the report would be GN12 compliant. Clearly, if the Board for Actuarial Standards produce reporting standards in future, actuaries involved with Schemes will need to consider the impact on their work.
- 6.3 The other area where compliance to GN12 may be relevant is where the Scheme Actuary is valuing claims in accordance with the Scheme's Estimation Guidelines. In this case there may be no disclosure requirements (e.g. to the Company), but some form of documentation is still likely to be important for the Scheme Actuary's records and to comply with professional standards. Whether this documentation should comply with GN12 is, however, unclear and in this context it is relevant that under some Schemes the sheer volume of claims being valued could make compliance with GN12 too onerous in any case. Currently then it falls to each individual Scheme Actuary to decide on the appropriate balance between the level of documentation maintained to ensure that professional standards are met and the time and cost required to achieve this.
- 6.4 Outside of any reporting that the Scheme Actuary deems necessary the Scheme Actuary may also contribute to the drafting of the formal scheme documentation such as the Estimation Guidelines and Supporting Evidence sections. In this case the documentation is not subject to any specific actuarial reporting guidelines but is governed more by what is deemed acceptable by the Court.

Solvent schemes

- 6.5 There are no reporting requirements for Actuarial Advisors in the context of solvent Schemes. As for insolvent Schemes though, the Actuarial Advisor may be involved in valuing claims submitted under the Scheme and therefore the discussion points on documentation from the sub-section on insolvent Schemes above will also be relevant here. The Actuarial Advisor may also contribute to the drafting of the formal scheme documentation such as the sections on the Estimation Guidelines and Supporting Evidence but as for insolvent Schemes these will not be subject to any specific actuarial reporting guidelines.

Other actuarial roles

- 6.6 In terms of the other roles that an actuary may take in connection with Schemes, such as the Scheme Adjudicator or the Vote Valuer, there are no reporting requirements. These roles, however, often involve giving a view on the value of individual claims or an opinion on the data or methodology which will impact the value of the claim and therefore some form of documentation is likely to be expected to support the view provided. Again, it will be down to the individual Vote Valuer or Scheme Adjudicator as to what form any documentation will take to ensure that both the client's expectations and professional standards are met.

7 DEALING WITH OBJECTIONS

- 7.1 Creditors have the right to object to a proposed Scheme at the convening or sanction hearings in relation to voting or Scheme principles that they do not agree with. If those principles are actuarial in nature (usually regarding aspects of vote or Scheme claim valuation) then an actuary advising the Scheme Company or Scheme Creditor may be called upon as an expert witness. Similarly, the Scheme Actuary may also be called upon to provide input to the process, and there could also be a role for an actuary as an independent expert. The different aspects of these roles, in the context of objections, are discussed further below.

Scheme Company advisor

- 7.2 The actuary's role usually consists of two elements. The first is to submit a written witness statement to the court outlining the actuary's views on the principle(s) under question. The second is to be prepared to be called to give evidence in the hearing(s) and answer questions regarding the statement submitted. In some cases the actuary may have to respond to cross-examination from the opposition's counsel. It is usually sensible in these circumstances to practice responding to cross-examination beforehand, anticipating questions that may be raised.
- 7.3 It is very likely that the actuary acting as the expert witness will have been involved in developing the Scheme and therefore the actuarial principles of the Scheme will already be consistent with their own views. Where the actuarial expert witness is not involved in developing the Scheme, the actuary will need to gain comfort (by understanding the Scheme principles in question) that they agree with the Scheme Company's view that the objection(s) is not supported. Generally it is sensible for the actuary to formulate his/her arguments on the objection with the help of counsel.
- 7.4 In producing the actuary's written witness statement, the actuary may include the following:
- Statement of their role in the Scheme (e.g. Actuarial Advisor to the Scheme Company);
 - Description of who the actuary works for and a summary of their relevant experience (e.g. past involvement in Schemes and in valuing the claim types anticipated in the Scheme). The actuary would normally include a more detailed CV of relevant experience as an appendix to the witness statement;
 - Background information to set the context for the principles under objection; and
 - A rebuttal setting out why the actuary disagrees with each objection in turn using language targeted at a person familiar with the business to be schemed but not actuarial terms.
- 7.5 A creditor may make an objection that the Scheme Company and its advisors consider is well founded. In that case, the Scheme Company will likely re-draft

the Scheme in such a manner that removes the objection. The Actuarial Advisor would therefore not be required to act as an expert witness.

Advisor to Scheme Creditor

- 7.6 There may also be instances where an actuary acts as an expert witness for a creditor who is opposing a Scheme. The actuary's role in this situation is very similar to the Scheme Advisor role above except that the actuary will not have been involved in developing the Scheme and will need to decide whether they support the objection(s) being raised. The actuary will therefore need to familiarise themselves with the actuarial principles of the Scheme, in particular those principle(s) against which the creditor intends to object.
- 7.7 The actuary will then need to understand the arguments a creditor has raised to support its objection(s), or indeed help the creditor articulate its objection(s), and decide whether those views are consistent with the actuary's own. If the actuary does not agree with the objection(s) then they will clearly not be able to support the creditor. If the actuary does agree with the objection(s) then they will need to produce a written witness statement and prepare to be called to give evidence in the hearing(s). The witness statement will contain similar information as per the Scheme Advisor role except that the specific provisions of the Scheme targeted will need to be highlighted and the objections set out, together with the actuary's reasoning for supporting the objections being raised.

Scheme Actuary

- 7.8 In some Schemes, the Scheme Actuary might be required to provide witness statements responding to specific points raised by objecting creditors, such as how certain types of claims might be valued if they are referred to the Scheme Actuary. Similar considerations to those mentioned above apply regarding the content of witness statements.

Independent Expert

- 7.9 In some cases, an actuary may be asked to act as an expert, independent of both the Scheme Company and the Scheme Creditor. Their role would be to report to the Court on his/her views on the specific objections being raised. Similar considerations to those mentioned above apply regarding the content of witness statements.

**APPENDIX A: LIST OF KNOWN SCHEMES OF ARRANGEMENT AS AT
MARCH 2009**

Company Name / Pool Name	Number of Pool Companies	Solvent / Insolvent	Effective Date	Bar Date
RMCA Re		Insolvent	26/04/1994	01/02/2004
Hopewell International		Solvent	30/06/1995	30/06/1999
Pine Top		Insolvent	01/11/1997	01/03/1998
HIR (UK)		Solvent	02/02/1998	01/02/1999
Scottish & Commonwealth		Solvent	09/02/1998	09/03/1998
Fremont (UK)		Insolvent	10/03/1998	27/06/2003
Osiris		Solvent	09/11/1998	09/02/1999
Mutual of Omaha (UK)		Solvent	02/02/1999	03/05/1999
Crombie (UK)		Solvent	01/09/1999	30/11/1999
Charter Re		Insolvent	12/10/1999	12/01/2000
Trent		Solvent	30/11/1999	01/03/2000
Scan Re		Insolvent	19/05/2000	31/08/2000
Bristol Re		Insolvent	16/06/2000	TBC
Ramus		Solvent	02/04/2001	02/07/2001
Transcon		Solvent	07/09/2001	06/11/2001
Nichido Fire & Marine of Japan		Solvent	28/01/2002	25/03/2002
Andrew Weir		Insolvent	25/03/2002	25/09/2002
Hassneh (UK)		Solvent	26/04/2002	31/07/2002
City General		Solvent	07/10/2002	07/01/2003
North Atlantic		Insolvent	23/10/2002	30/04/2003
ING Pool	5	Solvent	20/12/2002	20/03/2003
Dunedin Pool	4	Solvent	02/01/2003	03/04/2003
Chancellor		Insolvent	11/04/2003	11/08/2003
BNIB		Insolvent	25/04/2003	26/06/2003
United Standard		Insolvent	12/06/2003	11/09/2003
Bryanston Insurance Company Limited		Insolvent	27/06/2003	27/01/2004
Stockholm Re (Bermuda)		Insolvent	07/07/2003	10/10/2003
Pan Atlantic		Insolvent	24/07/2003	18/09/2003
La Metropole		Solvent	31/07/2003	31/10/2003
Marlon		Solvent	14/08/2003	12/11/2003
National Insurance and Guarantee Corporation		Solvent	14/08/2003	12/11/2003
Arig (UK)		Solvent	30/09/2003	30/12/2003
Trinity Insurance Company Limited		Insolvent	16/12/2003	20/04/2004
Trident Pool	2	Solvent	16/12/2003	20/04/2004
Black Sea & Baltic		Insolvent	23/12/2003	31/03/2004
Municipal General Insurance Limited		Insolvent	15/01/2004	15/01/2006
Figre Limited		Solvent	05/03/2004	07/06/2004
KWELM	5	Insolvent	02/04/2004	29/09/2004
Ludgate Insurance Company Limited		Solvent	08/04/2004	07/07/2004
Bermuda Fire and Marine Insurance Company Limited		Insolvent	25/06/2004	29/09/2004
Lakewood Insurance Company Limited		Solvent	28/06/2004	25/02/2005
Tanker Insurance Company Limited		Solvent	09/07/2004	07/10/2004
St Helen's Trust Pool	5	Solvent	09/07/2004	07/10/2004
Blackfriars Insurances Limited		Solvent	23/07/2004	22/10/2004
Quincy Mutual Fire Insurance Company Limited (UK Branch)		Solvent	27/07/2004	25/10/2004
Aviation & General Insurance Company Limited		Solvent	03/08/2004	01/11/2004
Seven Continents Insurance Company (Bermuda)		Solvent	01/10/2004	30/11/2004
Korean Insurance Company (UK) Limited		Solvent	15/10/2004	13/01/2005
Anglo American Insurance Company Limited		Insolvent	20/10/2004	31/01/2005
Carolina Reinsurance Limited (Bermuda)		Insolvent	03/12/2004	07/02/2005
Moorgate Insurance Company Limited		Solvent	09/12/2004	09/03/2005
Panfinancial Insurance Company Limited		Solvent	15/12/2004	31/03/2005
Colonia Insurance (Ireland) Limited		Solvent	21/03/2005	19/06/2005
Sphere Drake Insurance Limited		Solvent	06/05/2005	05/09/2005
Unione Italiana (UK) Reinsurance Company Limited		Solvent	09/06/2005	07/10/2005
Marina Mutual Insurance Association Limited		Insolvent	14/06/2005	30/09/2005
Compagnie Europeenne de Reassurances SA		Insolvent	20/07/2005	10/11/2005
Mercantile & General Reinsurance Company Limited		Solvent	22/09/2005	20/01/2006
Dutch Aviation Pool	18	Solvent	30/09/2005	30/03/2006
La Mutuelle De Mans Assurances IARD		Solvent	31/10/2005	01/03/2006
Scottish Eagle Insurance Company Limited		Solvent	31/10/2005	01/03/2006
Oceanus Mutual Underwriting Association (Bermuda) Limited		Insolvent	02/12/2005	16/03/2006
Global General and Reinsurance Company Limited (Direct General Policies)		Solvent	08/02/2006	08/08/2006
NRC Reinsurance Company Limited		Solvent	31/03/2006	30/06/2006
Lion City Run-Off Private Limited		Solvent	13/04/2006	31/08/2006
SRO Run-Off Limited		Solvent	21/04/2006	24/07/2006
Gordian Run-Off (UK) Limited (formerly GIO UK Ltd)		Solvent	26/04/2006	25/10/2006
QBE Reinsurance (UK) Limited		Solvent	26/05/2006	24/08/2006
CIC Insurance Limited		Insolvent	29/05/2006	TBC
FAI Reinsurance PTY Limited		Insolvent	29/05/2006	TBC
FAI Traders Insurance Company PTY Limited		Insolvent	29/05/2006	TBC
FAI General Insurance Company Limited		Insolvent	13/06/2006	TBC
FAI Insurances Limited		Insolvent	13/06/2006	TBC
World Marine & General Insurance PTY Limited		Insolvent	13/06/2006	TBC
AA Mutual International Insurance Company Limited		Insolvent	22/06/2006	23/10/2006
Stirling Cooke Brown Insurance Brokers Limited		Insolvent	28/07/2006	29/09/2006
NRG London Re		Solvent	16/08/2006	14/12/2006
NRG Victory Australia		Solvent	16/08/2006	14/12/2006
Reliance National Insurance Company (Europe) Limited		Solvent	20/10/2006	21/05/2007
UIC Insurance Company Limited		Insolvent	06/11/2006	27/03/2007
Reliance National Asia Re Pte Limited		Solvent	14/11/2006	14/05/2007
Europäische Rückversicherungs-Gesellschaft in Zürich (European Reinsurance Company of Zurich)		Solvent	23/01/2007	23/07/2007
Arian Insurance Company Limited		Solvent	30/03/2007	29/06/2007
La Salle Re Limited		Solvent	25/05/2007	30/08/2007
Global London Market Pool	5	Solvent	10/06/2007	25/01/2008
Oslo Reinsurance Company (UK) & Oslo Reinsurance Company ASA		Solvent	18/06/2007	17/12/2007
Great Lakes Reinsurance (UK) PLC		Solvent	05/07/2007	07/01/2008
Compagnie Européenne d'Assurances Industrielles s.a.		Solvent	27/09/2007	25/02/2008
WFUM Pool	15	Both	10/10/2007	07/04/2008
ING Re (UK) Limited		Solvent	01/02/2008	31/07/2008
Winterthur Swiss Insurance Company		Solvent	22/02/2008	20/08/2008
Pacific & General Insurance Company Limited		Insolvent	07/07/2008	09/01/2009
EW Payne Pool	82	Solvent	18/07/2008	16/12/2008
Malayan Insurance Company (UK) Limited		Solvent	09/10/2008	09/04/2009
Global General and Reinsurance Company Limited (Pre 89 Scheme)		Solvent	10/12/2008	08/06/2009
Globale Rückversicherungs-AG		Solvent	10/12/2008	08/06/2009
AFG Insurance Limited		Insolvent	TBC	TBC
Aneco		Insolvent	TBC	29/08/2002

Sources

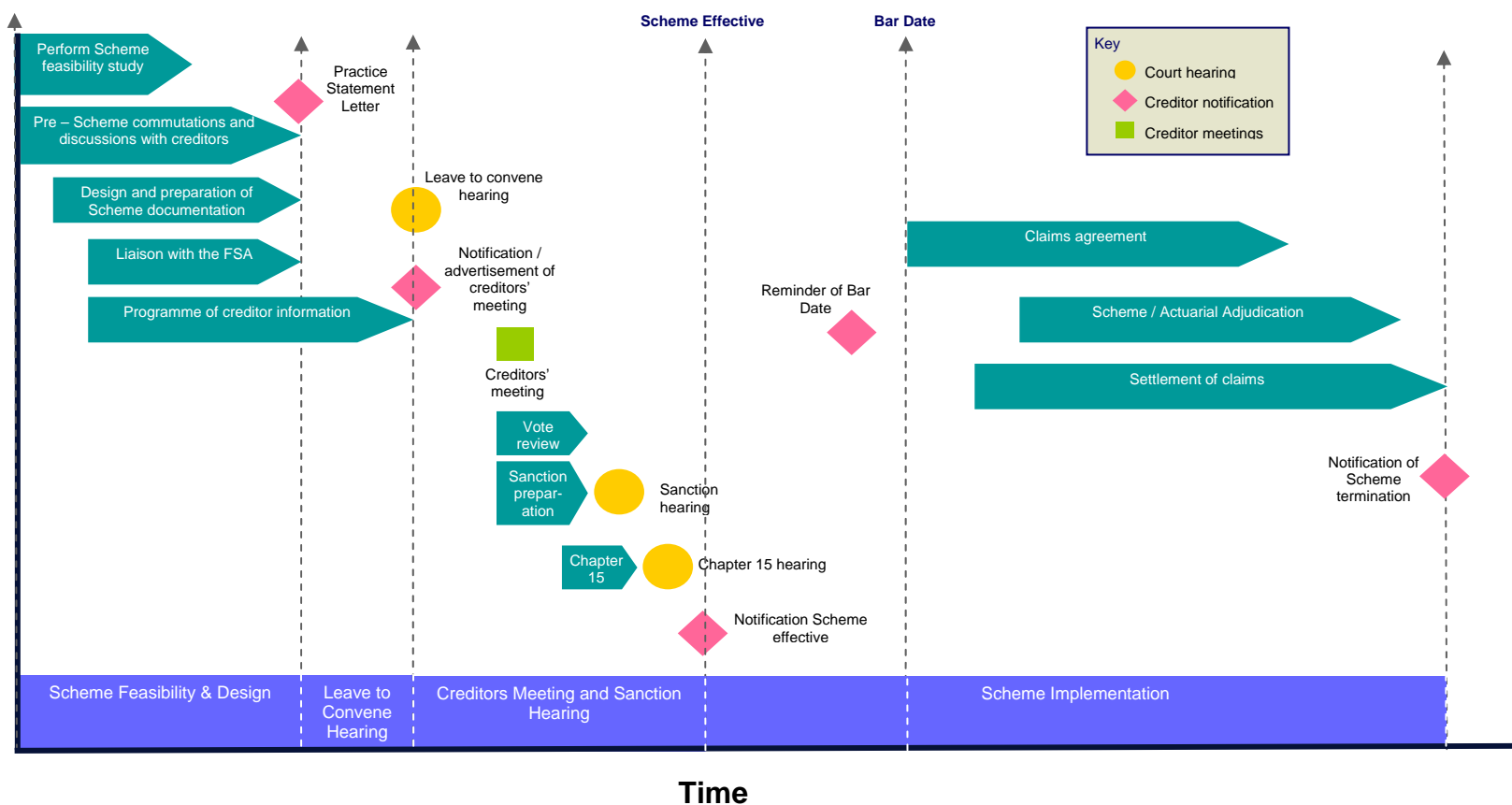
<http://www.runoffmarket.com/>
<http://brsuk.pwc.com/solvent.asp>
<http://www.kpmg.co.uk/advisory/r/ins/soa.cfm>
<http://www.chiltington.com/english/Home/Download/UK-Schemes-of-Arrangement/>

Notes

The above Schemes of Arrangement are all Cut-Off Schemes of Arrangement. There are also Run-Off Schemes of Arrangement but these are not included above.
 The above list of Cut-Off Schemes of Arrangement was prepared as at March 2009
 In addition to the Schemes of Arrangement in the above list there are also a number of pending Schemes of Arrangement.

APPENDIX B: INDICATIVE TIMELINE FOR A CUT-OFF SUBMISSION SCHEME OF ARRANGEMENT

The diagram below shows a possible timeline for a Cut-off Submission Scheme of Arrangement from the Scheme preparation phase, through the leave to convene and sanction hearings and onto the Scheme implementation phase. The actual timescale of each phase will depend on the size and nature of the proposed Scheme as well as any possible creditor concerns and the availability of the Court.



APPENDIX C: EXAMPLE CLAIM FORM

CLAIM FORM
XYZ INSURANCE COMPANY (the "Company")
(To be completed in relation to the Company's Liabilities)

This Claim Form and any Supporting Evidence submitted must be completed in accordance with the Claim Form Guidance Notes and the Scheme and returned to the Company, as soon as possible and, in any event, so as to be received by the Company no later than the Bar Date.

Claim Forms may be submitted either:

- (i) by Post, by hand or by courier to XYZ Insurance Company Limited at [Address], United Kingdom, marked for the attention of [contact] or [contact]; or**
- (ii) by facsimile at number +44 (0)12 3456 7890 marked for the attention of [contact] or [contact]; or**
- (iii) by email to solventscheme@xyz.co.uk (in a pdf format).**

After the Bar Date, no new or revised Claim Form(s) or Supporting Evidence will be admitted, except, in relation to Supporting Evidence only, in response to a request from the Company or the Scheme Adjudicator. If a Scheme Creditor does not complete and return a Claim Form so as to be received by the Company before the Bar Date, that Scheme Creditors' Scheme Claims will be valued at nil.

Whilst Unpaid Agreed Claims are not Scheme Claims and so are not subject to the Scheme, Scheme Creditors are requested to confirm the status of any claims they believe to be Unpaid Agreed Claims (as defined on page [X] of the Scheme) with the Company as soon as possible. Unpaid Agreed Claims shall be paid by the Company in the normal way outside of the Scheme.

You should read carefully the instructions set out below and contained in the following pages. The Claim Form is to be completed for each Outstanding Claim and IBNR Claim in relation to which you are a Scheme Creditor as at the Valuation Date, and valued as at the Valuation Date.

Please note that if a Claim Form is submitted by email or facsimile, the relevant Scheme Creditor is required to submit a hard copy of that Claim Form with an original signature to the Company (either by hand, by courier or by Post and to the address given above) within 7 days of the Bar Date.

Scheme Creditors should complete a separate Claim Form for each contract currency. Please use photocopied pages as required.

The type of Supporting Evidence that a Scheme Creditor must return to the Company before the Bar Date is dealt with in the Claim Form Guidance Notes and in the Supporting Evidence document.

Part B: Schemes of Arrangement

XYZ CLAIM FORM – FOR USE IN RELATION TO
THE XYZ INSURANCE COMPANY LIMITED'S SCHEME OF ARRANGEMENT

SCHEME CREDITOR ADDRESS AND CONTACT INFORMATION:

.....

Please complete a separate table for each currency. Use photocopied pages as required.

Scheme Creditor Name: _____ Currency: _____

(note: negative amounts (i.e. those sums due from you to the company) should appear in brackets on this Claim Form)

(1) The Company's (Our) policy ref	(2) Broker Name	(3) Broker Reference	(4) Your reference	(5) Class of business	(6) Inception and expiry date	(7) Limit in original currency	(8) Excess in original currency	(9) XYZ signed line %	(10) Outstanding Claims	(11) IBNR Claims	(12) Gross liability 10+11	(13)* Offsets and Security interests	(14) Net Liability 12-13	(15) Unpaid Agreed Claims
TOTALS														

* for example: funds withheld, loss reserves, premium reserves, interest due, reinstatement and adjustment premiums due, brokerage payable (if applicable) and any other set-off or cross claims

CLAIM FORM

**TO BE SIGNED AND COMPLETED BY THE SCHEME CREDITOR IN ORDER
FOR THIS FORM TO BE VALID**

To the best of my knowledge and belief the information on this Claim Form and any Supporting Evidence, as amended or otherwise, is correct.	
Signed:	Name:
Position/Capacity:	Email Address:
For and on behalf of (Scheme Creditor name)	Date:

PLEASE INSERT DETAILS OF THE BANK ACCOUNT INTO WHICH YOU REQUIRE ANY PAYMENT DUE TO THE SCHEME CREDITOR UNDER THE SCHEME TO BE MADE:

NAME AND ADDRESS OF BANK:

NAME OF ACCOUNT HOLDER:

SORT CODE/SWIFT CODE (or any other identifying code):

ACCOUNT and/or IBAN ACCOUNT NUMBER:

SEE THE FOLLOWING PAGES FOR THE CLAIM FORM GUIDANCE NOTES

CLAIM FORM GUIDANCE NOTES

(1) The Company's (Our) policy reference

If you have this information please insert all of the Company's policy references under which each of your claims under the Scheme may arise against the Company.

(2) Broker Name

Specify the name of the broker who placed the Insurance Contract or, if the placing broker is not known, any other broker intermediary (if known) who acted on your behalf in relation to the Insurance Contract. Enter, in addition, either "Placing Broker" or "Other" as applicable.

(3) Broker Reference

Specify the reference on the cover note that you received from the broker.

(4) Your reference

Please add any reference which will be of assistance to you when we communicate with you regarding your claims.

(5) Class of Business

Please enter the class of business that the Insurance Contract relates to (such as marine, aviation, property) and any sub-type reflecting the nature of the Insurance Contract (such as catastrophe excess of loss, surplus treaty, facultative obligatory treaty).

(6) Inception and expiry date

Specify the date when each Insurance Contract was inceptioned. In the case of continuous Insurance Contracts of more than 12 months plus odd time, each annual renewal should comprise a separate row.

Specify the date when each Insurance Contract expired. In the case of continuous Insurance Contracts of more than 12 months plus odd time, each annual renewal should comprise a separate row.

(7) Limit in original currency

This is the limit as per the Insurance Contract wording.

(8) Excess in original currency

This is the excess as per the Insurance Contract wording

(9) Company signed line %

Specify the participation percentage of the Company on each Insurance Contract.

(10) Outstanding Claims (to be shown in the contract currency)

Please specify the estimated amount as at the Valuation Date of any Scheme Liability or (where there is more than one Scheme Liability) the aggregate estimated amount of any Scheme Liability in respect of Outstanding Claims under each Insurance Contract or annual renewal thereof (if applicable).

A Outstanding Claim is a claim as at the Valuation Date, for the amount payable by the Company in respect of a loss that has been reported to the Scheme Creditor and which has not, according to the Company's records, subsequently become an Unpaid Agreed Claim (whether or not the Scheme Creditor has agreed Liability and/or quantum with its (re)insured on its inward business).

Part B: Schemes of Arrangement

Please provide particulars of your estimate(s) and all other relevant Supporting Evidence in accordance with the Scheme. Please quote in the contract currency.

Please do not deduct any premium adjustments from this figure. Any premium adjustments should be included in (13).

(11) **IBNR Claims (to be shown in the contract currency)**

Please specify the estimated amount as at the Valuation Date of any Scheme Liability or (where there is more than one Scheme Liability) the aggregate estimated amount of any Scheme Liability in respect of IBNR Claims under each Insurance Contract or annual renewal thereof (if applicable).

An IBNR Claim is an incurred but not reported claim as at the Valuation Date for the amount payable by the Company in respect of a loss which has been incurred but has not been reported to the Scheme Creditor together with the amount payable in respect of a general excess over Outstanding Claims, to the extent that the current estimate of claims included as Outstanding Claims may prove inadequate.

Estimates of IBNR Claims should be valued in accordance with and subject to the provisions of the Scheme and Estimation Guidelines, and in seeking to agree (or if necessary adjudicate) a Scheme Creditor's IBNR Claims, the principles, policies and assumptions comprised within the Estimation Guidelines will be applied.

Please provide particulars of your estimate(s) and all other relevant Supporting Evidence in accordance with the Scheme and the Supporting Evidence document. Please provide, in the form of Supporting Evidence, the basis for the calculation of IBNR Claims (including, but not limited to, the number and cost of applicable reinstatements) and provide documentation in support of this calculation. Please confirm, in the form of Supporting Evidence, if your IBNR Claim calculation is subject to an independent actuarial report and, if so, please provide a copy. Please quote in the contract currency.

(12) **Gross Liability**

Enter the total of columns (10) and (11)

(13) **Offsets and Security Interests**

In relation to each Insurance Contract or annual renewal thereof (if applicable) insert separate details of Security interests including funds withheld, loss reserves, premium reserves, and other offsets and security interests such as interest due, reinstatement and/or adjustment premiums payable, brokerage payable, common account excess of loss claim recoveries payable to the Company and any other set-off or cross claims in column (13).

(14) **Net Liability**

Enter the result of the calculation of the amount in column (12) less the total of column (13). Enter the total sum of all column (14) amounts at the foot of the column in the box marked "Totals".

(15) **Unpaid Agreed Claims**

Please specify the amount of any Unpaid Agreed Claims which you believe are due to you under each Insurance Contract at the Effective Date. An Unpaid Agreed Claim is any claim (or part thereof) where, as at the Effective Date, according to the Company's books or records Liability and amount have been agreed by or on behalf of the Company. Unpaid Agreed Claims are not Scheme Claims and so are not dealt with under the Scheme. They will be paid outside the Scheme in the normal course of business if accepted by the Company.

APPENDIX D:

FSA process guide to decision making on Schemes of Arrangement for insurance firms

July 2007

Introduction

1. In this paper, we explain how we engage with Schemes of Arrangement (Schemes) and, in particular, our process for reviewing Schemes which the firms we regulate propose and the criteria we use in that assessment. Our 11 Principles for Businesses set overall requirements for all financial services firms. As part of principles-based regulation, our aim in this publication is to give you predictability, consistency and certainty on the tests we will use to determine whether a firm has acted appropriately in relation to these principles in promoting a Scheme. This paper will be of interest to anyone involved in the UK insurance run-off market – including the management, advisers and policyholders of firms proposing Schemes, trade associations and market commentators.

Schemes of Arrangement

2. A Scheme of Arrangement is a compromise or arrangement between a company and its creditors (or any class of them) under section 425 of the Companies Act 1985. In the context of insurance companies, Schemes were originally used for insolvent insurers as a more flexible and cost-effective alternative to a liquidation. They have recently been used more extensively by solvent insurers seeking to conclude all or part of their business. This paper covers both solvent and insolvent Schemes.
3. A Scheme can be described as a global statutory commutation requiring both creditor and Court approval. Scheme creditor approval means the approval of a majority in number representing not less than 75% in value of those voting at each Scheme creditors' meeting.
4. The Court is involved at two points in the process. It is first involved when the company seeks permission to call the Scheme creditors' meeting(s). The second occasion is shortly after the Scheme meeting(s). At this point the company should report the results of the Scheme meeting(s) to the Court. Where the required majorities have been achieved, the company will ask the Court for an order sanctioning the Scheme. If the Court grants the order, the company should then deliver it to the Registrar of Companies for registration. The Scheme does not become effective until this has been done.
5. Once a Scheme becomes effective, it becomes legally binding on the company and the Scheme creditors. When the Scheme is announced, creditors are invited to submit claims in relation to their liabilities. These claims are then adjusted, agreed and paid under the terms of the Scheme.
6. Most Schemes impose a deadline, or bar date, of between three and six months after the effective date. After this date no further claims may be taken into account for

distribution purposes. Scheme creditors who do not submit a claim by this date may receive nothing under the Scheme.

Regulatory issues

7. Schemes are a Companies Act procedure and are not governed by the Financial Services and Markets Act 2000 (FSMA). However, Principle 11 of our Principles for Businesses states that 'a firm must deal with its regulators in an open and cooperative way, and must disclose to the FSA appropriately anything relating to the firm of which the FSA would reasonably expect notice'. This means that if a firm is proposing to implement a Scheme, it must tell us about it.
8. We recognise that Schemes are available to firms under company law and we are not against them in principle. Even so, Schemes raise regulatory issues. In particular, Principle 6 states that 'a firm must pay due regard to the interests of its customers and treat them fairly' and Principle 7 requires a firm to 'pay due regard to the information needs of its clients, and communicate information to them in a way which is clear, fair and not misleading'. These principles are relevant to how Schemes are constructed and implemented, so are relevant to how we evaluate all Schemes. We review all Schemes to reduce the risk to our objectives of maintaining confidence in the financial system and securing the appropriate degree of protection for consumers.

Our process for assessing Schemes

Our role versus role of firm

9. We review Schemes to reduce the risk to our objectives, but it is the responsibility of a firm's senior management to run its business and to comply with regulatory obligations, including treating its customers fairly. We do not approve firms' Schemes of Arrangement, but we will object to Schemes that pose a risk to the achievement of our objectives.
10. We are unlikely to object to a Scheme if we are satisfied that the firm's proposed course of action falls within the range of possible reasonable actions the firm might take, depending on what is fair in the circumstances.

Review process

11. Our process for considering Schemes involves the following stages:

Initial notice of Scheme proposals

The firm should tell both its normal supervisor and the Schemes contact in our Wholesale Insurance Run-Off team that it is planning to implement a Scheme. The larger or more complex the Scheme, the earlier the firm should consult us. This consultation may involve a meeting so the firm can present its Scheme proposals to us.

- **Review of Scheme documentation**

The firm should send us the Scheme documentation in near-final form for review at least eight weeks before the Court directions hearing. While we consider each case on its own merits, we also try to apply a consistent approach to different cases. We have set up a specialist committee within the FSA (the Schemes of Arrangement Review Committee), to ensure consistency of approach.

- **Resolve comments and questions with the firm**

As part of our review, we may have questions and comments about the Scheme provisions and will discuss these with the firm. The firm should factor in time for dealing with these queries.

- **We send the firm a letter of non-objection, if appropriate**

After our review, and when we have received satisfactory responses to our questions and comments, the firm will usually ask for a letter from us just before the directions hearing confirming we have no objection to the Scheme. The Court does not require a firm to have this letter, but our non-objection is usually mentioned in the Scheme documentation; and both the Court and the creditors will almost certainly take this into consideration.

Factors we take into account

12. A Scheme may be proposed for an entire firm, a branch, a subsidiary or a portfolio of business. Depending on the scope of the Scheme, we will look at the reasons why a firm is proposing a Scheme. For example, the type of firm, the type of policyholder, type of liabilities, intended purpose and shareholder intention, including the firm's current and projected financial position (degree of solvency).

Types of policyholder subject to a scheme

13. Our main considerations with regard to the degree of engagement by the FSA will be the type of policyholder and whether;
 - i. the proposed Scheme would pose a threat to the achievement of our objectives (including the protection of consumers) if it were implemented; and
 - ii. whether, in promoting a Scheme, the firm has acted appropriately in relation to the Principles for Businesses.
14. In considering the degree of protection that may be appropriate for consumers, we must consider 'the differing degrees of experience and expertise that different consumers may have in relation to different kinds of regulated activity' (section 5 of FSMA). This means greater protection and therefore greater FSA scrutiny is usually needed for direct policyholders, and in particular individual direct policyholders, than is required for policyholders that are also insurance and reinsurance firms.

- **Private retail policyholders and small commercial policyholders**

Where Schemes are proposed for private retail and small commercial policyholders the FSA will review such Schemes in order to assess whether having regard to our Principles the proposal being put is, in the circumstances, a fair exchange for the rights that private retail and small commercial policyholders are being asked to compromise.

The degree of scrutiny by the FSA will depend on the Scheme purpose together with the intended effect of the Scheme on such policyholders. This is because the FSA recognises the difficulties of consumer understanding and engagement. However the FSA also recognises that Schemes for this policyholder group may be an effective tool in certain circumstances (such as the re-organisation of benefits for Equitable Life policyholders).

- **Other direct commercial policyholders**

Many of the direct policyholders affected by solvent Schemes are substantial commercial companies, which are usually advised by actuaries and other professional advisers. Some direct commercial policyholders have been objectors to Schemes. Most of their objections have concerned Scheme construction. Nevertheless, the Court in *Re British Aviation Insurance Company Ltd* [2005] EWHC 1621 (Ch) recognised that fairness considerations remain relevant.

- **Insurers/reinsurers**

Insurance and reinsurance companies are familiar with the process of entering into commutations. A Scheme effectively brings into force a global commutation between an insurer and its policyholders.

Schemes are generally understood by this group of policyholders and they may even consider implementing a Scheme themselves. Insurance and reinsurance companies are 'in the risk business'.

Other factors we take into account

In deciding whether or not to object to a Scheme, our decision-making criteria will also take into account the following factors. Dependent on the type of policyholder and how their interests are affected we may consider these on a stand alone basis or one in conjunction with another.

- i. **Degree of solvency**

- **Insolvent firms**

Schemes of Arrangement are routinely used for insolvent insurers and reinsurers as a flexible and cost effective alternative to liquidation. In the case of insolvency, Schemes are likely to be in the interests of policyholders as a whole.

We would not normally object to a Scheme for an insolvent firm providing the Scheme treats policyholders fairly

- **Marginally solvent firms**

Marginally solvent firms are at risk of being unable to discharge their liabilities to policyholders in full. Schemes offer a flexible and cost-effective alternative to servicing liabilities to extinction or in liquidation and may offer policyholders a better return.

For these purposes we define a firm as marginally solvent if its capital resources are below the lower of its own Internal Capital Assessment (ICA) or FSA Individual Capital Guidance (ICG).

We would not normally object to a Scheme for a marginally solvent firm providing, having regard to the firm's resources, the Scheme treats policyholders fairly.

- **Substantially solvent firms**

A substantially solvent firm is unlikely to Scheme the whole of its business unless it is a subsidiary of a substantially solvent group. It is more likely that it wants to exit from a particular portfolio of business for commercial reasons. A substantially solvent firm is a firm with capital resources at or above ICG. Such a firm should demonstrate that the intended outcome of a Scheme is to place policyholders in no worse a position than in a solvent run-off.

Unless a substantially solvent firm offers benefits designed to ensure that policyholders are in no worse a position than in a solvent run-off, we would normally object to a Scheme.

- ii. **Type of business**

Employers' liability business cannot be Schemed for statutory reasons.

The classes and type of business to be Schemed can affect the ability to estimate ultimate outcomes at contract level. In particular, this is more difficult where policies are occurrence based and the claim has not yet manifested itself.

We would not normally object to a Scheme for short tail business providing the Scheme treats policyholders fairly.

We would not normally object to a Scheme for long tail business providing the Scheme treats policyholders fairly.

- iii. **Age of liability exposures**

In a mature run-off, it is likely that the largest and most volatile exposures will have already been commuted. The longer business has been in run-off, the more stable and suitable for Scheming it is likely to become.

The business usually should have been in run-off for at least five years before it may be considered suitable for a Scheme unless there are exceptional circumstances.

- iv. **Pools**

Schemes have been implemented for insurance pools. In deciding whether to object to a Scheme, we have regard to the solvency level of the firm. In the case of pool Schemes, the various pool members may have different levels of solvency. We

recognise the potential benefits to policyholders of pool members acting together. So we will base our decision on a pool as a whole. Consideration of pool Schemes is likely to be complex.

v. **Qualification**

Despite the decision-making criteria mentioned above, we may not object to a Scheme if the proposer is able to demonstrate that the Scheme treats policyholders fairly, for example through suitable additional benefits for policyholders and/or safeguards for dissenting policyholders.

vi. **Policyholder Advocate**

The FSA accepts that the interests of policyholders may be protected in a number of ways, depending on the circumstances of the firm and the type of Scheme it is proposing. Where a firm is proposing a Scheme which affects the interests of private retail policyholders or small commercial policyholders or is likely to be complex or controversial we may ask the firm to appoint a Policyholder Advocate. In addition, FSA rules already require the appointment of a Policyholder Advocate in relation to the reattribution of an inherited estate.

The Policyholder Advocate should have the necessary skills and knowledge and be free from any conflict of interest that might or might appear to be detrimental to the interests of policyholders.

The precise role of the Policyholder Advocate will depend on the type of firm and its proposed Scheme. Typically, the Policyholder Advocate will liaise with the firm on behalf of the relevant policyholders, for instance over the individual/aggregate value of the benefits the firm is offering to them in exchange for the interests they are asked to give up. The Policyholder Advocate will also advise policyholders on issues such as the estimation methodology and the criteria used for determining their claims. He will also prepare a report on these issues.

Next steps

15. This is not a formal consultation exercise, but we welcome your views on the decision criteria set out in this process guide. Please send us your comments in writing to:

Paul Taylor
Wholesale Firms Division
The Financial Services Authority
25 The North Colonnade
Canary Wharf
London E14 5HS

**APPENDIX E: EXTRACT FROM THE COMPANIES ACT 2006
RELATING TO SCHEMES OF ARRANGEMENT**

This extract is Part 26 from the Companies Act 2006 – “Arrangements and Reconstructions”. It is not specific to insurance Schemes of Arrangement.

- (b) authorise the responsible person to require information to be provided to him for the purposes of the arrangements,
 - (c) make provision about—
 - (i) the charging by the responsible person of fees in connection with the arrangements and the destination of such fees (including provision modifying any enactment which would otherwise apply in relation to fees payable to the responsible person), and
 - (ii) the making of payments under the arrangements by the registrar to the responsible person,
 - (d) require the registrar to make copies of the arrangements available to the public (in hard copy or electronic form).
- (6) In this section “specified” means specified in an order under this section.
- (7) A description of charge may be specified, in particular, by reference to one or more of the following—
 - (a) the type of company by which it is created,
 - (b) the form of charge which it is,
 - (c) the description of assets over which it is granted,
 - (d) the length of the period between the date of its registration in the special register and the date of its creation.
- (8) Provision may be made under this section relating to registers maintained under the law of a country or territory outside the United Kingdom.
- (9) An order under this section is subject to negative resolution procedure.

894 General power to make amendments to this Part

- (1) The Secretary of State may by regulations under this section—
 - (a) amend this Part by altering, adding or repealing provisions,
 - (b) make consequential amendments or repeals in this Act or any other enactment (whether passed or made before or after this Act).
- (2) Regulations under this section are subject to affirmative resolution procedure.

PART 26

ARRANGEMENTS AND RECONSTRUCTIONS

Application of this Part

895 Application of this Part

- (1) The provisions of this Part apply where a compromise or arrangement is proposed between a company and—
 - (a) its creditors, or any class of them, or
 - (b) its members, or any class of them.
- (2) In this Part—
 - “arrangement” includes a reorganisation of the company’s share capital by the consolidation of shares of different classes or by the division of shares into shares of different classes, or by both of those methods; and

“company” –

- (a) in section 900 (powers of court to facilitate reconstruction or amalgamation) means a company within the meaning of this Act, and
 - (b) elsewhere in this Part means any company liable to be wound up under the Insolvency Act 1986 (c. 45) or the Insolvency (Northern Ireland) Order 1989 (S.I. 1989/2405 (N.I. 19)).
- (3) The provisions of this Part have effect subject to Part 27 (mergers and divisions of public companies) where that Part applies (see sections 902 and 903).

Meeting of creditors or members

896 Court order for holding of meeting

- (1) The court may, on an application under this section, order a meeting of the creditors or class of creditors, or of the members of the company or class of members (as the case may be), to be summoned in such manner as the court directs.
- (2) An application under this section may be made by –
 - (a) the company,
 - (b) any creditor or member of the company, or
 - (c) if the company is being wound up or an administration order is in force in relation to it, the liquidator or administrator.

897 Statement to be circulated or made available

- (1) Where a meeting is summoned under section 896 –
 - (a) every notice summoning the meeting that is sent to a creditor or member must be accompanied by a statement complying with this section, and
 - (b) every notice summoning the meeting that is given by advertisement must either –
 - (i) include such a statement, or
 - (ii) state where and how creditors or members entitled to attend the meeting may obtain copies of such a statement.
- (2) The statement must –
 - (a) explain the effect of the compromise or arrangement, and
 - (b) in particular, state –
 - (i) any material interests of the directors of the company (whether as directors or as members or as creditors of the company or otherwise), and
 - (ii) the effect on those interests of the compromise or arrangement, in so far as it is different from the effect on the like interests of other persons.
- (3) Where the compromise or arrangement affects the rights of debenture holders of the company, the statement must give the like explanation as respects the trustees of any deed for securing the issue of the debentures as it is required to give as respects the company's directors.

- (4) Where a notice given by advertisement states that copies of an explanatory statement can be obtained by creditors or members entitled to attend the meeting, every such creditor or member is entitled, on making application in the manner indicated by the notice, to be provided by the company with a copy of the statement free of charge.
- (5) If a company makes default in complying with any requirement of this section, an offence is committed by –
 - (a) the company, and
 - (b) every officer of the company who is in default.This is subject to subsection (7) below.
- (6) For this purpose the following are treated as officers of the company –
 - (a) a liquidator or administrator of the company, and
 - (b) a trustee of a deed for securing the issue of debentures of the company.
- (7) A person is not guilty of an offence under this section if he shows that the default was due to the refusal of a director or trustee for debenture holders to supply the necessary particulars of his interests.
- (8) A person guilty of an offence under this section is liable –
 - (a) on conviction on indictment, to a fine;
 - (b) on summary conviction, to a fine not exceeding the statutory maximum.

898 Duty of directors and trustees to provide information

- (1) It is the duty of –
 - (a) any director of the company, and
 - (b) any trustee for its debenture holders,to give notice to the company of such matters relating to himself as may be necessary for the purposes of section 897 (explanatory statement to be circulated or made available).
- (2) Any person who makes default in complying with this section commits an offence.
- (3) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

Court sanction for compromise or arrangement

899 Court sanction for compromise or arrangement

- (1) If a majority in number representing 75% in value of the creditors or class of creditors or members or class of members (as the case may be), present and voting either in person or by proxy at the meeting summoned under section 896, agree a compromise or arrangement, the court may, on an application under this section, sanction the compromise or arrangement.
- (2) An application under this section may be made by –
 - (a) the company,
 - (b) any creditor or member of the company, or

- (c) if the company is being wound up or an administration order is in force in relation to it, the liquidator or administrator.
- (3) A compromise or agreement sanctioned by the court is binding on –
 - (a) all creditors or the class of creditors or on the members or class of members (as the case may be), and
 - (b) the company or, in the case of a company in the course of being wound up, the liquidator and contributories of the company.
- (4) The court's order has no effect until a copy of it has been delivered to the registrar.

Reconstructions and amalgamations

900 Powers of court to facilitate reconstruction or amalgamation

- (1) This section applies where application is made to the court under section 899 to sanction a compromise or arrangement and it is shown that –
 - (a) the compromise or arrangement is proposed for the purposes of, or in connection with, a scheme for the reconstruction of any company or companies, or the amalgamation of any two or more companies, and
 - (b) under the scheme the whole or any part of the undertaking or the property of any company concerned in the scheme (“a transferor company”) is to be transferred to another company (“the transferee company”).
- (2) The court may, either by the order sanctioning the compromise or arrangement or by a subsequent order, make provision for all or any of the following matters –
 - (a) the transfer to the transferee company of the whole or any part of the undertaking and of the property or liabilities of any transferor company;
 - (b) the allotting or appropriation by the transferee company of any shares, debentures, policies or other like interests in that company which under the compromise or arrangement are to be allotted or appropriated by that company to or for any person;
 - (c) the continuation by or against the transferee company of any legal proceedings pending by or against any transferor company;
 - (d) the dissolution, without winding up, of any transferor company;
 - (e) the provision to be made for any persons who, within such time and in such manner as the court directs, dissent from the compromise or arrangement;
 - (f) such incidental, consequential and supplemental matters as are necessary to secure that the reconstruction or amalgamation is fully and effectively carried out.
- (3) If an order under this section provides for the transfer of property or liabilities –
 - (a) the property is by virtue of the order transferred to, and vests in, the transferee company, and
 - (b) the liabilities are, by virtue of the order, transferred to and become liabilities of that company.

- (4) The property (if the order so directs) vests freed from any charge that is by virtue of the compromise or arrangement to cease to have effect.
- (5) In this section –
 - “property” includes property, rights and powers of every description; and
 - “liabilities” includes duties.
- (6) Every company in relation to which an order is made under this section must cause a copy of the order to be delivered to the registrar within seven days after its making.
- (7) If default is made in complying with subsection (6) an offence is committed by –
 - (a) the company, and
 - (b) every officer of the company who is in default.
- (8) A person guilty of an offence under subsection (7) is liable on summary conviction to a fine not exceeding level 3 on the standard scale and, for continued contravention, a daily default fine not exceeding one-tenth of level 3 on the standard scale.

Obligations of company with respect to articles etc

901 Obligations of company with respect to articles etc

- (1) This section applies –
 - (a) to any order under section 899 (order sanctioning compromise or arrangement), and
 - (b) to any order under section 900 (order facilitating reconstruction or amalgamation) that alters the company’s constitution.
- (2) If the order amends –
 - (a) the company’s articles, or
 - (b) any resolution or agreement to which Chapter 3 of Part 3 applies (resolution or agreement affecting a company’s constitution),the copy of the order delivered to the registrar by the company under section 899(4) or section 900(6) must be accompanied by a copy of the company’s articles, or the resolution or agreement in question, as amended.
- (3) Every copy of the company’s articles issued by the company after the order is made must be accompanied by a copy of the order, unless the effect of the order has been incorporated into the articles by amendment.
- (4) In this section –
 - (a) references to the effect of the order include the effect of the compromise or arrangement to which the order relates; and
 - (b) in the case of a company not having articles, references to its articles shall be read as references to the instrument constituting the company or defining its constitution.
- (5) If a company makes default in complying with this section an offence is committed by –
 - (a) the company, and
 - (b) every officer of the company who is in default.

- (6) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

PART 27

MERGERS AND DIVISIONS OF PUBLIC COMPANIES

CHAPTER 1

INTRODUCTORY

902 Application of this Part

- (1) This Part applies where –
- (a) a compromise or arrangement is proposed between a public company and –
 - (i) its creditors or any class of them, or
 - (ii) its members or any class of them,for the purposes of, or in connection with, a scheme for the reconstruction of any company or companies or the amalgamation of any two or more companies,
 - (b) the scheme involves –
 - (i) a merger (as defined in section 904), or
 - (ii) a division (as defined in section 919), and
 - (c) the consideration for the transfer (or each of the transfers) envisaged is to be shares in the transferee company (or one or more of the transferee companies) receivable by members of the transferor company (or transferor companies), with or without any cash payment to members.
- (2) In this Part –
- (a) a “new company” means a company formed for the purposes of, or in connection with, the scheme, and
 - (b) an “existing company” means a company other than one formed for the purposes of, or in connection with, the scheme.
- (3) This Part does not apply where the company in respect of which the compromise or arrangement is proposed is being wound up.

903 Relationship of this Part to Part 26

- (1) The court must not sanction the compromise or arrangement under Part 26 (arrangements and reconstructions) unless the relevant requirements of this Part have been complied with.
- (2) The requirements applicable to a merger are specified in sections 905 to 914. Certain of those requirements, and certain general requirements of Part 26, are modified or excluded by the provisions of sections 915 to 918.
- (3) The requirements applicable to a division are specified in sections 920 to 930. Certain of those requirements, and certain general requirements of Part 26, are modified or excluded by the provisions of sections 931 to 934.

APPENDIX F: GLOSSARY OF TERMS USED IN PART B OF THE PAPER

This Glossary provides a description of some of the key terms used within this part of the paper. For many of them, there is no “right” definition, and different meanings can be assigned to the same terms in different Schemes.

Actuarial Adjudicator

Where a Scheme has an Actuarial Adjudicator his/her role may involve reviewing the Estimation Guidelines prior to the sanction of the Scheme and resolving disputes relating to the application of the Estimation Guidelines by the Scheme Company and/or Scheme Actuary during the claims review process.

Actuarial Advisor

Where a Scheme has an Actuarial Advisor, s/he may advise the Scheme Company on the Estimation Guidelines and Supporting Evidence requirements and in the valuation of Scheme Claims.

Allocation Scheme

Under an Allocation Scheme, the Scheme Company and/or the Scheme Actuary applies an estimation and allocation methodology as set out in the Scheme Document and provides each Scheme Creditor with a value for its Scheme Claim under the Scheme.

Bar Date

This is typically the deadline for the submission of all Scheme Claims to the Scheme Company. The Bar Date will be specified in the Scheme Document. It will also be specified in the Scheme Document that after the Bar Date no additional claims can be made against the Scheme Company for the business concerned.

Chairman of the Creditors’ Meeting

The person who chairs the meeting of the Scheme Creditors at which each of the Scheme Creditors cast their vote on the proposed Scheme. The Chairman of the Creditors’ Meeting is responsible for ensuring that the Creditors’ Meeting is convened in accordance with the direction of the Court following the leave to convene hearing. The Chairman should ensure that the relevant class votes are cast and valued appropriately and the outcome of the meeting is recorded.

Class of Creditors

For the purposes of voting, creditors need to be grouped into sufficiently homogeneous “classes” such that the rights of all creditors against the relevant company within a particular class, are sufficiently similar as compared with the rights of other creditors within the same class, as well as in terms of the impact of the proposed Scheme on such rights. There is no statutory definition of “class” but the Courts have interpreted the class requirement to mean “a group of creditors whose rights are sufficiently similar such that they can properly consult together with a view to a common interest”.

Court

Refers to the governing law and jurisdiction where the scheme is to be sanctioned. For example the High Court of justice of England and Wales, the supreme court of Bermuda, or the High Court of Justice of the Isle of Man.

Creditors' Committee

For an insolvent Scheme the Creditors' Committee is usually established for the purpose of assisting the Scheme Administrator in carrying out its functions. In most cases it has all the rights, powers, duties, functions, procedures and composition of a Creditors' Committee as set out in the Companies Act applying as though any reference to the "liquidator" and to a "creditor" contained that Act was a reference to the Scheme Administrator and the Scheme Creditor respectively.

Cut-off Scheme

A Cut-off Scheme estimates all present and future claims in order for the Scheme Company to make a final payment to Scheme Creditors and terminate the run-off. In a Cut-off Scheme, the Scheme Company establishes a final deadline (the Bar Date) by which Scheme Creditors must submit all Scheme Claims against the Scheme Company. Cut-off Schemes may be implemented as either an Allocation Scheme or as a Submission Scheme.

Effective Date

This is typically the date on which the Court order sanctioning the Scheme is delivered for registration to the Registrar of Companies.

Estimation Guidelines

The Estimation Guidelines almost always form part of the Scheme Document and set out the estimation methodologies that the Scheme Company and/or the Scheme Actuary will apply to value Scheme Claims. The Estimation Guidelines may also be considered by the Scheme Adjudicator in the case of a dispute between the Scheme Creditor and the Scheme Company and/or the Scheme Actuary in relation to the Scheme Creditor's Scheme Claim.

Explanatory Statement

The Explanatory Statement is included within the Scheme Document and explains the effect of the Scheme to the Scheme Creditors pursuant to section 897 of the Companies Act 2006.

FSCS

The Financial Services Compensation Scheme Limited (company number 03943048), established pursuant to Part XXV of the Financial Services and Markets Act 2000 ("FSMA").

Leave to Convene / Directions Hearing

This is the Court hearing where the Scheme Company asks the Court for approval to call a meeting of its creditors to vote on the proposed Scheme.

Policyholder Advocate

Where a Scheme Company is proposing a Scheme which affects the interests of private retail policyholders or small commercial policyholders or is likely to be complex or controversial, the FSA may ask the Scheme Company to appoint a Policyholder Advocate. The precise role of the Policyholder Advocate will depend on the type of Scheme Company and its proposed Scheme. The Policyholder Advocate will liaise with the Scheme Company on behalf of the relevant Scheme Creditors, for instance, over the individual/aggregate value of the benefits the Scheme Company is offering to them in exchange for the interests they are being asked to give up. The Policyholder Advocate will also advise Scheme Creditors on issues such as the Estimation Guidelines and the

criteria used for determining their Scheme Claims. The Policyholder Advocate should have the necessary skills and knowledge and be free from any conflict of interest that might or might appear to be detrimental to the interests of Scheme Creditors.

Run-off Scheme

A Run-off Scheme is principally used for an insolvent insurance company to allow the Scheme Company to pay "cents on the dollar" on all Scheme Claims agreed. As greater certainty on the ultimate liabilities of the Scheme Company occurs over the life of the Run-off Scheme, increases are made in the payment to Scheme Creditors by way of an increase in the payment percentage.

Sanction Hearing

The Sanction Hearing is the hearing before the Court at which the Court will consider, and if thought fit, grant an order sanctioning the proposed Scheme.

Scheme of Arrangement

A Scheme of Arrangement ("Scheme") is a compromise or arrangement under part 26 of the Companies Act 2006 between a company and its creditors or its members. Schemes may be used by insurance companies with portfolios in run-off to reach finality by providing a mechanism to estimate and pay future contingent liabilities.

Scheme Actuary

Where a Scheme has a Scheme Actuary, s/he may assist the Scheme Company in drafting the Estimation Guidelines and Supporting Evidence requirements and in determining and agreeing Scheme Claims under the Scheme

Scheme Adjudicator

When a Scheme Company and a Scheme Creditor have exhausted all meaningful exchanges to resolve a submitted Scheme Claim without success within the timeframe prescribed by the Scheme, then the matter may be referred to the Scheme Adjudicator to determine. The Scheme Adjudicator's decision is usually final and binding on both parties. Some Schemes may have a separate Actuarial Adjudicator.

Scheme Administrator

In an insolvent Scheme, Scheme Creditors have the right to select a Scheme Administrator, an independent person who can advise and safeguard the interests of Scheme Creditors. The powers and duties of the Scheme Administrator are set out in the Scheme Document and tend to be the same powers as an Administrator or Liquidator.

Scheme Advisor

In a solvent Scheme, it is usual for the Scheme Company to appoint one or more Scheme Advisors. They should be individuals who are duly qualified in the reasonable opinion of the Scheme Company to discharge the function of a Scheme Advisor under the Scheme. Where more than one person has been appointed as a Scheme Advisor, they may perform and exercise the powers, rights, duties and functions of the Scheme Advisors under the Scheme jointly or severally.

Scheme Claim

A Scheme Claim is a claim against the Scheme Company by a Scheme Creditor in respect of a liability under or in relation to an insurance contract written by the Scheme Company and covered by the Scheme.

Scheme Company

The Scheme Company is the company in respect of which the Scheme has become effective.

Scheme Creditor

A Scheme Creditor is a creditor of a Scheme Company in respect of any Scheme Claim or liability.

Scheme Document / Scheme Rules

The Scheme Document sets out the full details of the Scheme; this may include the Scheme Company's present and former names, contact information, an Explanatory Statement and corresponding appendices including the scope of the Scheme. A copy should also be supplied to all Scheme Creditors and debtors identified as having placed business with or on behalf of the Scheme Company.

Scheme Manager

In some Schemes the Scheme Company appoints a Scheme Manager to manage the Scheme process for the Scheme Company on a day-to-day basis. In these cases the Scheme Manager may perform some or all of the tasks that would otherwise be undertaken by the Scheme Company.

Submission Scheme

Under a Submission Scheme, Scheme Claim values are submitted to the Scheme Company by Scheme Creditors with the appropriate Supporting Evidence.

Supporting Evidence

A collection of documents to substantiate the Scheme Claim submitted to the Scheme Company by the Scheme Creditor under the Scheme. For example these can take the form of loss bordereaux, reports, advices, court filings and opinions of counsel supporting the underlying claims and/or coverage issues.

Valuation Date / Ascertainment Date

This is typically the date at which all Scheme Claims will be valued.

Vote Value

The value of each Scheme Creditor's vote in each Class in respect of the proposed Scheme. To determine its vote value, the Scheme Creditor must identify incurred losses, attempt to estimate potential future losses, and allocate the losses to the policies subject to the Scheme. In many instances the vote happens before the Scheme Creditors formally value their Scheme Claims under the proposed Scheme. In these situations, the votes they submit are often a high level assessment of the value of their Scheme Claim against the Scheme Company.

Vote Valuer / Adjudicator

It is usually the Vote Valuer's role to assist the Chairman of the Creditors' Meeting in the reasonable valuation of the vote values submitted by each creditor. The Vote Adjudicator on the other hand may be asked by the Chairman of the Creditors' Meeting to only opine on the votes of those creditors referred to her/him.

PART C: INSURANCE BUSINESS TRANSFERS – CONTENTS SUMMARY

Section no:	Description
1	Background & Introduction
2	Details of the Part VII process
3	Role of FSA and FSA guidance on Part VII transfers
4	Guidance relevant to business transfers
5	The appointment of the Independent Expert
6	Nature and extent of work of Independent Expert
7	Uncertainty considerations in the context of business transfers
8	Topics which might be covered in Independent Expert report
9	Opinion wording in Independent Expert report
10	Liaison with policyholders
11	Dealing with objections
12	Other roles
Appendices	
A	Part VII of the Financial Services & Market Act 2000
B	Explanatory Notes of Part VII of the FSMA 2000
C	Extract of Chapter 18 of FSA's Supervision Handbook
D	Additional detail on quantitative and qualitative measures considered by the Independent Expert
E	Part VII transfers effected under the Financial Services & Markets Act 2000

1. BACKGROUND & INTRODUCTION

Introduction

- 1.1 An insurance business transfer is the complete transfer of business from one insurer to another – with no contractual liability remaining with the original insurer. The process substitutes the original insurer with a new insurer. In many respects, an insurance business transfer achieves the same result as a novation, but can be effected for a large number of policies at the same time via a court process and does not require the explicit agreement of individual policyholders.
- 1.2 This part of the paper specifically considers insurance business transfers in respect of non-life insurance. Many of the issues considered are also likely to be directly relevant to the transfer of life insurance business although in respect of life insurance business many other additional issues are also likely to be worthy of consideration.

Insurance business transfers in the UK

- 1.3 The focus of this part of the paper is on insurance business transfers in the UK, where they are often called Part VII transfers. The name Part VII transfer comes from Part VII of the Financial Services & Markets Act 2000 (“FSMA”), which is the legislation that allows these transactions to occur in the UK. A copy of Part VII of the FSMA is attached as Appendix A. Prior to the FSMA, insurance business transfers were effected in the UK under the Insurance Companies Act 1982.
- 1.4 Insurance business transfers in the UK can be effected for both business written by insurance and reinsurance companies, as well as business written at Lloyd’s.
- 1.5 Although this part of the paper focuses on insurance business transfers in the UK, we would expect many of the principles and issues considered to be the same for business transfers undertaken in other jurisdictions.
- 1.6 Under Part VII transfers, a prescribed role exists, the Independent Expert, which is often fulfilled by an actuary. The aim of this role is to help protect policyholders from being adversely affected by an insurance business transfer. An Independent Expert needs to be appointed for all insurance business transfers in the UK (other than for a Part VII “lite”, as described in paragraph 1.14 below), with the Independent Expert being required to consider and opine on the effect of the proposed transfer on all the different groups of policyholders who may be impacted.
- 1.7 Typically this means that at least three main groups of policyholders need to be separately considered:
- those that are retained in the transferor company;

Part C: Insurance Business Transfers

- those that are proposed to be transferred from the transferor to the transferee company; and
 - the existing policyholders of the transferee company.
- 1.8 In some situations not all three groups of policyholders may exist, for example if a new insurance company is being established for the purpose of receiving the transfer there will be no existing policyholders in the transferee company. In other situations there may be more than three groups of policyholders, for example where a transfer involves a number of portfolios from multiple transferor companies being transferred into one transferee company. For some transfers certain categories of policyholders may need to be considered separately from the usual main groups considered above, as discussed further in paragraph 8.11.
- 1.9 With the aim of protecting policyholders, the Independent Expert is required to opine on the “likely effects” of the transfer on policyholders, distinguishing between the different groups of policyholders which exist in respect of the transfer.
- 1.10 Business transferred under a Part VII transfer can include liabilities and potential liabilities on current and expired policies - so actual claims can be transferred, future potential claims on expired policies can be transferred (for example asbestos related claims from business written many years ago) and future potential claims on unexpired policies. Liabilities on policies to be written in the future period prior to the effective date of the transfer can also be included.
- 1.11 The exact business which actually transfers for an individual Part VII transfer is specified in the transfer scheme, which will have been designed and agreed by the companies involved, possibly in conjunction with their lawyers and other advisors. For example, a Part VII transfer may transfer all of the insurance business in the transferor company or only a selected part of it. The business may be transferred to an existing insurance company or to a new “empty” insurance company.
- 1.12 Part VII transfers do not require the consent of the affected policyholders (compared with a novation which does) and there is no voting mechanism for policyholders either (which is a feature of schemes of arrangement). However, policyholders are entitled to be heard by the Court sanctioning the transfer if they feel that their interests are likely to be adversely affected.
- 1.13 The first Part VII transfers which were effected under FSMA were finalised in 2002. A list of all the non-life Part VII transfers which we are aware of since that date is set out in Appendix E.
- 1.14 In the UK a Part VII “lite” regime also exists. This regime covers insurance business transfers which consist solely of reinsurance contracts and where all of the policyholders whose contracts are to be transferred have consented to it. The only requirement for such transfers is the production of a solvency

certificate by the competent authority regulating the EEA accepting office. Court approval of the transfer is not required but the transferor and transferee will retain the ability to apply to Court for sanction of the transfer, if desired, for example to enhance the prospects of recognition by a foreign court or to seek an ancillary court order to transfer reinsurance protections relating to the underlying portfolio. This part of the paper, however, focuses on the usual Part VII transfer process and not this “lite” regime.

Insurance business transfers across Europe

- 1.15 Insurance business transfers are not unique to the UK, however. Under the Third Non-Life Insurance Directive (which was implemented in 1994) and the EU Reinsurance Directive (which was implemented in 2007) a similar procedure exists for both direct and reinsurance business in all EU countries.
- 1.16 However, the requirements imposed by these EU Directives for such a transfer process only prescribe minimum standards (such as a requirement for a solvency certificate to be provided by the local regulatory authority of the transferee). Subject to the minimum requirements, the Directives give Member States flexibility over the exact procedures to be adopted for these transfers which, it provides, are to be authorised ‘under conditions laid down by national law’. Hence, the exact process for insurance business transfers varies by country. Indeed, the requirement to appoint an Independent Expert, that is present in the UK legislation, often does not exist in overseas jurisdictions.
- 1.17 The implementation of these Directives provides EU (re)insurers with the flexibility to transfer business both within any EU country and from one EU jurisdiction to another. This may enable (re)insurers to take advantage of favourable laws or regulations or to rationalise its businesses and consolidate capital requirements.
- 1.18 The situation outside Europe varies by country. In many countries there is no equivalent of a Part VII transfer.

Reasons for effecting a Part VII transfer

Achieving finality

- 1.19 Part VII transfers are often undertaken to achieve true finality for the transferor company (with respect to the laws of countries that recognise the transfer¹). Reinsurance does not achieve this finality – with the reinsured always maintaining exposure to the underlying business. After a Part VII transfer has been completed the transferor has no remaining exposure to the transferred business, while at the same time cover for policyholders is maintained.

¹ Normally, a business transfer would be recognised by courts in England and the EU. Recognition of transfers in the US is more problematic. This paper does not address the issues arising from differing recognition by the laws in different jurisdictions.

Cost savings & capital releases

- 1.20 Another common reason for undertaking a Part VII transfer is to achieve cost savings or releases of capital. Many insurers have a large number of different insurance companies within their group, often as a result of previous mergers and acquisitions or for other historical reasons. By undertaking one, or a number of, Part VII transfers these legacy liabilities within the companies can be transferred into one single entity. Given the finality of the Part VII transfer process, this enables all the other companies to be de-authorised and wound up. This can result in a reduction in both management time and administration costs, for example after the Part VII transfer process only one set of accounts, one set of FSA returns and one ICA would be required. The resultant cost savings can be significant.
- 1.21 In addition, capital may be released from redundant subsidiaries and be able to be put to more profitable uses as a result.

In connection with mergers & acquisitions

- 1.22 Part VII transfers are also often effected in connection with mergers and acquisitions. In this area they can be used in a number of ways:
- prior to an acquisition - where similar portfolios of business are all transferred into one entity ready to be sold or a portfolio is transferred out of a company to enable a sale of the remaining business to progress;
 - after an acquisition – by combining the new subsidiaries in order to achieve cost savings or a release of capital as discussed above; and
 - as an alternative way of acquiring a portfolio (or a combination of portfolios at the same time) rather than purchasing the entire company.

In preparation for a scheme of arrangement

- 1.23 A Part VII transfer can also be used in conjunction with a scheme of arrangement. For example, where the insurance company currently contains business which cannot be included in a scheme of arrangement, such as compulsory insurance policies (e.g. UK employers' liability insurance), this business can be removed from the company prior to effecting a scheme of arrangement (or subsequent to effecting a scheme of arrangement for the business which can be schemed).

Restructuring overseas business

- 1.24 Part VII transfers are also effected in order to restructure overseas business. For example, companies have transferred portfolios of business written through a European branch of a UK insurance company to a – sometimes newly

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established – insurance company in the European country instead. Another example is where companies have transferred a portfolio of business written through a UK branch of a non-EU insurance company to an EU insurance company, for example to take advantage of passporting rights in Europe.

- 1.25 In this context, Part VII transfers enable companies to pursue their business strategy – which could be connected to tax, regulatory issues or a variety of other reasons – unhindered by run-off liabilities being left behind in another group entity.
- 1.26 This restructuring is most practical when the business of the insurance group is all within the European Union, so that the issue of recognition of the transfer does not arise.

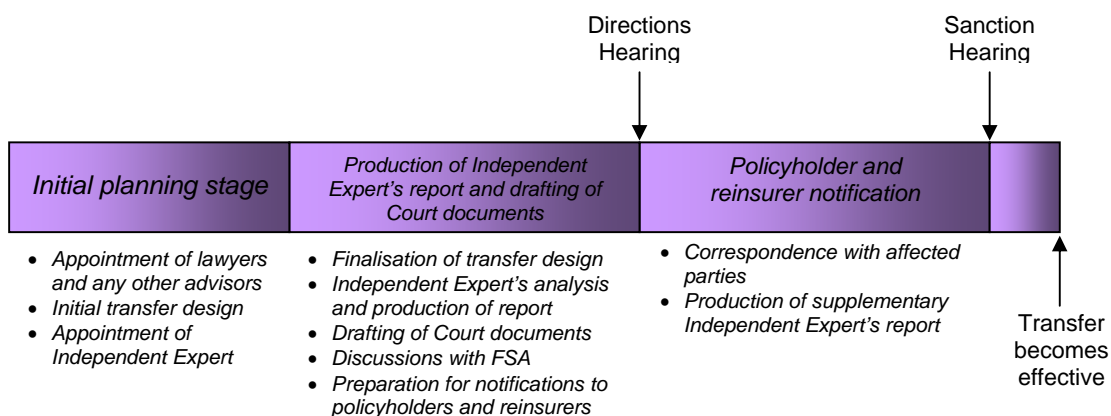
Other reasons?

- 1.27 There are also other potential reasons for undertaking a Part VII transfer, since all companies have circumstances which are unique to them. For example, a more recent reason for undertaking a Part VII transfer is to take advantage of tax losses in a (currently) empty company. Another reason whose profile is continuing to increase is in preparation for Solvency II, ensuring that a group is capital efficient.

2. DETAILS OF THE PART VII PROCESS

Part VII timeline

- 2.1 A timeline for a typical Part VII transfer is set out below. The key individual steps set out in this process timeline are discussed further below.



Parties involved

- 2.2 The main parties involved in any Part VII transfer are the transferor company, the transferee company which is receiving the business, the companies' lawyers and any other advisors, the Court, the policyholders, any reinsurers of the transferring business, the Financial Services Authority ("the FSA") and the Independent Expert.

The FSA

- 2.3 There is significant FSA involvement throughout the process. In addition to approving the appointment of the Independent Expert (as discussed further in paragraph 5.5), the FSA also approves the form of the Independent Expert's report, is entitled to be heard in Court and usually produces a report for the Court on regulatory aspects of the proposed transfer. In deciding whether or not to appear in Court, the FSA will consider the potential risk to its regulatory objectives of the transfer proceeding compared to not implementing the transfer.

Overseas regulators

- 2.4 In certain circumstances, an overseas regulator will also be involved in a Part VII transfer. It is necessary to obtain consent from the overseas local regulator where:
- the transferor is a UK authorised insurer and the business to be transferred includes business carried on from a branch in another EEA state; or

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- the business to be transferred includes risks located in another EEA state; or
- the transfer affects authorisation arrangements in jurisdictions outside the EEA.

2.5 Within the EEA, the FSA consults the overseas regulator, who has three months to respond. To avoid the need to obtain the consent of the overseas local regulator, such business and risks are sometimes excluded from the Part VII transfer. The Independent Expert should be aware of this possibility, especially since many transfers provide for the exclusion of such policies in the event that the overseas regulator's consent is not obtained by the effective date of the transfer.

2.6 An overseas regulator will also be involved where the transferor is a UK authorised insurer and the transferee is authorised in another EEA state. In this situation the local regulatory authority of the transferee, as a minimum, needs to provide a solvency certificate in order for the transfer to proceed.

Court hearings

2.7 The court process usually revolves around two court hearings : the directions hearing and the sanction hearing. In the first hearing, the directions hearing, the Court considers the insurers plans for publicising the transfer, something which must be done so that policyholders and reinsurers are made aware of the transfer. This includes the documents which are planned to be sent directly to those affected, applications for waivers from notifying certain policyholders and plans for publishing notices in appropriate publications.

2.8 In a recent large Part VII transfer an additional pre-directions hearing was also held to seek direction on waivers before the full documentation, including the Independent Expert's report, was ready.

2.9 During the period between the directions hearing and the sanction hearing, the publicising of the proposed transfer takes place. At the sanction hearing, which happens shortly before the desired effective date of the transfer, the Court is asked to approve the transfer (in accordance with Section 111 of the FSMA).

2.10 Part VII transfers can only go ahead if they are sanctioned by the Court. Before sanctioning the transfer the Court needs to be satisfied that it has jurisdiction to sanction the transfer and that the transfer is appropriate. In reaching its decision as to whether the transfer is appropriate the Court relies to a large extent on the opinions of both the FSA and Independent Expert. The Court will also consider opinions of policyholders or others who present objections.

2.11 In addition to sanctioning the transfer of the insurance policies, the Court also has the power to transfer the benefit of reinsurance contracts protecting the transferred business, and to make such amendments to the terms of those contracts as may be necessary to give effect to that transfer of benefit. This

second point means that the Courts have the ability to override contractual provisions that might otherwise have the effect of voiding or altering any contracts which are subject to the transfer.

Policyholder & reinsurer notification

- 2.12 Policyholders and reinsurers must be provided with sufficient information on the proposed transfer, and its effects, to enable them to decide if they are likely to be adversely affected, and whether they wish to be heard by the Court, which they are entitled to be.
- 2.13 The information provided to policyholders and reinsurers includes a summary of the transfer scheme and a summary of the Independent Expert's report. These summaries are approved in advance by the FSA. In the FSA's guidance on insurance business transfers it is stated that "ideally every recipient should understand in broad terms from the summary how the scheme will likely affect him". The Independent Expert's full report also needs to be provided on request.
- 2.14 In addition to being provided with this information, policyholders and reinsurers must also be given adequate time to consider this information – typically a period of at least six weeks.
- 2.15 In some cases, the Court waives the requirement to notify all policyholders. These waivers are applied for during the Directions Hearing. When considering such waivers, the Court will bear in mind a number of aspects such as the practicality and costs of sending notices to policyholders, the effectiveness of other arrangements proposed for informing policyholders and the views of the FSA. The opinion of the Independent Expert on the impact of the proposed transfer on the group of policyholders who may not be notified will also be considered. For example, a waiver is more likely to be given if cover for the policies in question has expired and the probability of the policyholders making a claim is so small as to make the sending of information disproportionately expensive.
- 2.16 Press adverts also need to be taken out to publicise the transfer. These adverts are particularly important in cases where incomplete policyholder records remain, for example when policies which were written a number of years ago are proposed to be transferred.

3. ROLE OF FSA AND FSA GUIDANCE ON PART VII TRANSFERS

3.1 The FSA has the following roles in the process:

- approving the appointment of the Independent Expert (as discussed further in paragraph 5.5);
- communicating with the Independent Expert so that the Independent Expert knows the issues that the FSA wishes him to consider;
- reviewing the Independent Expert's report and the summary report before they become final; and
- reporting to the Court.

3.2 In preparing its final report, the FSA will consider the potential risks to its regulatory objectives of the transfer proceeding compared to not implementing the transfer.

FSA reports

3.3 Commonly the FSA issues two reports to the Court in connection with Part VII transfers. The first of these is in advance of the Directions Hearing and a further report is then issued in advance of the Final Hearing. Where an additional hearing is held the FSA may produce a further report. Previously only one report was provided by the FSA, in advance of the Final Hearing, and prior to that the FSA did not produce any reports, often confirming their "approval" for a Part VII transfer by simply providing a letter stating that they did not intend to attend Court.

3.4 The purpose of the FSA's reports is to provide the Court with information on the FSA's position in relation to the proposed Part VII transfer, in particular, the basis on which the FSA does or does not object to the proposed transfer going ahead.

FSA fees

3.5 Since 1 April 2008, the FSA began to levy fees for Part VII transfers for the first time. As at May 2009, the fees payable are £18,500 for life insurance transfers and £10,000 for non-life insurance transfers. The fee is payable by the transferor on or before the application to the FSA for approval of the Independent Expert.

FSA guidance

3.6 The FSA provides guidance on insurance business transfers in Chapter 18 of their Supervision Handbook ("SUP 18"). An extract of the current version of SUP 18 (as at August 2009), which includes those sections that are relevant for non-life insurance business transfers, is attached as Appendix C. The full

version of SUP 18 can be obtained at <http://fsahandbook.info/FSA/handbook/SUP/18.pdf>.

3.7 This guidance from the FSA covers a number of areas, including:

- The requirements which must be met in order for an individual to be approved as the Independent Expert for a Part VII transfer.
- The required form of the Independent Expert's report, in particular the information which the Independent Expert's report should contain.
- The FSA's requirements around the publication of the proposed transfer, covering both the information sent directly to policyholders / reinsurers and the publication of notices in the press.
- The likely considerations which may impact the FSA's opinion on a transfer scheme.

3.8 We believe that the FSA accept that changes need to be made to SUP 18 in order to reflect recent legislative changes and changes to the normal court process, including the two reports the FSA now normally provide to the Court and the fact that the Independent Expert often now produces a supplementary report. However, it is not clear when SUP 18 will be updated.

4. GUIDANCE RELEVANT TO BUSINESS TRANSFERS

- 4.1 In addition to the guidance set out by the FSA in SUP 18, which is discussed in the previous section, there is further guidance that is relevant to Independent Experts. CPR 35, as discussed below, is relevant for all Independent Experts. In addition, for Independent Experts who are also qualified actuaries, there is further guidance issued by the Board for Actuarial Standards and the Institute and Faculty of Actuaries.
- 4.2 We discuss briefly below the current guidance which we feel is most applicable for individuals who are acting as an Independent Expert. It is also very important though for these individuals to remain up-to-date by keeping abreast of changes in guidance. This is particularly relevant for qualified actuaries given the number of changes that both the Board for Actuarial Standards and the Institute and Faculty of Actuaries are likely to make to their standards in the near future.

CPR 35

- 4.3 Part 35 of the Civil Procedure Rules ("CPR 35") provides the guidance set out by the Courts as to duties and responsibilities of expert witnesses in civil cases. CPR 35 includes certain specific requirements which an expert must comply with when compiling their expert report. CPR 35 can be accessed at http://www.justice.gov.uk/civil/procrules_fin/menus/rules.htm#part31.
- 4.4 CPR 35 is written with expert witnesses in adversarial situations in mind. Independent Experts for Part VII transfers therefore need to use their judgement in interpreting and applying it.
- 4.5 The Civil Procedure Rules only apply to England and Wales, and do not apply in Scotland.

Standards issued by the Board for Actuarial Standards

- 4.6 The most directly relevant standards issued by the Board for Actuarial Standards is Guidance Note 12 ("GN12"), which covers "General Insurance Business: Actuarial Reports". GN12 is available at [http://www.frc.org.uk/documents/pagemanager/bas/GN12%20General%20insurance%20business%20-%20actuarial%20reports%20V4.0%20\(2\).pdf](http://www.frc.org.uk/documents/pagemanager/bas/GN12%20General%20insurance%20business%20-%20actuarial%20reports%20V4.0%20(2).pdf).
- 4.7 Where the Independent Expert is a qualified actuary, their report may or may not comply with GN12. For example, the report may not comply with GN12 if, in the opinion of the Independent Expert, in order to meet the needs of the Court and policyholders it is not appropriate to describe the level of technical detail concerning the derivation of the reserves and modelling assumptions normally found in an actuarial report. However, details of the methodology for reviewing the key assumptions, and the conclusions on their appropriateness will normally be included. Where a report does not comply with GN12, this should be disclosed in the report and the reasons for non-disclosure explained.

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Often the reason cited for non-disclosure is that compliance would require much more detail than is necessary or helpful for the Court.

- 4.8 While we are aware that GN12 is due to be replaced (by TAS R), it remains valid at the current time and the general principles set out in GN12 are likely to remain relevant and helpful.
- 4.9 The other relevant standard issued by the Board for Actuarial Standards is Guidance Note 50 (“GN50”). This guidance note governs the professional behaviour of members of the Institute and Faculty of Actuaries in the field of General Insurance. GN50 is available at <http://www.frc.org.uk/documents/pagemanager/bas/GN50%20General%20Insurance%20Principles%20and%20Practice%20V1.0.pdf>.

Standards issued by the Institute and Faculty of Actuaries

- 4.10 In addition to the standards issued by the Board for Actuarial Standards, qualified actuaries are also required to comply with the Professional Conduct Standards (“PCS”) issued by the Institute and Faculty of Actuaries. The PCS is available at http://www.actuaries.org.uk/_data/assets/pdf_file/0014/33116/PCSV3-0.pdf.
- 4.11 The Institute and Faculty of Actuaries have also issued an Information and Assistance Note (“IAN”) on “The Actuary as an Expert Witness”. While compliance with IANs is not mandatory, they are intended to provide helpful material on particular matters for members of the Institute and Faculty. Similarly to CPR 35, this IAN has been written with expert witnesses in adversarial situations in mind. While the IAN is still helpful for individuals acting as an Independent Expert for a Part VII transfer, actuaries will need to use their judgement in interpreting and applying it. The IAN is available at http://www.actuaries.org.uk/_data/assets/pdf_file/0009/143667/IAN_ExpertWitness_20090109.pdf.

5. THE APPOINTMENT OF THE INDEPENDENT EXPERT

- 5.1 The Independent Expert is typically appointed jointly by the transferor and transferee companies. The person nominated by the companies needs to be approved by the FSA.
- 5.2 The appointment as an Independent Expert is a personal one and places a high level of responsibility on the individual. Before accepting such an appointment, an individual should consider whether he has sufficient relevant practical knowledge and experience. Such experience would probably include familiarity with the types of insurance business transacted by the companies concerned, possibly including familiarity with the relevant jurisdictions. The individual also needs to consider whether there are any potential impediments to their independence in the eyes of the Court, as discussed further starting at paragraph 5.9 below.
- 5.3 If an Independent Expert needs independent specialist advice on some aspect of the transfer he must ensure that he has access to such advice. This situation might arise, for example, if an Independent Expert, who is a non-life specialist, is opining on a non-life insurance business transfer where one of the companies involved is a composite insurer, such that an element of long-term business is potentially affected by the proposed transfer.
- 5.4 An individual offered an appointment as an Independent Expert should normally enquire if the appointment has previously been accepted and subsequently vacated by another person. If this has happened, it would be advisable to try and establish the circumstances which occurred.

FSA approval of the Independent Expert

- 5.5 All Independent Experts must be approved by the FSA. When approving the Independent Expert the FSA's focus is to ensure that the proposed individual is truly independent and has the resources, knowledge and experience necessary to opine on the proposed transfer.
- 5.6 Where a Part VII transfer involves long-term (i.e. life) business the Independent Expert must be an actuary. For short-term (i.e. non-life) business this is not the case, although the vast majority of Independent Experts to date have been actuaries.
- 5.7 The role of the Independent Expert is prescribed in Section 109 of the FSMA, where it states that a report must be made in a form approved by the FSA and may be made only by a person:
- appearing to the FSA to have the skills necessary to enable him to make a proper report; and
 - nominated or approved for the purpose by the FSA.

- 5.8 In order for the FSA to approve an individual as the Independent Expert, they require the nomination to be accompanied by the reasons why the transferor / transferee consider the nominee to be a suitable person, together with relevant details on the nominee's experience and qualifications.

Establishment of independence of the Independent Expert

- 5.9 In addition to possessing sufficient relevant practical knowledge and experience in order to opine on the proposed transfer, the Independent Expert also clearly needs to be independent. We would typically consider someone to be "independent" if they have no personal interest in whether the proposed transfer goes ahead or not. In this sense, the Independent Expert should probably not be connected to the transferor, transferee, affected policyholders or any affected reinsurers.
- 5.10 Before accepting an appointment as the Independent Expert, the proposed individual therefore needs to satisfy himself that his independence is not compromised in any way.
- 5.11 An individual would not be expected to act as the Independent Expert if any direct or indirect interest in, or connection with, any party to the transfer would prejudice his status in the eyes of the Court. The individual should normally disclose to the transferee, the transferor and the FSA (and state in his report) any direct or indirect interest or connection they may have or have had in or with any party. Whether such an interest or connection would disqualify the individual from acting as the Independent Expert would depend on the exact circumstances.
- 5.12 In addition to real independence, the perceived independence of the Independent Expert should also be considered, as any aspects which may give rise to external parties questioning an Independent Expert's independence may cause issues for the smooth progression of the proposed transfer.
- 5.13 Some of the areas which the proposed Independent Expert would normally consider in order to satisfy himself of his independence are:
- Any work that he has undertaken historically for the companies or business involved in the proposed transfer, bearing in mind the nature and size of any work undertaken.
 - If his firm places significant reliance on income (beyond that from the Independent Expert project) which it receives from the companies involved in the proposed transfer.

Maintaining independence

- 5.14 In addition to establishing independence at the outset, the Independent Expert's independence also needs to be maintained throughout the transfer process, up until the time that the transfer is either sanctioned by the Court or

abandoned. During this time, the Independent Expert should declare any new potential conflicts or changes which may influence his independence (or perceived independence) as they arise. This may include a situation, for example, where colleagues of the Independent Expert take on a project for one of the parties involved in the transfer that is seen as materially significant either due to the nature or size of the project. In such situations it would be usual for the Independent Expert to raise the potential issue with the transferor and transferee (and their legal teams) and consider whether it is appropriate to comment on the issue in the Independent Expert's report. The FSA should also be made aware of any potential issues which may influence the independence (or perceived independence) of the Independent Expert.

5.15 In addition to the areas listed in paragraph 5.13 above, the additional factors which are often considered in order to ensure maintenance of independence are as follows:

- Maintaining objectivity throughout the process and not being unduly influenced by any of the parties involved in the insurance business transfer.
- Ensuring that the Independent Expert does not provide any advice to the parties involved in the insurance business transfer which might impair the Independent Expert's independence. This might include, for example, providing advice on the design of the proposed insurance business transfer scheme. This does not, though, normally prevent the Independent Expert from answering "what if?" type questions during the course of his work, since this can result in a constructive approach to enable the parties to develop an acceptable transfer scheme efficiently.
- The arrangements which are put in place for the payment of the Independent Expert's fees. The fee arrangements agreed should be considered in light of the impact they may have on the Independent Expert's real, or perceived, independence. The fees should usually be payable regardless of the conclusions reached by the Independent Expert. Therefore, contingent fees, which are dependent on whether the insurance business transfer is successfully sanctioned by the Court, are usually viewed as being inappropriate. Fixed fee arrangements are also sometimes regarded as inappropriate since it is crucial that the Independent Expert carries out all the necessary analysis in order to form his opinion. While it may be the case that the work carried out is not affected by the underestimation of a fixed fee, this may not be the perception by external parties, the FSA or the Court.

6. NATURE AND EXTENT OF WORK OF INDEPENDENT EXPERT

Role of the Independent Expert

- 6.1 The ultimate decision as to whether a proposed transfer can go ahead is the Court's. To assist the Court in making that decision, the FSMA requires that all Part VII transfer applications are accompanied by a report on the terms of the transfer scheme so that the Court can assess the impact of the transfer on policyholders and other third parties that may rely on the relevant insurance policies.
- 6.2 The Independent Expert is required to opine on the “likely effects” of the transfer on policyholders, distinguishing between the different groups of policyholders who are affected by the transfer.
- 6.3 In forming his opinion, the Independent Expert needs to consider the effect of the transfer on:
- the security of the policyholders' rights; and
 - the levels of service provided to policyholders.

Issues to be considered

- 6.4 The issues to be considered by the Independent Expert split broadly into two areas – Quantitative and Qualitative. Within each of these areas, the following is a non-exhaustive list of the items that might be considered by the Independent Expert. For each item listed below, the Independent Expert would compare the pre and post-transfer position and consider whether the position post-transfer is adverse from each of the relevant categories of affected policyholders' perspective. Not all of these issues will apply in all circumstances, and there will certainly be others not listed here that will apply in some cases; the Independent Expert will need to select the issues that are appropriate in each situation.

Quantitative issues

- Capital “strength” – Ratio of actual net assets to ICA
- Capital “strength” – Probability of ruin (or probability of some other level of impairment)
- Capital “strength” – TVAR / “Conditional Tail Expectation” measure
- Capital “strength” – Probability of all policyholders being paid in full
- Capital “strength” – Ratio of actual net assets to Statutory Minimum Solvency Margin or ECR or QIS4 (or subsequent version)

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- Capital “strength” – Ratio of net assets to technical provisions
- Other miscellaneous financial measures (for example net to gross reserves, premium to surplus ratio, etc.)
- Rating awarded by rating agency (and corresponding knock-on effect to relevant creditors)
- Levels of parent company support / intra-group or inter-company guarantees etc.
- Impact of any changes in outwards reinsurance
- Impact of reinsurance set-off
- Capital structure (such as levels of debt compared to equity)
- Accounting and tax issues

Qualitative issues

- Claims handling procedures, staffing and service levels
- IT systems and support (where relevant to policyholders)
- Customer complaints procedures
- Regulatory system in place
- Premium collection procedures / instalment facilities
- Business mix

- 6.5 For each of these items, the Independent Expert will normally wish to consider the relative position pre and post-transfer, with the pre-transfer position being that which would apply if the transfer did not go ahead. For example, the Independent Expert might consider whether the ratio of net assets to ICA is at least as high post-transfer as pre-transfer. Where the position for each particular issue is “better” post-transfer compared to pre-transfer, then the Independent Expert can usually regard this issue as being satisfactorily resolved. Where this is not the case, the Independent Expert will need to consider the materiality of the apparent reduction in “security” and the resulting absolute level of security post-transfer. In some cases, it might be reasonable to argue, that, even though the apparent security is lower post-transfer than pre-transfer, the absolute level of security post-transfer is at least as high as that which might be required by the FSA in the normal course of events (e.g. 99.5th percentile basis in an ICA context). In other words, the security afforded to policyholders is at least at the level that they can expect the regulator to

require for other companies with whom they might purchase a policy. Clearly this will be a matter of judgment for the individual Independent Expert.

- 6.6 Different specific issues will apply to the different groups of affected policyholders.
- 6.7 In Appendix D we give further details of the issues associated with each of the above listed quantitative and qualitative measures.
- 6.8 With Solvency II on the horizon, it might start to become relevant for the Independent Expert to consider how the transfer might be viewed when considered in the light of this evolving regulatory framework.

Reliance on the work of others

- 6.9 In many situations, in order to address some of the issues listed above, the Independent Expert may wish to do so by reviewing the work of others, rather than carrying out his own independent work. In each case, the Independent Expert will need to consider the extent to which this is appropriate. In general, though, it may be considered reasonable to rely upon the work of others, as long as:
 - the Independent Expert carries out at least a broad reasonableness review of the methodology and key assumptions used by the other party;
 - the Independent Expert is content that the scope of, and context for, the work of the other party is acceptable, given the business transfer context for which it is being used (or that the Independent Expert can make appropriate adjustments to allow for this);
 - the Independent Expert is able to test the impact of any errors or differences of opinion in relation to the other party's approach on his views of the transfer; and
 - the Independent Expert explains the reasons for reliance in the report.
- 6.10 The other party can either be an internal resource at one or more of the companies involved in the transfer, or an external consultant to the company. In both cases, but particularly where the other party is an external consultant, the Independent Expert will need to consider any restrictions associated with formal reliance on, and disclosure of, the other party's findings.
- 6.11 In some situations it may be necessary for the Independent Expert to rely on the work of another professional (such as a lawyer), without being able to undertake the same level of review or checks as when relying on the work of someone operating in the same professional field (such as another actuary).

- 6.12 In all cases, it is the responsibility of the Independent Expert to consider whether or not it is appropriate for him/her to rely upon the work of any others, and to explain the reasons for such reliance in his report.

Scope of opinion

- 6.13 The scope of the Independent Expert's work, and hence the resulting opinion in relation to the transfer, clearly covers the impact on the affected policyholders from both a financial and non-financial perspective. There are also, however, other affected parties where it is reasonable to consider whether the Independent Expert's scope should extend to consideration of the impact of the transfer on them. The following table summarises the working party's view in relation to a number of different parties. This is not intended to be an exhaustive list, nor is intended to be a list of parties that need to be considered in each case. Furthermore, in any individual case, it will be up to the Independent Expert to consider which specific parties, other than policyholders (if any) need to be considered. In most cases, the significant majority of the Independent Expert's effort will be around considering the affected policyholders, rather than other parties.

Category	Within Independent Expert's scope?	Rationale
Employees of relevant companies	No	Not likely to be within the Independent Expert's expertise to consider employment rights etc. It would seem more logical that it should be the responsibility of the company to ensure that the relevant employment laws are complied with (e.g. staff might be TUPE'd to another company).
Reinsurers of affected companies	Possibly	If the transfer has an adverse impact on reinsurers (e.g. by adversely affecting their set-off position, perhaps) then it does not seem unreasonable for the Independent Expert to consider this impact – they are not affected policyholders, but they are contractually very clearly connected with the companies.
Other insurers	Possibly	For certain claim types (e.g. asbestos mesothelioma-related claims) there may be situations where some individual claims are shared amongst a number of insurers. Hence, if one of those insurers' policies are part of a business transfer, then a change in that insurer's chance of insolvency, caused by the transfer, may impact on the shares of an individual claim payable by the other insurers (through the sharing mechanism). Thus, for some transfers, this issue may be

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		relevant.
FSCS ²	Possibly	In some cases, the Financial Services Compensation Scheme ("FSCS") may have an interest in a Part VII Transfer, if there are protected policies involved. Hence, it might be appropriate for them to be consulted and/or their interests considered.
Brokers, suppliers and other service-providers to the company	No	Difficult to see how these would be affected, but any consequential adverse impact on this group seems to us to be simply within the bounds of normal commercial operations.

² Or government / industry compensation schemes in other jurisdictions, if relevant.

7. UNCERTAINTY CONSIDERATIONS IN THE CONTEXT OF BUSINESS TRANSFERS

7.1 The Independent Expert is reporting about the effects of the transfer on the different groups of policyholders involved, particularly on their security. Therefore he is concerned about any uncertainties relating to their risk of being adversely affected by the transfer.

7.2 If the Independent Expert (or another party such as one of the companies involved or a third party) is modelling the effects of the transfer then these uncertainties, where quantifiable, would normally be included as part of the model. Sensitivity tests can be carried out by varying the assumptions behind the model to investigate how this changes policyholder security. It may be useful to place these tests in context by estimating the probability that all policyholders will be paid in full (or other such tests as may be appropriate to the particular circumstances of a transfer).

7.3 Areas of uncertainty to be considered include the following:

The strength of the reserves in the different entities involved

7.4 This may be a key uncertainty and so the Independent Expert will normally carry out a high level review of the reserves as well as relying on the work of others.

7.5 Sensitivity tests can be carried out by assuming certain percentage increases in the key reserves. Other tests include increasing the volatility of the reserves by increasing their coefficients of variation and increasing the correlations between different reserve classes.

7.6 In reviewing the reserves the Independent Expert may well apply benchmarks though this gives uncertainties relating to their applicability to the entities involved.

Legislative changes

7.7 These could significantly affect certain classes of business, for example US asbestos or the impact of the Court Act on UK motor claims. The uncertainty regarding the effect of the transfer on policyholder security is all the greater when the entities involved contain completely different types of business.

7.8 As above, sensitivity tests can be carried out by assuming certain percentage increases in the reserves for the classes that could potentially be affected.

Legal disputes affecting claims

7.9 An example would be whether the World Trade Centre losses relate to one event or two events. This naturally lends itself to scenario testing of the different possibilities.

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Reinsurance & stop loss contracts

- 7.10 The continuation of reinsurance and stop loss contracts after the transfer may well be a key assumption in maintaining a high degree of policyholder security. If this is the case then the Independent Expert may take legal advice to support this assumption.
- 7.11 Similarly the performance of these contracts may be a key assumption. This can be stress tested by increasing the probabilities of failure for the key contracts. On other contracts the bad debt provision can be made disproportionately higher when simulated recoveries are high. This is to reflect the fact that very high levels of recoveries indicate a significant deterioration in claims experience which is more likely to lead to a general weakening in the financial strength of reinsurers.

Performance of assets

- 7.12 This can be modelled by discounting reserves for the time value of money according to assumed interest rates and payment profiles for the different classes of business.
- 7.13 Sensitivity tests can be carried out by reducing the interest rates to model lower asset returns. The payment profiles could also be shortened to test the effects of faster than expected payments.

Timing of asset transfers

- 7.14 A particular uncertainty may arise when the transferring business contains US Trust Funds (Reinsurance and/or Surplus Lines) held for the benefit of US policyholders. The security of policyholders may be reduced if the transfer of the assets in these Funds is delayed or not authorised for whatever reason. Also, if the transfer effectively moves policies from an insurer with a trust fund (or similar collateral arrangements) to an insurer without equivalent collateral arrangements, cedants might have an issue taking credit for reinsurance for regulatory solvency purposes. This could be of concern to cedants even if the true underlying security of the transferee is no different from that of the transferor. Naturally in these cases it is important to involve the US regulatory authorities as early as possible and gain their support for the transfer or the arrangements in place.

Future plans of the companies involved

- 7.15 Clearly the future development of the companies will affect policyholder security. The Independent Expert will normally ask the companies involved for their plans and consider whether these may adversely affect policyholders.
- 7.16 The Independent Expert also needs to consider the context in which the business transfer is taking place, for example it may be part of a sequence of events including restructuring or changes in ownership and be leading, say, to a scheme of arrangement. The extent to which a post-transfer event needs to

be considered depends on the degree of protection for policyholders associated with the event. For example, if a sale is planned then policyholders will be protected by the change of control procedures.

Events following the review date

- 7.17 The Independent Expert will normally have reviewed the transfer using data as at a valuation date prior to the report date. The Independent Expert needs to consider whether there have been any developments between this date and the date of his report that might affect his conclusions. For this reason he would normally require the details of any material changes from the companies involved so as to adjust his analysis accordingly.
- 7.18 There is also the uncertainty relating to any future events that could occur between the date of the report and the effective date of the transfer. As above, the Independent Expert may ask the companies if there have been any material events. If actual events between these two dates could potentially have a significant impact on the transfer then it may be necessary for the Independent Expert to produce a supplementary report covering their effects.

Communicating this uncertainty

- 7.19 The Independent Expert will often indicate the nature, degree and sources of uncertainty surrounding the results. In particular, this is a requirement if the report is to comply with Guidance Note 12, and be consistent with CPR35. If the effects of the transfer have been modelled then the main results of the sensitivity tests described above to the key assumptions would normally be included in the report.

8. TOPICS WHICH MIGHT BE COVERED IN THE INDEPENDENT EXPERT'S REPORT

8.1 Section 109 of the FSMA requires a report from an Independent Expert on the business transfer. The amount of detail that it is appropriate to include will depend on the complexity of the transfer, the materiality of the details themselves and the circumstances.

8.2 The report will often include the following topics:

Introduction

8.3 This section will normally contain standard items as in a formal general insurance report such as the purpose, scope and use of the report, any reliances and limitations and compliance with professional guidance.

8.4 It will also often include a summary of the proposed transfer as well as details of the Independent Expert. The latter may include the experience of the Independent Expert and information supporting his independence.

Executive summary

8.5 If an executive summary is included then this will normally cover areas such as the following:

- high level overview of the transfer
- summary of the methodologies adopted
- conclusion together with the key reasons

Outline of the transfer

8.6 The report will normally describe the purpose of the transfer. For example, this may be to make more efficient use of capital and/or improve operational efficiencies by consolidating similar business. In particular, transfers have been made in order to consolidate legacy business and/or to separate it from ongoing business.

8.7 The report will usually include a brief description of the companies involved in the transfer, normally covering their histories and the types of business written.

8.8 The business that is subject to the proposed transfer will be identified in the report. The report would describe the liabilities and the assets to be transferred, and specify the intended treatment of any outwards reinsurances and guarantees. This would include any new reinsurances and guarantees to be provided after the transfer.

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- 8.9 The report would describe the policyholders that may be affected by the transfer. In its simplest form these are usually the:
- transferring policyholders
 - policyholders in the transferor(s) whose policies are not being transferred
 - existing policyholders in the transferee(s) (who are receiving the transferring business)
- 8.10 There may be several companies involved, particularly as transferors where business is being consolidated.
- 8.11 If the Independent Expert has considered certain categories of policyholders separately then this will normally be detailed in the report. For example, direct and reinsurance policyholders may have been considered separately because they have different priorities in the event of insolvency under UK law. Another example is certain US policyholders who benefit from their liabilities being collateralized in US Trust Funds (Reinsurance or Surplus Lines). Policyholders with cover relating to different lines of business may also be considered separately if the characteristics of the lines of business means that the potential impact of the transfer on the policyholders varies significantly.
- 8.12 It is often helpful to give diagrammatic representations of the transferor(s) and transferee(s) both before and after the transfer highlighting the business being transferred. In particular, when the transfer is to consolidate entities within a group then this would show the group structure pre and post-transfer.

Methodology & results of investigations

- 8.13 This will normally include details of work the Independent Expert has carried out in reviewing the reserves of the various entities involved. The Independent Expert may have carried out independent analysis on the key reserves and relied on the work of others elsewhere. In the latter case he would normally include a high level review of the methodology and key assumptions employed by the other parties.
- 8.14 If the Independent Expert (or another party) has carried out modelling to estimate the security of the various groups of policyholders both before and after the transfer then the methodology adopted and the key assumptions made will normally be detailed in the report.
- 8.15 The report would also show the results of the scenario tests for each of the relevant uncertainties described previously in Section 7. The description will normally include scenarios in which there is unfavourable experience on two or more of the key factors.

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- 8.16 In addition, the report will contain the results for each of the quantitative issues listed previously in Section 6 that the Independent Expert considered appropriate to investigate. Similarly each of the relevant qualitative issues listed in Section 6 will be considered. Normally the positions if the transfer is or is not implemented will be compared and contrasted.

Conclusions

- 8.17 This section will usually cover the effects of the transfer on the security of each of the different groups of policyholders.
- 8.18 It will normally state what (if any) alternative arrangements to the transfer have been considered by the Independent Expert.
- 8.19 It may also show summarised balance sheets before and after the transfer and consider the treatment of assets and investments, including US Trust Funds (if applicable).
- 8.20 It will normally give the Independent Expert's overall conclusion or opinion on the transfer and its likely effects on the various groups of policyholders and other groups affected by the transfer.

Appendices

- 8.21 These may include standard items as in a formal general insurance report such as a summary of the terms of engagement, data and other information considered (including internal and external reports) and terms and definitions. They may also include any legal opinions obtained.

Issues around report audience & public nature of report

- 8.22 The full report, and a statement setting out the terms of the transfer scheme and containing a summary of the report, must be provided to any person who requests it. The report also assists the Court in assessing the impact of the proposed transfer on policyholders and other third parties that may rely on the policies. Hence the Independent Expert needs to consider the appropriate level of detail to include in his report while maintaining compliance with the relevant legal, regulatory and professional guidance requirements.
- 8.23 The Independent Expert should bear in mind, in preparing the report, that affected parties and the FSA may rely on it when considering how to respond to the proposal, including whether or not to make representations to the Court about the effects of the transfer on them.
- 8.24 Similar considerations apply to the summary of the Independent Expert's report. In practice, the summary report may be drafted by lawyers or based on the Executive Summary from the full report. However, it is the Independent Expert's responsibility to ensure that the summary contains adequate information, is readily comprehensible, is appropriate for the likely readership,

and that neither it, nor any document that will accompany it, gives a misleading impression of the findings in the full report.

- 8.25 The summary need not contain background factual matter contained in the accompanying documents. The Independent Expert can make it clear in the summary report, if appropriate, that the full report would be needed for a full understanding of the Independent Expert's analysis and conclusions.
- 8.26 The Independent Expert should be aware of the possibility that some of the information he may wish to include in his report, in order for the effects of the transfer to be understood, may be confidential or commercially sensitive. In practice, therefore, the Independent Expert will often provide a draft version of the report to the relevant parties so that any confidentiality issues can normally be resolved through discussion at this stage.

Supplementary reports

- 8.27 There has been a growing trend for supplementary reports to be produced for the final court hearing. These are generally to respond to any significant objections or to consider the effects of events subsequent to the original report.
- 8.28 In the latter case, the events may be internal such as management actions in the companies involved or external such as changes in financial markets. The Independent Expert needs to consider whether these events affect the conclusions and opinions in the original report.

9. OPINION WORDING IN INDEPENDENT EXPERT REPORT

- 9.1 The report that an Independent Expert produces for a Part VII transfer is typically pitched at a broad audience, ranging from policyholders to the judge and the FSA. We discussed in the previous section the need to convey a number of technical matters in some detail in these reports; however it is also important to deliver a clear report that is as concise as possible. In particular, it is important to describe the impact on policyholders accurately in easily comprehensible terms within a conclusion section or an executive summary. This tends to involve the Independent Expert summarising the conclusions of his work in plain English, in a way that the Independent Expert feels adequately sums up the spirit of his conclusions. An example of a conclusion stated in a recent report is as follows: *"In my view, none of the policyholders involved would be materially adversely affected if the Proposed Scheme is permitted"*.
- 9.2 There is no specified form of words for the conclusion set out in the legislation or in FSA guidance. Nor is it clear exactly what conclusion the Independent Expert would need to give in order for the judge to conclude that it is appropriate (or inappropriate) to sanction the transfer.
- 9.3 In the absence of any such guidance, the Independent Expert is forced to rely on his own judgement and the precedents set by prior Part VII transfers to determine appropriate wording that is unambiguous and represents his opinion of the effect of the transfer on policyholders.
- 9.4 This working party has made a survey of recent Independent Expert reports on non-life Part VII transfers and has observed the following:
- Forms of "standard wording" appear to have evolved in the executive summaries of reports over the last few years, albeit with a number of variations.
 - A likely reason underlying the evolution of standard wordings is the fact that opinions are reviewed by the sponsor's legal advisers and Queen's Counsel, and it is generally their preference to stick to existing precedent where possible, on the assumption that following such precedent is more palatable to a judge, and will therefore reduce the likelihood of the judge raising issues with the Independent Expert's report.
 - Wordings often centre on the phrase *"not materially adversely affected"* as in the example above, or *"not materially disadvantaged"*. When a stronger phrase is justified variations such as *"not adversely affected"* or *"unaffected"* appear.
 - As described in paragraph 6.5, when a proposed transfer will adversely affect the security of policyholders the Independent Expert will need to consider the materiality of the apparent reduction in security and the resulting absolute level of security post-transfer. Where the reduction is slight and the absolute level is very high, an

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Independent Expert might choose to describe policyholder security as *“not materially adversely affected”*, although clearly this is a matter of judgment for the individual Independent Expert and the rationale would need to be explained.

- The Independent Expert usually sets out a conclusion for each group of policyholders in turn (these groups are typically the policyholders remaining with the transferor, the transferring policyholders and the existing policyholders of the transferee, as described in paragraph 1.7). Sometimes a combined statement is added, summarising the effect on all policyholders.
- The statement relating to each group of policyholders typically refers to policyholders in aggregate (rather than as individuals), e.g. *“the policyholders are not adversely affected”* or *“no groups of policyholders are adversely affected”*. Some conclusions, however, state that *“none of the policyholders are adversely affected”*, which seems a stronger statement.
- The Independent Expert usually sets out a conclusion for each aspect of the potential impact on policyholders in turn – typically the aspects considered separately are security and levels of service, as described in paragraph 6.3. Sometimes a summary statement is added. An example wording showing two aspects addressed separately followed by a summary statement reads as follows: *“... I do not anticipate that the Transfer will affect the financial security provided to the Transferred Policyholders. ... I do not anticipate a non-financial impact of the Transfer on the Transferred Policyholders. I therefore believe that the Transfer is unlikely to have a material adverse impact on the Transferred Policyholders compared to their position prior to the Transfer”*.
- As in the last sentence above, the Independent Expert sometimes includes probabilistic words or phrases such as *“unlikely”*. Variations on this have included *“highly unlikely”*, *“extremely unlikely”*, *“there is no reasonable likelihood of”*, *“although it is impossible to foresee every eventuality, the risk of ... is small”*, or *“the risk of ... is sufficiently remote for it to be appropriate to proceed with the Scheme”*. If there is a risk of something going wrong, however small the risk, it would seem good practice to reflect this in the conclusion by using an appropriate probabilistic phrase.
- A concluding statement typically includes a phrase showing that it is an opinion rather than a factual statement. For example recent statements have begun with words such as *“In my view ...”*, *“In my opinion ...”*, *“I have concluded that ...”* or *“I consider that ...”*.
- The paragraph(s) containing the conclusion often contain an indication of the basis of the conclusion. Sometimes this is achieved simply by referring to analysis described elsewhere in the report (e.g.

“Based on the analysis set out in this report ...”). Sometimes it is achieved by outlining the line of argument (e.g. “... although the level of security of policyholders would be reduced by the Scheme, the amount of capital held to support the policies would remain in excess of the level of confidence specified by the FSA for UK general insurance companies”). Given that some readers will inevitably only read the conclusion section or executive summary, the inclusion of some reference to the basis of the conclusion, via one of these routes, seems good practice.

- 9.5 Variations in wordings such as some of those noted above can be subtle yet important. Care should be taken to select a form of words that is appropriate to the circumstances.
- 9.6 It is also good practice for the Independent Expert to use consistent wording within his report as small variations in wording, if not intentional, can become confusing.
- 9.7 The bullet points above each illustrate a different aspect of the opinion wording. It is hoped that this list of issues to consider will assist an Independent Expert in devising a form of words appropriate to the transfer on which he is reporting.
- 9.8 Some of the terms used in the opinion wording may need to be defined, since otherwise there may be scope for readers to interpret them in ways different to the Independent Expert’s intention. In particular, a layperson may interpret an expression differently from someone with a legal background, who may interpret it differently from someone with an actuarial background. Examples of terms mentioned above that may need defining include “materially”, “unlikely” and “small”.
- 9.9 The difficulty of devising concise, unambiguous and non-technical definitions of the expressions used in the Independent Expert’s conclusion should not be underestimated. To illustrate the difficulty and add to the debate, we note that the GI Reserving Oversight Committee (“GI ROC”) in August 2007 suggested a number of “Everyday English” conventions for discussing percentiles of reserves. Amongst its conclusions were suggestions that: 95% was equivalent to “possible but very unlikely that the outcome will lie above this estimate”, and that 99% was equivalent to “there is a possibility, albeit remote, that the outcome will lie above this estimate”. It could be argued that some people might consider the Everyday English versions here to be interchangeable. We note that the paper includes a useful discussion on the pros and cons of using percentiles versus Everyday English to communicate uncertainty.
- 9.10 An Independent Expert choosing to include additional definitions or to use different conclusion wordings compared to precedents set by previous Independent Expert reports may need to make it clear that any new wording is not intended as a weaker conclusion than that seen in previous transfers (if this is indeed the case). This will require clear explanation and contextualisation of the conclusions. In addition, it would be preferable to maintain the conciseness of the current form of conclusion – again, not an easy task.

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- 9.11 It is for each Independent Expert to judge the best way to communicate his conclusion. We have not attempted to propose a specific wording, since every situation is different. We believe, however, that it will assist an Independent Expert to consider the factors discussed above.

10. LIAISON WITH POLICYHOLDERS

- 10.1 In Part VII transfers, the primary function of the Independent Expert is to report to the Court on the transfer (as explained in paragraph 206 of the Explanatory Notes of Part VII of the FSMA 2000 – reproduced in Appendix B). However, given that part of the role of the Independent Expert is to consider how the policyholders are affected by the transfer, it is worth considering what the nature of the relationship is between the Independent Expert and the affected policyholders. Before considering this, we first consider whether there is likely to be contact between the policyholders and the Independent Expert.

Contact with policyholders

- 10.2 In the working party's experience, in most Part VII transfers that have occurred to date there has rarely been any direct contact between the Independent Expert and policyholders prior to production of the Independent Expert report. In the course of carrying out their work, the Independent Expert may, however, wish to know whether policyholders have views on certain aspects of the transfer, and therefore may encourage the relevant companies to liaise with policyholders and report back to the Independent Expert.
- 10.3 Once the report is produced and made available to policyholders, then it is possible, but unusual, for there to be some direct contact between policyholders and the Independent Expert. For example, policyholders may obtain the contact details of the Independent Expert and make contact by telephone, e-mail or post to ask questions in relation to the transfer. Members of the working party are aware of such direct contact being made.
- 10.4 Indirect contact can also occur via the policyholders' lawyers perhaps, or via the company proposing the transfer. For example, if policyholders raise objections, then they may often write to the transferee or transferor, commenting on or questioning the Independent Expert's report, and clearly this correspondence would be made available to the Independent Expert. The Independent Expert's response to such questions is discussed in paragraph 11.6 below.
- 10.5 In some Part VII transfers, prior to the final court hearing, one or more meetings are arranged to allow policyholders to ask questions of the company proposing the transfer. These can be held without the Independent Expert being present but, in some cases, the Independent Expert attends the meeting. This can clearly, therefore, put the Independent Expert in direct contact with policyholders. An Independent Expert who is invited to attend such a meeting with policyholders may wish to consider whether it is appropriate to do so, depending on the circumstances. For example, it could be argued that appearing in public with the sponsoring company may be construed as advocacy for the transfer, which may impair the Independent Expert's independence. A further consideration might be whether the Independent Expert feels it is appropriate to expose himself to answering direct questions in a public forum, when the Independent Expert's duty is to the Court rather than being directly answerable to policyholders.

- 10.6 In theory at least, some of the references above to policyholders could also equally well apply to reinsurers, or others who may have questions about and / or object to the proposed transfer.

Who is the client?

- 10.7 Given the nature of the Independent Expert's role, it seems clear to the working party that the Independent Expert has some form of responsibility towards the affected policyholders. But are they the client?
- 10.8 It is normal for the company proposing the transfer to pay the fees of the Independent Expert. If the transfer involves more than one corporate group, these fees might be shared between the different corporate groups. There would normally be an engagement letter between the Independent Expert (or his firm) and the company/corporate groups. Hence, from both a fee paying perspective and a contractual perspective, the client is/are the company/companies involved in the transfer. This is certainly how the members of the working party regard the position.
- 10.9 However, CPR 35 is clear that the Independent Expert has an overriding duty to the Court, stating that "It is the duty of an expert to help the Court on the matters within his expertise" (CPR 35.3(1)). Moreover, CPR 35.3(2) states "This duty overrides any obligation to the person from whom he has received instructions or by whom he is paid".
- 10.10 The Practice Direction accompanying CPR 35 (PD35) also provides details of other duties of the Independent Expert including the following:
- Firstly, PD35 section 1.3 states "Expert evidence should be the independent product of the expert uninfluenced by the pressures of litigation". In this regard, the Protocol for the Instruction of Expert to give Evidence in Civil Claims (PD35 annex) also provides that a "... useful test of independence is that the expert would express the same opinion if given the same instructions by an opposing party". In addition, experts should not take it upon themselves to promote the point of view of the party instructing them or engage in the role of advocates (PD35 Annex section 4.2).
 - Secondly, PD35 section 1.4 states that "An expert should consider all material facts, including those which might detract from his opinion."
 - Finally, PD35 section 1.6 states that "If, after producing a report, an expert changes his view on any material matter, such change of view should be communicated to all the parties without delay, and when appropriate to the court."
- 10.11 These duties to the Court would appear to operate to the benefit of policyholders and other parties who are potentially affected by the proposed transfer. The CPR and the PD do not, however, specify any direct obligations of the Independent Expert to policyholders (or other affected parties).

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- 10.12 However, we note that the Independent Expert's report (or a summary or both) will be made available to affected policyholders and there is the possibility of contact between the Independent Expert and the affected policyholders. Also, the FSA Supervision Handbook (18.2.34) states that both policyholders (and others affected by the transfer) and the FSA may also be relying on the report. Thus it might be argued that there are further connections between the Independent Expert and the affected policyholders. Hence, the legal duty or responsibility of the Independent Expert towards the policyholder seems unclear to us. If this potential issue were to appear significant in any particular case then the Independent Expert might want to consider whether they need any legal input on this matter, for example from the Court or their own legal advisers.

11. DEALING WITH OBJECTIONS

The process for dealing with objections

- 11.1 Unlike a scheme of arrangement, an insurance business transfer does not require a vote. Instead policyholders and others raise any concerns at Court. FSMA section 110(b) states that “any person (including an employee of the authorised person concerned or of the transferee) who alleges that he would be adversely affected by the carrying out of the scheme” is entitled to be heard. The Court is then able to take these views into account when deciding whether or not to approve the transfer.
- 11.2 The FSA is also entitled to be heard by the Court. In practice, of course, it is very unlikely that an insurer would proceed as far as a court hearing knowing that the FSA was in opposition to the proposed transfer.
- 11.3 Those who wish to object in Court are encouraged to give notice that they intend to do so, by writing to the company that is making the transfer application or its lawyers, setting out the concerns they wish to raise. Alternatively they can write to raise their concerns without the need to attend the court hearing. There is no requirement for advance notice of objections to be given, so it is always possible that an objector will turn up at the court hearing unexpectedly. Objections may come from individuals as well as from companies.
- 11.4 In practice, objections have been relatively rare – certainly in terms of substantive objections raising real issues. Sometimes, objections can be raised that are not substantive in nature. In the absence of a sound argument as to why the transfer would adversely affect the policyholder, such an objection would not cause the Court to reject the transfer.
- 11.5 Occasionally, however, a transfer does attract substantive objections, with the complainant turning up in Court, sometimes represented by counsel.
- 11.6 Prior to the court hearing, the Independent Expert should ask the company for details of any objections received. What should the Independent Expert do if any real issues are raised in these objections? This would depend very much on circumstances so it is impossible to set out a one size fits all approach here. The Independent Expert would need to use judgment in deciding on the appropriate course of action. Some issues are best addressed by a witness statement from the transferee, transferor or other party (other than the Independent Expert). To the extent that the objection relates to issues primarily within the domain of the Independent Expert, and the Independent Expert believes that either clarification of the report or further comments will assist the judge in making his determination, then the Independent Expert might provide comments to the QC representing the appropriate party or prepare a supplementary report. For issues in the Independent Expert's domain, the Independent Expert could, in theory at least, be asked for comments in Court by the judge.

- 11.7 In situations where the Independent Expert decides to draft a supplementary report to consider the objections raised by the policyholders, this report would then be made available to the Court, the FSA and to policyholders.
- 11.8 Clearly there is also a possibility of objections being raised if the Independent Expert has not performed his work properly or has not communicated clearly in the report. It is therefore important that the Independent Expert takes a level of care appropriate to the role and responsibilities involved.

Previous notable objections

- 11.9 We include below some issues raised in the past within substantive objections, and how the judge responded to them. They are useful not just as illustrations of objections but also for reference purposes for those involved in future transfers with some of the same features.

Degree of fairness of the transfer

- 11.10 First it is useful to quote a passage from a court case to approve a transfer under legislation that preceded FSMA 2000, since this passage is often quoted in more recent judgments.
- 11.11 In *Re London Life Association Ltd* [1989], Mr Justice Hoffmann said: *“Although the statutory discretion is unfettered, it must be exercised according to principles which give due recognition to the commercial judgment entrusted by the company’s constitution to its board. The court in my judgment is concerned in the first place with whether a policyholder, employee or other person would be “adversely affected” by the scheme in the sense that it appears to leave him worse off than if there had been no scheme. It does not however follow that any scheme which leaves someone adversely affected must be rejected. For example, as we shall see, one scheme which might have adopted in this case would have adversely affected many of London Life’s employees because they would have become redundant. But such a scheme might nevertheless have been confirmed by the court. In the end the question is whether the scheme as a whole is fair as between the interests of the different classes of persons affected. But the court does not have to be satisfied that no better scheme could have been devised. A board might have a choice of several possible schemes, none of which, taken as a whole, could be regarded as unfair. Some policyholders might prefer one such scheme and some might think they would be better off with another. But the choice is in my judgement a matter for the board. Of course one could imagine an extreme case in which the choice made by the board was so irrational that a court could only conclude that it had been actuated by some improper motive and had therefore abused its fiduciary powers. In such a case a member would be entitled to restrain the board from proceeding. But that would be an exercise of the court’s ordinary jurisdiction to restrain breaches of fiduciary duty; not an exercise of the statutory jurisdiction under section 49 of the Insurance Companies Act 1982.”*
- 11.12 From this passage we can see that a transfer scheme should be fair, but it is not the case that any transfer scheme that leaves someone adversely affected

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must be rejected. Also the Court does not have to be satisfied that no better transfer scheme could be devised.

Challenging the independence and work of the Independent Expert

- 11.13 In *Re Eagle Star Insurance Company Limited [2006]*, objectors contended that fairness required that they should have the opportunity either to examine the Independent Expert's detailed work or to appoint their own expert.
- 11.14 The judge disagreed, pointing out that the Independent Expert's work differs from that of experts in adversarial cases and emphasising the independent nature of the work. He also noted that the Independent Expert had identified the possible problems with the transfer and had rejected them on what appeared to be satisfactory grounds. In view of this, he would only have allowed the Independent Expert's detailed workings to be examined, or an additional expert to be appointed, if the objectors had put forward strong grounds for supposing that the Independent Expert had not performed her function or had made an error.

Dependence on a substantial reinsurance contract

- 11.15 In the case of *Re Sompo Japan Insurance Inc [2007]*, liabilities were to be transferred to a third party, Transfercom, and a substantial reinsurance contract provided by NICO (Transfercom's parent) was to come into effect on the effective date of the transfer. An objector raised two concerns relating to the reinsurance contract.
- 11.16 The objector complained that the FSA has no obvious regulatory jurisdiction over NICO (a US company) and, therefore, no means by which to protect Transfercom's principal asset. But the judge did not see this as a problem, stating "*As to NICO's standing, I am satisfied that, by reason of its net assets and its regulation by US insurance regulators, it can be properly regarded as a reliable counterparty to the reinsurance agreement.*"
- 11.17 The objector also complained that the reinsurance contract had not been disclosed and might not, depending on its terms, provide adequate security. In reply, Sompo supplied a copy of the contract to the objector (with a small number of deletions). The judge shared the objector's concern here in one respect: "*policyholders would be at risk if NICO proceeded to seek to avoid the policy or decline cover on grounds of non-disclosure or misrepresentation.*" But the judge went on to say: "*However, this concern is allayed by clause 10 of the contract, which excludes any such right in the absence of fraud on the part of Transfercom itself. It further provides that it shall not be cancelled by any party for any reason whatsoever. NICO's acknowledgment that this is the effect of clause 10 has been provided in a witness statement made on its behalf.*"

Possibility of the transfer being followed by a scheme of arrangement

- 11.18 This issue was raised in *Re Eagle Star Insurance Company Limited [2006]*. Objectors suggested that the transfer might be or would be followed by a

solvent scheme of arrangement, *"having the effect of barring unnotified claims after some date in the future"*. (No potential scheme of arrangement was mentioned in the Independent Expert's report, and presumably none was planned at the time, since the Independent Expert's report states *"I have been advised by the Parties that they do not anticipate any other major event to happen either before or after the Transfers which would have a material impact upon any of the policyholders of ZIC, ES and its subsidiaries."*)

- 11.19 The judge referred to Mr Justice Hoffmann's judgement in the London Life case and then concluded that he did not consider that the possibility, or even the likelihood, of a future scheme of arrangement could be a valid reason for an objection, unless there was a suggestion of bad faith (i.e. intent to deceive) or improper motive.
- 11.20 A similar issue was also raised in *Re Equitas Ltd (the Names At Lloyd's for the 1992 and Prior Years of Account) [2009]* where, prior to the transfer, a scheme of arrangement would have been impossible because the relevant legislation is available only to companies and not to individuals such as Names. The judge noted that the transferor had no plans for a scheme of arrangement. He also commented that neither he nor the FSA saw the possibility of a future scheme of arrangement as a ground for objection to the transfer. He stated that the safeguards that would apply (including the need for the Court's sanction) if a scheme were ever proposed are sufficient that he could discount this concern when considering whether to sanction the transfer.

Effectiveness of transfer in respect of policies governed by foreign law

- 11.21 An objector raised this issue in *Re Sompo Japan Insurance Inc [2007]*, asking on what basis the transfer was properly the subject of an application under Part VII of FSMA 2000 when Sompo in Japan was the insurer or reinsurer. The judge stated *"I am satisfied that as the relevant business is now carried on by Sompo's UK branch, there is jurisdiction to sanction the transfer under Part VII"*. However, he went on to consider the effectiveness of the transfer further, given that the business had originally been written by Sompo's predecessors in Japan, not in the UK.
- 11.22 He started by stating that *"a transfer under Part VII would be effective to transfer the liabilities under English law and therefore in the English courts, even if the policy was governed by foreign law. But, unless the policies were themselves governed by English law, that would or might be relevant only if the proceedings were brought in the United Kingdom."* He then considered what would happen if proceedings against Sompo were brought in a jurisdiction outside the UK in which Sompo had substantial assets.
- 11.23 He noted that *"the court will not act in vain"* in matters where it has discretion, in other words the Court might not sanction the transfer if the transfer would serve no discernable purpose. He was therefore concerned to understand what proportion of the transferring policies were governed by English or other UK law and what the effect of the transfer would be in other jurisdictions where Sompo had substantial assets.

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- 11.24 He did not conclude definitively as to whether the transfer would be effective in overseas proceedings, although he acknowledged that it may well be so in Japan and the US. He did sanction the transfer, however, given that it would definitely be effective in respect of some of the policies and therefore the transfer would achieve a purpose.

Opinion wording used by the Independent Expert

- 11.25 The working party is aware of one objection being made in a transfer relating to the opinion wording used by the Independent Expert in the report. In this case, the use of the word “unlikely” in the opinion wording of “...*is unlikely to have a material adverse impact...*” was challenged. The Independent Expert had to produce a supplementary report which explained that the word unlikely was not, as the objecting policyholder had effectively suggested, intended to convey an only slightly less than evens chance of the policyholders not being materially adversely affected by the transfer. The judge accepted the Independent Expert’s argument.

12. OTHER ROLES

- 12.1 This paper is intended to focus on roles where an actuary's work product can become available in the public domain; hence the sections above focus mainly on the role of the Independent Expert. We thought it useful, however, to supplement this by touching briefly on other roles that actuaries may undertake in connection with insurance business transfers.

Assisting objectors

- 12.2 Policyholders or others potentially affected by an insurance business transfer might choose to consult an actuary to help them understand the impact on them, or to help them frame an objection. The actuary's work in this case might include critically assessing the Independent Expert's report, including the reasonableness of the key assumptions and conclusions, or identifying whether a group of policyholders in a particular situation has not been considered by the Independent Expert, for example. One potential difficulty is that not all the underlying data will be in the public domain. However, the actuary may still be able to estimate the impact of varying the assumptions from those used by the Independent Expert.
- 12.3 If the actuary helps an objector to put an objection together, it is possible that the actuary's work could end up in the public domain. In some situations the actuary might even act as a witness in Court although we are not aware of this having happened to date.

Transfer design & analysis

- 12.4 Actuaries may be involved in the design or analysis tasks associated with an insurance business transfer – either an internal actuary working for one of the transferor or transferee companies, or an external actuarial consultant.
- 12.5 At an early stage an actuary could help with the decision as to whether to use an insurance business transfer or an alternative restructuring tool, by modelling a range of options at a high level.
- 12.6 After an insurance business transfer has been selected as the appropriate tool, an actuary can help in designing the structure of the transfer via more detailed modelling. Every situation is different, but examples of structuring decisions might include the following: which business should be included or excluded, what is an appropriate level of assets to be transferred relative to the liabilities, what level of support is required via additional capital or reinsurance, etc. The understanding that an actuary will have of what matters will concern the Independent Expert can be useful in helping to choose a route that will make it easier for the Independent Expert to conclude positively.
- 12.7 Specific actuarial exercises might be needed to support the above decisions, or to be provided to the Independent Expert, or to support discussions with the FSA. For example, it is sometimes useful to perform a reserving exercise with

Part C: Insurance Business Transfers

the proposed transfer specifically in mind; this would typically involve a greater focus on higher percentiles than otherwise. Modelling may also be necessary in order to assess the impact of the transfer on the financial position of the transferor and transferee companies and hence the likelihood of paying policyholder claims; this might involve updating the existing ICA to reflect the post-transfer position or may take a simpler form.

- 12.8 Every situation is different. Some transfers are straightforward and there is no need for additional modelling, whereas others are more complex.

APPENDIX A : Part VII of the Financial Services & Markets Act 2000

Part VII of the Financial Services & Markets Act 2000 ("FSMA 2000") is attached, together with three subsequent amendments. These three amendments are:

- Statutory Instrument No. 1468, the purpose of which was to clarify the Court's powers. In particular, the amendment clarifies that the Court has the power to transfer accompanying outwards reinsurance contracts and other contracts (which are related to the main business being transferred) and to clarify that this power extends to being able to override provisions in reinsurance contracts that purport to modify or annul a contract upon it being transferred. This amendment came into force on 30 June 2008.
- Statutory Instrument No. 1469, an amendment that removed the restriction that previously prevented certain former Lloyd's names from participating in a Part VII transfer. This amendment came into force on 30 June 2008.
- Statutory Instrument No. 3253. This amendment, made late in 2007, was largely to implement the Reinsurance Directive throughout FSMA 2000.

Other pieces of legislation which are relevant to Part VII transfers are:

Policyholder notification requirements

The statutory instrument governing policyholder notification requirements, amongst other things, is The Financial Services and Markets Act 2000 (Control of Business Transfers) (Requirements on Applicants) Regulations 2001. This can be found at <http://www.opsi.gov.uk/si/si2001/20013625.htm>.

One key amendment to these regulations is The Financial Services and Markets Act 2000 (Control of Business Transfers)(Requirements on Applicants)(Amendment) Regulations 2008, also known as 2008 SI 1467. This amendment, made in 2008, requires the notification of reinsurers whose contracts are to be transferred (this was done in parallel with SI 1468 above). It can be found at http://www.opsi.gov.uk/si/si2008/uksi_20081467_en_1.

Transfers involving Lloyd's

For business transfers involving Lloyd's an additional statutory instrument is relevant, The Financial Services and Markets Act 2000 (Control of Transfers of Business Done at Lloyd's) Order 2001. This can be found at <http://www.opsi.gov.uk/si/si2001/20013626.htm>.

PART VII**CONTROL OF BUSINESS TRANSFERS****104 Control of business transfers**

No insurance business transfer scheme or banking business transfer scheme is to have effect unless an order has been made in relation to it under section 111(1).

105 Insurance business transfer schemes

- (1) A scheme is an insurance business transfer scheme if it—
 - (a) satisfies one of the conditions set out in subsection (2);
 - (b) results in the business transferred being carried on from an establishment of the transferee in an EEA State; and
 - (c) is not an excluded scheme.
- (2) The conditions are that—
 - (a) the whole or part of the business carried on in one or more member States by a UK authorised person who has permission to effect or carry out contracts of insurance (“the authorised person concerned”) is to be transferred to another body (“the transferee”);
 - (b) the whole or part of the business, so far as it consists of reinsurance, carried on in the United Kingdom through an establishment there by an EEA firm qualifying for authorisation under Schedule 3 which has permission to effect or carry out contracts of insurance (“the authorised person concerned”) is to be transferred to another body (“the transferee”);
 - (c) the whole or part of the business carried on in the United Kingdom by an authorised person who is neither a UK authorised person nor an EEA firm but who has permission to effect or carry out contracts of insurance (“the authorised person concerned”) is to be transferred to another body (“the transferee”).
- (3) A scheme is an excluded scheme for the purposes of this section if it falls within any of the following cases:

CASE 1

Where the authorised person concerned is a friendly society.

CASE 2

Where—

- (a) the authorised person concerned is a UK authorised person;
- (b) the business to be transferred under the scheme is business which consists of the effecting or carrying out of contracts of reinsurance in one or more EEA States other than the United Kingdom; and
- (c) the scheme has been approved by a court in an EEA State other than the United Kingdom or by the host state regulator.

CASE 3

Where—

- (a) the authorised person concerned is a UK authorised person;
- (b) the business to be transferred under the scheme is carried on in one or more countries or territories (none of which is an EEA State) and does not include policies of insurance (other than reinsurance) against risks arising in an EEA State; and
- (c) the scheme has been approved by a court in a country or territory other than an EEA State or by the authority responsible for the supervision of that business in a country or territory in which it is carried on.

CASE 4

Where the business to be transferred under the scheme is the whole of the business of the authorised person concerned and—

- (a) consists solely of the effecting or carrying out of contracts of reinsurance, or
- (b) all the policyholders are controllers of the firm or of firms within the same group as the firm which is the transferee,

and, in either case, all of the policyholders who will be affected by the transfer have consented to

it.

- (4) The parties to a scheme which falls within Case 2, 3 or 4 may apply to the court for an order sanctioning the scheme as if it were an insurance business transfer scheme.
- (5) Subsection (6) applies if the scheme involves a compromise or arrangement falling within section 427A of the [1985 c. 6.] Companies Act 1985 (or Article 420A of the Companies [S.I. 1986/1032 (N.I. 6).] (Northern Ireland) Order 1986).
- (6) Sections 425 to 427 of that Act (or Articles 418 to 420 of that Order) have effect as modified by section 427A of that Act (or Article 420A of that Order) in relation to that compromise or arrangement.
- (7) But subsection (6) does not affect the operation of this Part in relation to the scheme.
- (8) "UK authorised person" means a body which is an authorised person and which—
 - (a) is incorporated in the United Kingdom; or
 - (b) is an unincorporated association formed under the law of any part of the United Kingdom.
- (9) "Establishment" means, in relation to a person, his head office or a branch of his.

106 Banking business transfer schemes

- (1) A scheme is a banking business transfer scheme if it—
 - (a) satisfies one of the conditions set out in subsection (2);
 - (b) is one under which the whole or part of the business to be transferred includes the accepting of deposits; and
 - (c) is not an excluded scheme.
- (2) The conditions are that—
 - (a) the whole or part of the business carried on by a UK authorised person who has permission to accept deposits ("the authorised person concerned") is to be transferred to another body ("the transferee");
 - (b) the whole or part of the business carried on in the United Kingdom by an authorised person who is not a UK authorised person but who has permission to accept deposits ("the authorised person concerned") is to be transferred to another body which will carry it on in the United Kingdom ("the transferee").
- (3) A scheme is an excluded scheme for the purposes of this section if—
 - (a) the authorised person concerned is a building society or a credit union; or
 - (b) the scheme is a compromise or arrangement to which section 427A(1) of the [1985 c. 6.] Companies Act 1985 or Article 420A of the [S.I. 1986/1032 (N.I.6).] Companies (Northern Ireland) Order 1986 (mergers and divisions of public companies) applies.
- (4) For the purposes of subsection (2)(a) it is immaterial whether or not the business to be transferred is carried on in the United Kingdom.
- (5) "UK authorised person" has the same meaning as in section 105.
- (6) "Building society" has the meaning given in the [1986 c. 53.] Building Societies Act 1986.
- (7) "Credit union" means a credit union within the meaning of—
 - (a) the [1979 c. 34.] Credit Unions Act 1979;
 - (b) the [S.I. 1985/1205 (N.I. 12).] Credit Unions (Northern Ireland) Order 1985.

107 Application for order sanctioning transfer scheme

- (1) An application may be made to the court for an order sanctioning an insurance business transfer scheme or a banking business transfer scheme.
- (2) An application may be made by—
 - (a) the authorised person concerned;
 - (b) the transferee; or
 - (c) both.
- (3) The application must be made—
 - (a) if the authorised person concerned and the transferee are registered or have their head offices in the same jurisdiction, to the court in that jurisdiction;

- (b) if the authorised person concerned and the transferee are registered or have their head offices in different jurisdictions, to the court in either jurisdiction;
 - (c) if the transferee is not registered in the United Kingdom and does not have his head office there, to the court which has jurisdiction in relation to the authorised person concerned.
- (4) “Court” means—
 - (a) the High Court; or
 - (b) in Scotland, the Court of Session.

108 Requirements on applicants

- (1) The Treasury may by regulations impose requirements on applicants under section 107.
- (2) The court may not determine an application under that section if the applicant has failed to comply with a prescribed requirement.
- (3) The regulations may, in particular, include provision—
 - (a) as to the persons to whom, and periods within which, notice of an application must be given;
 - (b) enabling the court to waive a requirement of the regulations in prescribed circumstances.

109 Scheme reports

- (1) An application under section 107 in respect of an insurance business transfer scheme must be accompanied by a report on the terms of the scheme (“a scheme report”).
- (2) A scheme report may be made only by a person—
 - (a) appearing to the Authority to have the skills necessary to enable him to make a proper report; and
 - (b) nominated or approved for the purpose by the Authority.
- (3) A scheme report must be made in a form approved by the Authority.

110 Right to participate in proceedings

On an application under section 107, the following are also entitled to be heard—

- (a) the Authority, and
- (b) any person (including an employee of the authorised person concerned or of the transferee) who alleges that he would be adversely affected by the carrying out of the scheme.

111 Sanction of the court for business transfer schemes

- (1) This section sets out the conditions which must be satisfied before the court may make an order under this section sanctioning an insurance business transfer scheme or a banking business transfer scheme.
- (2) The court must be satisfied that—
 - (a) the appropriate certificates have been obtained (as to which see Parts I and II of Schedule 12);
 - (b) the transferee has the authorisation required (if any) to enable the business, or part, which is to be transferred to be carried on in the place to which it is to be transferred (or will have it before the scheme takes effect).
- (3) The court must consider that, in all the circumstances of the case, it is appropriate to sanction the scheme.

112 Effect of order sanctioning business transfer scheme

- (1) If the court makes an order under section 111(1), it may by that or any subsequent order make such provision (if any) as it thinks fit—
 - (a) for the transfer to the transferee of the whole or any part of the undertaking concerned and of any property or liabilities of the authorised person concerned;
 - (b) for the allotment or appropriation by the transferee of any shares, debentures, policies or

- other similar interests in the transferee which under the scheme are to be allotted or appropriated to or for any other person;
- (c) for the continuation by (or against) the transferee of any pending legal proceedings by (or against) the authorised person concerned;
- (d) with respect to such incidental, consequential and supplementary matters as are, in its opinion, necessary to secure that the scheme is fully and effectively carried out.
- (2) An order under subsection (1)(a) may—
- (a) transfer property or liabilities whether or not the authorised person concerned otherwise has the capacity to effect the transfer in question;
- (b) make provision in relation to property which was held by the authorised person concerned as trustee;
- (c) make provision as to future or contingent rights or liabilities of the authorised person concerned, including provision as to the construction of instruments (including wills) under which such rights or liabilities may arise;
- (d) make provision as to the consequences of the transfer in relation to any retirement benefits scheme (within the meaning of section 611 of the [1988 c. 1.] Income and Corporation Taxes Act 1988) operated by or on behalf of the authorised person concerned.
- (3) If an order under subsection (1) makes provision for the transfer of property or liabilities—
- (a) the property is transferred to and vests in, and
- (b) the liabilities are transferred to and become liabilities of,
- the transferee as a result of the order.
- (4) But if any property or liability included in the order is governed by the law of any country or territory outside the United Kingdom, the order may require the authorised person concerned, if the transferee so requires, to take all necessary steps for securing that the transfer to the transferee of the property or liability is fully effective under the law of that country or territory.
- (5) Property transferred as the result of an order under subsection (1) may, if the court so directs, vest in the transferee free from any charge which is (as a result of the scheme) to cease to have effect.
- (6) An order under subsection (1) which makes provision for the transfer of property is to be treated as an instrument of transfer for the purposes of the provisions mentioned in subsection (7) and any other enactment requiring the delivery of an instrument of transfer for the registration of property.
- (7) The provisions are—
- (a) section 183(1) of the [1985 c. 6.] Companies Act 1985;
- (b) Article 193(1) and (2) of the [S.I. 1986/1032 (N.I. 6).] Companies (Northern Ireland) Order 1986.
- (8) If the court makes an order under section 111(1) in relation to an insurance business transfer scheme, it may by that or any subsequent order make such provision (if any) as it thinks fit—
- (a) for dealing with the interests of any person who, within such time and in such manner as the court may direct, objects to the scheme;
- (b) for the dissolution, without winding up, of the authorised person concerned;
- (c) for the reduction, on such terms and subject to such conditions (if any) as it thinks fit, of the benefits payable under—
- (i) any description of policy, or
- (ii) policies generally,
- entered into by the authorised person concerned and transferred as a result of the scheme.
- (9) If, in the case of an insurance business transfer scheme, the authorised person concerned is not an EEA firm, it is immaterial for the purposes of subsection (1)(a), (c) or (d) or subsection (2), (3) or (4) that the law applicable to any of the contracts of insurance included in the transfer is the law of an EEA State other than the United Kingdom.
- (10) The transferee must, if an insurance or banking business transfer scheme is sanctioned by the court, deposit two office copies of the order made under subsection (1) with the Authority within 10 days of the making of the order.
- (11) But the Authority may extend that period.

- (12) "Property" includes property, rights and powers of any description.
- (13) "Liabilities" includes duties.
- (14) "Shares" and "debentures" have the same meaning as in—
 - (a) the [1985 c. 6.] Companies Act 1985; or
 - (b) in Northern Ireland, the [S.I. 1986/1032 (N.I. 6).] Companies (Northern Ireland) Order 1986.
- (15) "Charge" includes a mortgage (or, in Scotland, a security over property).

113 Appointment of actuary in relation to reduction of benefits

- (1) This section applies if an order has been made under section 111(1).
- (2) The court making the order may, on the application of the Authority, appoint an independent actuary—
 - (a) to investigate the business transferred under the scheme; and
 - (b) to report to the Authority on any reduction in the benefits payable under policies entered into by the authorised person concerned that, in the opinion of the actuary, ought to be made.

114 Rights of certain policyholders

- (1) This section applies in relation to an insurance business transfer scheme if—
 - (a) the authorised person concerned is an authorised person other than an EEA firm qualifying for authorisation under Schedule 3;
 - (b) the court has made an order under section 111 in relation to the scheme; and
 - (c) an EEA State other than the United Kingdom is, as regards any policy included in the transfer which evidences a contract of insurance, the State of the commitment or the EEA State in which the risk is situated ("the EEA State concerned").
- (2) The court must direct that notice of the making of the order, or the execution of any instrument, giving effect to the transfer must be published by the transferee in the EEA State concerned.
- (3) A notice under subsection (2) must specify such period as the court may direct as the period during which the policyholder may exercise any right which he has to cancel the policy.
- (4) The order or instrument mentioned in subsection (2) does not bind the policyholder if—
 - (a) the notice required under that subsection is not published; or
 - (b) the policyholder cancels the policy during the period specified in the notice given under that subsection.
- (5) The law of the EEA State concerned governs—
 - (a) whether the policyholder has a right to cancel the policy; and
 - (b) the conditions, if any, subject to which any such right may be exercised.
- (6) Paragraph 6 of Schedule 12 applies for the purposes of this section as it applies for the purposes of that Schedule.

Business transfers outside the United Kingdom

115 Certificates for purposes of insurance business transfers overseas

Part III of Schedule 12 makes provision about certificates which the Authority may issue in relation to insurance business transfers taking place outside the United Kingdom.

116 Effect of insurance business transfers authorised in other EEA States

- (1) This section applies if, as a result of an authorised transfer, an EEA firm falling within paragraph 5(d) of Schedule 3 transfers to another body all its rights and obligations under any UK policies.
- (2) This section also applies if, as a result of an authorised transfer, a company authorised in an EEA State other than the United Kingdom under Article 27 of the first life insurance directive, or Article 23 of the first non-life insurance directive, transfers to another body all its rights and obligations under any UK policies.
- (3) If appropriate notice of the execution of an instrument giving effect to the transfer is published,

the instrument has the effect in law—

- (a) of transferring to the transferee all the transferor's rights and obligations under the UK policies to which the instrument applies, and
 - (b) if the instrument so provides, of securing the continuation by or against the transferee of any legal proceedings by or against the transferor which relate to those rights and obligations.
- (4) No agreement or consent is required before subsection (3) has the effects mentioned.
- (5) "Authorised transfer" means—
- (a) in subsection (1), a transfer authorised in the home State of the EEA firm in accordance with—
 - (i) Article 11 of the third life directive; or
 - (ii) Article 12 of the third non-life directive; and
 - (b) in subsection (2), a transfer authorised in an EEA State other than the United Kingdom in accordance with—
 - (i) Article 31a of the first life directive; or
 - (ii) Article 28a of the first non-life directive.
- (6) "UK policy" means a policy evidencing a contract of insurance (other than a contract of reinsurance) to which the applicable law is the law of any part of the United Kingdom.
- (7) "Appropriate notice" means—
- (a) if the UK policy evidences a contract of insurance in relation to which an EEA State other than the United Kingdom is the State of the commitment, notice given in accordance with the law of that State;
 - (b) if the UK policy evidences a contract of insurance where the risk is situated in an EEA State other than the United Kingdom, notice given in accordance with the law of that EEA State;
 - (c) in any other case, notice given in accordance with the applicable law.
- (8) Paragraph 6 of Schedule 12 applies for the purposes of this section as it applies for the purposes of that Schedule.

Modifications

117 Power to modify this Part

The Treasury may by regulations—

- (a) provide for prescribed provisions of this Part to have effect in relation to prescribed cases with such modifications as may be prescribed;
- (b) make such amendments to any provision of this Part as they consider appropriate for the more effective operation of that or any other provision of this Part.

STATUTORY INSTRUMENTS

2008 No. 1468

FINANCIAL SERVICES AND MARKETS

The Financial Services and Markets Act 2000 (Amendments to Part 7) Regulations 2008

<i>Made</i>	<i>9th June 2008</i>
<i>Laid before Parliament</i>	<i>9th June 2008</i>
<i>Coming into force</i>	<i>30th June 2008</i>

The Treasury, in exercise of the powers conferred on them by sections 117(b) and 428(3) of the Financial Services and Markets Act 2000(1) make the following Regulations:

Citation and commencement

1. These Regulations may be cited as the Financial Services and Markets Act 2000 (Amendments to Part 7) Regulations 2008 and come into force on 30th June 2008.

Amendments to Part 7 of the Financial Services and Markets Act 2000

2.—(1) After subsection (2) of section 112 of the Financial Services and Markets Act 2000 (effect of order sanctioning business transfer scheme) insert—

“(2A) Subsection (2)(a) is to be taken to include power to make provision in an order—

- (a) for the transfer of property or liabilities which would not otherwise be capable of being transferred or assigned;
- (b) for a transfer of property or liabilities to take effect as if there were—
 - (i) no such requirement to obtain a person’s consent or concurrence, and
 - (ii) no such contravention, liability or interference with any interest or right,as there would otherwise be (in the case of a transfer apart from this section) by reason of any provision falling within subsection (2B).

(2B) A provision falls within this subsection to the extent that it has effect (whether under an enactment or agreement or otherwise) in relation to the terms on which the authorised person concerned is entitled to the property or subject to the liabilities in question.

(2C) Nothing in subsection (2A) or (2B) is to be read as limiting the scope of subsection (1).”

(2) In subsection (9) of that section after “subsection (2),” insert “(2A),”.

(3) After section 112 insert—

“112A Rights to terminate etc.

(1) Subsection (2) applies where (apart from that subsection) a person would be entitled, in consequence of anything done or likely to be done by or under this Part in connection with an insurance business transfer scheme or a banking business transfer scheme—

- (a) to terminate, modify, acquire or claim an interest or right; or
- (b) to treat an interest or right as terminated or modified.

(2) The entitlement—

- (a) is not enforceable in relation to that interest or right until after an order has been made under section 112(1) in relation to the scheme; and

- (b) is then enforceable in relation to that interest or right only insofar as the order contains provision to that effect.
- (3) Nothing in subsection (1) or (2) is to be read as limiting the scope of section 112(1).".

Dave Watts

Frank Roy

Two of the Lords Commissioners of Her Majesty's
Treasury

9th June 2008

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend Part 7 of the Financial Services and Markets Act 2000 ("the Act") which deals with schemes for the transfer of insurance and banking business.

Section 112 of the Act is amended by the insertion of new subsections (2A) to (2C) and a consequential amendment of subsection (9).

Subsections (2A) and (2B) make clear for the avoidance of doubt that the power of the court to make an order under section 112 is to be taken as always having included the power to transfer, for example, contracts which include provisions prohibiting their transfer or contracts in relation to which there is a query as to their transferability in the absence of consent of a counterparty or contracts where there is a contravention, liability or interference with a right or interest which arises as a result of the transfer.

New section 112A is inserted. The new section makes clear, again for the avoidance of doubt, that the specified entitlements arising as a result of something done or likely to be done by or under Part 7 of the Act will only be enforceable after the order under section 112(1) has been made and only insofar as the court makes provision to that effect in that order. These circumstances might be relevant, for example, in relation to the transfer of reinsurance contracts, if such transfer were sanctioned by the court, which are connected to insurance contracts being transferred under an insurance business transfer scheme. Section 112A(1) could be relevant, for example, where a counterparty of a bank or insurer has a right to terminate an agreement with the bank or insurer which is exercisable as a result of the bank or insurer stating its intention to pursue a banking or insurance business transfer scheme.

A full regulatory impact assessment has been produced for this instrument and is available from the Financial Stability and Risk Team, HM Treasury, 1 Horse Guards Road, London SW1A 2HQ and is on the HM Treasury's web-site at www.hm-treasury.gov.uk.

(1) 2000 c.8. Back [1]

STATUTORY INSTRUMENTS

2008 No. 1469

FINANCIAL SERVICES AND MARKETS

The Financial Services and Markets Act 2000 (Amendment of
section 323) Regulations 2008

Made

9th June 2008

Laid before Parliament

9th June 2008

Coming into force

30th June 2008

The Treasury are a government department designated⁽¹⁾ for the purposes of section 2(2) of the European Communities Act 1972⁽²⁾ in relation to transfers of insurance contracts other than contracts of life assurance from one insurance undertaking to another and matters relating to the transfer of contracts of life assurance from one insurance undertaking to another and to anything supplemental or incidental to those matters.

In exercise of the powers conferred on them by section 2(2) of the European Communities Act 1972, the Treasury make the following Regulations:

Citation and commencement

1. These Regulations may be cited as the Financial Services and Markets Act 2000⁽³⁾ (Amendment of section 323) Regulations 2008 and come into force on 30th June 2008.

Amendment to section 323

2. In section 323 of the Financial Services and Markets Act 2000 (transfer schemes), for the words from “members” (where it first occurs) to the end substitute—

“underwriting members of the Society or by one or more persons who have ceased to be such a member (whether before, on or after 24th December 1996)”.

Dave Watts

Frank Roy

Two of the Lords Commissioners of Her Majesty's
Treasury

9th June 2008

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend section 323 of the Financial Services and Markets Act 2000 (“the Act”). Section 323 enables the application by order of Part 7 of the Act, which provides for insurance and banking transfer schemes, in relation to the insurance business of underwriting members and former underwriting members of the Society of Lloyd's.

Section 323 of the Act as it stands prior to this amendment uses the existing definition of former

underwriting member set out in section 324 of the Act. That definition does not apply to former underwriting members who ceased to be underwriting members before 24th December 1996. This amendment enables an order under section 323 to apply to all insurance business whenever written in the Lloyd's Market.

The Regulations are made using the power in section 2(2) of the European Communities Act 1972. This matter arises out of and relates to the European Community obligation on Member States to authorise insurance undertakings, in particular, to transfer all or part of their portfolio of contracts to an accepting office within the Community under Article 12(2) of Council Directive 1992/49/EEC (OJ No. L228 11.8.92, p.1) (known as "the third non-life insurance directive") and Article 14 of European Parliament and Council Directive 2002/83/EC (OJ No. L345, 19.12.2002, p.1 (known as "the consolidated life insurance directive").

A full regulatory impact assessment has been produced for this instrument and is available from the Financial Stability and Risk Team, HM Treasury, 1 Horse Guards Road, London SW1A 2HQ. It is also on the HM Treasury web-site at www.hm-treasury.gov.uk.

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- (1) S.I. 1997/2781. [Back \[1\]](#)
 - (2) [1972 c. 68](#). The enabling powers of section 2(2) of this Act were extended by virtue of the amendment of section 1(2) by section 1 of the European Economic Area Act [1993 \(c.51\)](#). Council Directive [73/239/EEC](#) applies in the EEA by virtue of the Annex IX of the EEA Agreement signed at Oporto on 2nd May 1992 together with the Protocol adjusting that Agreement signed at Brussels on 17th March 1993. Directive 2002/83 of the European Parliament and the Council applies in the EEA by virtue of the EEA Joint Committee Decision No 60/2004 of 26th August 2004 (O.J. L.277, 26.8.2004, p.172). [Back \[2\]](#)
 - (3) 2000 c.8. [Back \[3\]](#)

S T A T U T O R Y I N S T R U M E N T S

2007 No. 3253

FINANCIAL SERVICES AND MARKETS

The Reinsurance Directive Regulations 2007

*Made**19th November 2007**Laid before Parliament**19th November 2007**Coming into force**10th December 2007*

The Treasury are a government department designated for the purposes of section 2(2) of the European Communities Act 1972⁽¹⁾ in relation to:

- (a) the authorisation of the carrying on of insurance business and the regulation of such business and its conduct⁽²⁾;
- (b) transfers of insurance contracts other than contracts of life insurance from one insurance undertaking to another⁽³⁾;
- (c) matters relating to the transfer of contracts of life assurance from one insurance undertaking to another⁽⁴⁾;
- (d) anything supplemental or incidental to matters in (a) to (c)⁽⁵⁾; and
- (e) the conduct of insurance business carried on by friendly societies and the authorisation and regulation of the carrying on of such business by friendly societies⁽⁶⁾.

The Treasury make these Regulations in exercise of the powers conferred on them by section 2(2) of that Act:

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Reinsurance Directive Regulations 2007 and come into force on 10th December 2007.

(2) In these Regulations “the Act” means the Financial Services and Markets Act 2000⁽⁷⁾.

Amendments of primary and secondary legislation

2.—(1) Schedule 1 to these Regulations (which contains amendments to the Act) has effect.

(2) Schedule 2 to these Regulations (which contains amendments to secondary legislation made under the Act) has effect.

(3) Schedule 3 to these Regulations (which contains amendments to other primary legislation) has effect.

(4) Schedule 4 to these Regulations (which contains amendments to other secondary legislation) has effect.

*Frank Roy**Alan Campbell*

Two of the Lords Commissioners of Her Majesty's
Treasury

19th November 2007

SCHEDULE 1

Amendments to the Act

Regulation 2(1)

Amendments to the Act

1. The Act is amended as set out in this Schedule.

Amendments to Part 7 of, and Schedule 12 to, the Act

- 2.—(1) In section 105 (insurance business transfer schemes)—

- (a) in subsection (2)(b) for the words from “qualifying for” to “contracts of insurance” substitute “falling within paragraph 5(d) of Schedule 3 and qualifying for authorisation under that Schedule”;
- (b) in subsection (3) in Case 2 after paragraph (a) insert—
 - “(aa) the authorised person concerned is not a reinsurance undertaking (within the meaning of Article 2.1(c) of the reinsurance directive);”;
- (c) in subsection (3) in Case 3 in paragraph (b) omit “(other than reinsurance)”;
- (d) in subsection (3) in Case 4—

- (i) for the words from “the business to be transferred” to the end of paragraph (a) (including the word “or” at the end of that paragraph) substitute—

“—

- (a) the business to be transferred under the scheme is the whole of the business of the authorised person concerned;”;

- (ii) for “, in either case, ” substitute “(c)”;

- (e) in subsection (3) after Case 4 insert—

“CASE 5

Where—

- (a) the business of the authorised person concerned consists solely of the effecting or carrying out of contracts of reinsurance;
- (b) the business to be transferred is the whole or part of that business;
- (c) the scheme does not fall within Case 4;
- (d) all of the policyholders who will be affected by the transfer have consented to it; and
- (e) a certificate has been obtained under paragraph 2 of Schedule 12 in relation to the proposed transfer.”;

- (f) in subsection (4) for “3 or 4” substitute “3, 4 or 5”.

- (2) In section 114 (rights of certain policyholders) in subsection (1)(c) after “contract of insurance” insert “(other than a contract of reinsurance)”.

- (3) After section 114 insert—

“114A Notice of transfer of reinsurance contracts

- (1) This section applies in relation to an insurance business transfer scheme if—

- (a) the authorised person concerned is an authorised person other than an EEA firm qualifying for authorisation under Schedule 3;
- (b) the court has made an order under section 111 in relation to the scheme; and
- (c) an EEA State other than the United Kingdom is, as regards any policy included in the transfer which evidences a contract of reinsurance, the State in which the establishment of the policyholder to which the policy relates is situated at the date when the contract was entered into (“the EEA State concerned”).

- (2) The court may direct that notice of the making of the order, or the execution of any instrument, giving effect to the transfer must be published by the transferee in the EEA State concerned.”.

- (4) In section 116 (effect of insurance business transfers authorised in other EEA States)—

- (a) in subsection (1) after “paragraph 5(d)” insert “or (da)”;
 - (b) for subsection (2) substitute—
 - “(2) This section also applies if, as a result of an authorised transfer, any of the following transfers to another body all its rights and obligations under any UK policies—
 - (a) an undertaking authorised in an EEA State other than the United Kingdom under Article 51 of the life assurance consolidation directive;
 - (b) an undertaking authorised in an EEA State other than the United Kingdom under Article 23 of the first non-life insurance directive;
 - (c) an undertaking, whose head office is not within the EEA, authorised under the law of an EEA State other than the United Kingdom to carry out reinsurance activities in its territory (as mentioned in Article 49 of the reinsurance directive).”;
 - (c) in subsection (5)—
 - (i) at the end of paragraph (a)(i) omit “or”;
 - (ii) at the end of paragraph (a)(ii) for “and” substitute “or”;
 - (iii) after paragraph (a)(ii) insert “(iii) Article 18 of the reinsurance directive; and”;
 - (iv) at the end of paragraph (b)(i) omit “or”;
 - (v) at the end of paragraph (b)(ii) insert “or (iii) the provisions in the law of that EEA State which provide for the authorisation of transfers of all or part of a portfolio of contracts of an undertaking authorised to carry out reinsurance activities in its territory (as mentioned in Article 49 of the reinsurance directive).”;
 - (d) for subsection (6) substitute—
 - “(6) “UK policy” means—
 - (a) in the case of an authorised transfer within the meaning of paragraph (a)(i) or (ii) or (b) (i) or (ii) of subsection (5), a policy evidencing a contract of insurance (other than a contract of reinsurance) to which the applicable law is the law of a part of the United Kingdom;
 - (b) in the case of an authorised transfer within the meaning of paragraph (a)(iii) or (b)(iii) of that subsection, a policy evidencing a contract of reinsurance to which the applicable law is the law of a part of the United Kingdom.”.
- (5) In Schedule 12 (transfer schemes: certificates)—
- (a) at the end of paragraph 1(1)(d) insert “; (e) if sub-paragraph (5) applies, the certificates under paragraph 5A.”;
 - (b) in paragraph 1(3)(a)(8) after “Article 4” insert “or Article 51”;
 - (c) in paragraph 1(4)(a) after “Article 6” insert “or Article 23”;
 - (d) after paragraph 1(4) insert—
 - “(5) This sub-paragraph applies if—
 - (a) the authorised person concerned has received authorisation under Article 23 of the first non-life insurance directive or Article 51 of the life assurance consolidation directive from the Authority; and
 - (b) the proposed transfer is to a branch or agency, in an EEA State other than the United Kingdom, authorised under the same Article.”;
 - (e) in paragraph 2—
 - (i) in sub-paragraph (6)(a) after “paragraph 5(d)” insert “or (da)”;
 - (ii) after sub-paragraph (6)(a) insert—
 - “(aa) if the transferee is a non-EEA branch, the competent authorities of the EEA State in which the transferee is situated or, where appropriate, the competent authorities of an EEA State which supervises the state of solvency of the entire business of the transferee’s agencies and branches within the EEA in accordance with Article 26 of the first non-life insurance directive or Article 56 of the life assurance consolidation directive.”;
 - (iii) in sub-paragraph (6)(c) for “paragraph (a)” substitute “paragraph (a), (aa)”;
 - (iv) after sub-paragraph (7) insert—
 - “(7A) “Competent authorities” has the same meaning as in the insurance directives.”;
 - (v) after sub-paragraph (8) insert—

“(9) “Non-EEA branch” means a branch or agency which has received authorisation under Article 23 of the first non-life insurance directive or Article 51 of the life assurance consolidation directive.”;

(f) after paragraph 5 insert—

“Certificates as to legality and as to consent

5A.—(1) The certificates under this paragraph are to be given—

- (a) in the case of the certificate under sub-paragraph (2), by the Authority;
- (b) in the case of the certificate under sub-paragraph (3), by the relevant authority.

(2) A certificate given under this sub-paragraph is one certifying that the relevant authority has been notified of the proposed scheme and that—

- (a) the relevant authority has consented to the proposed scheme; or
- (b) the period of three months beginning with the notification has elapsed and that relevant authority has not refused its consent.

(3) A certificate given under this sub-paragraph is one certifying that the law of the EEA State in which the transferee is set up permits such a transfer.

(4) “Relevant authority” means the competent authorities (within the meaning of the insurance directives) of the EEA State in which the transferee is set up.”;

(g) in paragraph 10(2) after “paragraph 5(d)” insert “or (da)”.

Amendments to section 198 of the Act

3. In section 198 (power to apply to court for injunction in respect of certain overseas insurance companies)—

- (a) at the end of subsection (1)(a) omit “or”;
- (b) at the end of subsection (1)(b)(9) insert—
 - “; or
 - (c) Article 42.4 of the reinsurance directive”.

Amendments to section 199 of the Act

4. In section 199 (additional procedure for EEA firms in certain cases)—

- (a) for subsection (2)(b) substitute—
 - “(b) as respects its contravention, the single market directive in question provides that a procedure of the kind set out in the following provisions of this section (so far as they are relevant in the firm’s case) is to apply.”;
- (b) after subsection (3) insert—
 - “(3A) If the firm falls within paragraph 5(da) of Schedule 3, the Authority must at the same time as it gives notice to the firm under subsection (3) refer its findings to the firm’s home state regulator.
 - (3B) Subsections (4) to (8) apply to an incoming EEA firm other than a firm falling within paragraph 5(da) of Schedule 3.”;
- (c) in subsection (5) after “its power of intervention” insert “before informing the firm’s home state regulator and ”;
- (d) after subsection (8) insert—
 - “(9) In the case of a firm falling within paragraph 5(da) of Schedule 3, the Authority may not exercise its power of intervention before informing the firm’s home state regulator and unless satisfied—
 - (a) that the firm’s home state regulator has failed or refused to take all appropriate measures for the purpose of ensuring that the firm remedies the situation which gave rise to the notice under subsection (3); or
 - (b) that the measures taken by the home state regulator have proved inadequate for that purpose.”.

Amendment to section 425 to the Act

5. In section 425(1)(a)(10) (expressions relating to authorisation elsewhere in the single market) after

““insurance directives”,” insert ““reinsurance directive”,”.

Amendments to Schedule 3 to the Act

6. In Schedule 3 (EEA Passport Rights)—

- (a) after paragraph 1(c)(11) insert “(ca) the reinsurance directive.”;
- (b) after paragraph 3 insert—

“The reinsurance directive

3A. “The reinsurance directive” means Directive [2005/68/EC](#) of the European Parliament and of the Council of 16 November 2005 on reinsurance and amending Council Directives [73/239/EEC](#), [92/49/EEC](#) as well as Directives [98/78/EC](#) and [2002/83/EC](#).”;

- (c) after paragraph 5(d) insert—

“(da) an undertaking pursuing the activity of reinsurance (within the meaning of Article 2.1(a) of the reinsurance directive) which has received authorisation under (or is deemed to be authorised in accordance with) Article 3 of the reinsurance directive from its home state regulator.”;

- (d) after paragraph 12(4)(12) insert—

“(5) An EEA firm which falls within paragraph 5(da) which establishes a branch in the United Kingdom, or provides services in the United Kingdom, in exercise of an EEA right qualifies for authorisation.

(6) Sub-paragraphs (1) and (2) do not apply to an EEA firm falling within paragraph 5(da).”;

- (e) in paragraph 15—

- (i) in sub-paragraph (1) for “paragraph 12” substitute “paragraph 12(1), (2) or (3)”;
- (ii) after sub-paragraph (4) insert—

“(5) A firm which qualifies for authorisation as a result of paragraph 12(5) has, in respect of each permitted activity which is a regulated activity, permission to carry it on through its United Kingdom branch or by providing services in the United Kingdom.

(6) The permission is to be treated as being on terms equivalent to those appearing in the authorisation granted to the firm under Article 3 of the reinsurance directive by its home state regulator (“its home authorisation”).

(7) For the purposes of sub-paragraph (5), “permitted activity” means an activity which the firm is permitted to carry on under its home authorisation.”;

- (f) in paragraph 19(1)(13) for “sub-paragraph (5A)” substitute “sub-paragraphs (5ZA) and (5A)”;
- (g) after paragraph 19(5) insert—

“(5ZA) This paragraph does not apply to a UK firm having an EEA right which is subject to the conditions of the reinsurance directive.”;

- (h) in paragraph 20(1)(14) at the beginning insert “Subject to sub-paragraph (4D), ”;
- (i) after paragraph 20(4C) insert—

“(4D) This paragraph does not apply to a UK firm having an EEA right which is subject to the conditions of the reinsurance directive.”.

SCHEDULE 2

Regulation 2(2)

Amendments to secondary legislation made under the Act

Amendments to the Financial Services and Markets Act 2000 (EEA Passport Rights) Regulations 2001

The Financial Services and Markets Act 2000 (EEA Passport Rights) Regulations 2001(15) are amended as follows—

- (a) in regulation 10—

- (i) the original text from “an EEA firm” to the end becomes paragraph (a);
- (ii) at the end insert—

- “; and
 - (b) an EEA firm which falls within paragraph 5(da) of Schedule 3 which establishes a branch in the United Kingdom”;
 - (b) in regulation 19—
 - (i) the existing text becomes paragraph (1);
 - (ii) after paragraph (1) insert—
 - “(2) Where—
 - (a) the activities of a UK firm which pursues the activity of reinsurance (within the meaning of Article 2.1(a) of the reinsurance directive) includes any activity which is not a regulated activity, and
 - (b) that activity is one which the UK firm in question is able to carry on in the EEA State in question without contravening any provision of the law of the United Kingdom (or any part of the United Kingdom),
- the UK firm is to be treated, for the purpose of the exercise of its EEA right, as being authorised to carry on that activity.”.

SCHEDULE 3

Amendments to other primary legislation

Regulation 2(3)

Amendments to the Friendly Societies Act 1992

1. Section 119 of the Friendly Societies Act 1992(**16**)(general interpretation) is amended as follows—
 - (a) in subsection (1A)(**17**)—
 - (i) for “72/239/EEC” substitute “73/239/EEC”; and
 - (ii) at the end insert “and as amended by the reinsurance Directive.”;
 - (b) after subsection (1C) add—

“(1D) References in this Act to the life assurance consolidation Directive are references to that Directive as amended by the reinsurance Directive.”;
 - (c) after subsection (2) insert—

“(3) In this section, “the reinsurance Directive” means Directive [2005/68/EC](#) of the European Parliament and of the Council of 16 November 2005 on reinsurance and amending Council Directives [73/239/EEC](#), [92/49/EEC](#) as well as Directives [98/78/EC](#) and [2002/83/EC](#).”.

Amendments to the Companies Acts

- 2.—(1) Section 843 of the Companies Act 2006(**18**) (realised profits and losses of long term insurance business) is amended as follows—
 - (a) in subsection (1) after “authorised insurance company” insert “, other than an insurance special purpose vehicle,”;
 - (b) after subsection (7) insert—

“(8) In this section “insurance special purpose vehicle” means a special purpose vehicle within the meaning of Article 2.1(p) of Directive [2005/68/EC](#) of the European Parliament and of the Council of 16 November 2005 on reinsurance and amending Council Directives [73/239/EEC](#), [92/49/EEC](#) as well as Directives [98/78/EC](#) and [2002/83/EC](#).”
- (2) Until the coming into force of section 843 of the Companies Act 2006, section 268 of the Companies Act 1985(**19**) (realised profits of authorised insurance company with long term business) has effect as if—
 - (a) in subsection (1)(**20**) after “authorised insurance company” there were inserted “, other than an insurance special purpose vehicle,”; and
 - (b) in subsection (3)(**21**) after paragraph (a) there were inserted—

“(aa) “insurance special purpose vehicle” means a special purpose vehicle within the meaning of Article 2.1(p) of Directive [2005/68/EC](#) of the European Parliament and of the Council of 16 November 2005 on reinsurance and amending Council Directives [73/239/EEC](#), [92/49/EEC](#) as well as Directives [98/78/EC](#) and [2002/83/EC](#).”.

SCHEDULE 4

Regulation 2(4)

Amendments to other secondary legislation

Amendment to the Competition Act 1998 (Small Agreements and Conduct of Minor Significance) Regulations 2000

1.—(1) The Competition Act 1998 (Small Agreements and Conduct of Minor Significance) Regulations 2000(22) are amended as follows.

(2) In paragraph 1 of the Schedule at the end of the definition of “insurance undertaking” insert “or a reinsurance undertaking carrying on the business of reinsurance under Directive 2005/68/EC of the European Parliament and of the Council of 16 November 2005 on reinsurance”.

Amendment to the Competition Act 1998 (Determination of Turnover for Penalties) Order 2000

2.—(1) The Competition Act 1998 (Determination of Turnover for Penalties) Order 2000(23) is amended as follows.

(2) In paragraph 1 of the Schedule at the end of the definition of “insurance undertaking” insert “or a reinsurance undertaking carrying on the business of reinsurance under Directive 2005/68/EC of the European Parliament and of the Council of 16 November 2005 on reinsurance”.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations implement in part the provisions of Directive 2005/68/EC of the European Parliament and of the Council of 16 November 2005 on reinsurance (OJ L323 9.12.2005 p.1) (“the Reinsurance Directive”). The rest of the implementation is achieved through existing provisions of the Financial Services and Markets Act 2000 (c.8) (“the Act”) and its accompanying secondary legislation and the amendments made in Financial Services and Markets Act 2000 (Reinsurance Directive) Regulations 2007 (S.I. 2007/3255), the Financial Services and Markets Act 2000 (Reinsurance Directive) Order 2007 (S.I. 2007/3254) and through rules made by the Financial Services Authority under powers available to them under the Act.

The Reinsurance Directive applies only to reinsurers which carry out reinsurance to the exclusion of direct insurance business and therefore does not apply to mixed insurers (other than by virtue of amendments made to the directives referred to in its title).

Schedule 1 to these Regulations amends the Act.

Paragraph 2 of that Schedule amends Part 7 of, and Schedule 12 to, the Act. These provisions provide for the transfer of insurance business by insurers and the relevant solvency and other certificates required. It has always been possible under Part 7 to transfer reinsurance portfolios, therefore the amendments required are to make the provisions work in the context of the Reinsurance Directive. Article 18 of the Reinsurance Directive requires Member States to authorise reinsurance transfers (under conditions laid down in national law) by a reinsurance undertaking, including of business carried out under the freedom of establishment or to provide services in other Member States. Such a transfer is subject to the home State regulator of the transferee providing a certificate of the necessary solvency margin (taking the transfer into account). The amendments provide a new procedure for certain reinsurance transfers (those where there is consent of all policyholders) which does not require an application to court, but does require obtaining a solvency certificate.

The amendments to Schedule 12 to the Act also include provision (related to the third non-life insurance directive (92/49/EEC) and the consolidated life assurance directive (2002/83/EC)) to clarify the application of the certificates required under Schedule 12 to transfers by non-EEA insurers with a branch in the United Kingdom.

Paragraph 6 of that Schedule amends Schedule 3 to the Act. Schedule 3 to the Act sets out the rules to permit UK firms to establish in and to provide services into other EEA States on the basis of their UK authorisation, and for EEA-based firms to do the same in or into the UK. The present provisions require a process to be gone through by firms seeking to establish or to provide services which are subject to time limits. The Reinsurance Directive provides for an EU reinsurer to provide services or to establish on the basis of their home Member State’s authorisation without any further requirements. The amendments here

make the necessary changes to Schedule 3 in relation to reinsurers falling within the Reinsurance Directive.

Other amendments made by Schedule 1 are either consequential on the Reinsurance Directive or by virtue of small changes in wording of the Directive when compared to the direct insurance directives, provisions of which are already implemented by the Act. Such is the case for the amendments to section 199 of the Act.

Schedule 2 to these Regulations makes amendments to the Financial Services and Markets Act 2000 (EEA Passport Rights) Regulations 2001 (S.I. 2001/2511). The main amendment provides that where a reinsurer provides a service which is not a regulated activity under the Act, provided that activity may lawfully be provided in an EEA State as a matter of UK law, it is deemed for the purposes of its EEA right to be authorised to carry out that activity.

Schedule 3 makes consequential amendments to the Friendly Societies Act 1992 (c.40). It also makes consequential provision in relation to the implementation of Article 46 of the Reinsurance Directive concerning the accounting treatment of insurance special purpose vehicles (doing long term insurance business) by amending section 843 (c.46) of the Companies Act 2006 and modifying section 268 of the Companies Act 1985 (c.6) until the former provision comes into force. Section 843 of the 2006 Act is the analogous provision to section 268 of the 1985 Act.

Schedule 4 makes amendments to secondary legislation made under the Competition Act 1998 inserting references to reinsurers (within the meaning of the Reinsurance Directive) in relation to the exception from penalties under section 36 of the Competition Act 1998 for small agreements and agreements of minor significance and to the method of determining competition fines.

A transposition note has been prepared which sets out how the main elements of the Directive will be transposed into UK law. A Regulatory Impact Assessment of the effect of this instrument on the costs of business has been prepared. Both may be obtained from the Financial Stability and Risk Team, HM Treasury, 1 Horse Guards Road, London SW1A 2HQ. They are also available on HM Treasury's website (www.hm-treasury.gov.uk). Copies of both documents have been placed in the libraries of both Houses of Parliament.

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- (1) [1972 c.68](#); section 2(2) was amended by section 27 of the Legislative and Regulatory Reform Act 2006 c.51. By virtue of the amendment of section 1(2) made by section 1 of the European Economic Area Act 1993 (c. 51) regulations may be made under section 2(2) to implement obligations of the United Kingdom created by or arising under the Agreement on the European Economic Area signed at Oporto on 2nd May 1992 (Cm 2073) and the Protocol adjusting that Agreement signed at Brussels on 17th March 1993 (Cm 2183). For the decision of the EEA Joint Committee in relation to Directive [2005/68/EC](#), see Decision No 59/2006 O.J. No. L245 7.9.2006 p.5. [Back \[1\]](#)
 - (2) S.I. 1976/2141; the designation was transferred to the Treasury in place of the Secretary of State in 1997 by S.I. 1997/2781. [Back \[2\]](#)
 - (3) S.I. 1975/427; the designation was transferred to the Treasury in place of the Secretary of State in 1997 by S.I. 1997/2781. [Back \[3\]](#)
 - (4) [S.I. 1990/600](#); the designation was transferred to the Treasury in place of the Secretary of State in 1997 by S.I. 1997/2781. [Back \[4\]](#)
 - (5) S.I. 1997/2781. [Back \[5\]](#)
 - (6) S.I. 2001/3495. [Back \[6\]](#)
 - (7) [2000 c.8](#). [Back \[7\]](#)
 - (8) Paragraph 1(3)(a) was amended by S.I. 2004/3379. [Back \[8\]](#)
 - (9) Section 198(1)(b) was amended by S.I. 2004/3379. [Back \[9\]](#)
 - (10) Section 425(1)(a) was amended by S.I. 2003/2066; 2004/3379 and 2006/2975. [Back \[10\]](#)
 - (11) Paragraph 1 was amended by S.I. 2000/2952; 2003/1473, 2003/2066 and 2007/126. [Back \[11\]](#)
 - (12) Paragraph 12 was amended by S.I. 2007/1473. [Back \[12\]](#)
 - (13) Paragraph 19 was amended by S.I. 2003/1473, 2003/2066 and 2007/126. [Back \[13\]](#)
 - (14) Paragraph 20 was amended by S.I. 2001/1376; 2003/1473, 2003/2066 and 2007/126. [Back \[14\]](#)

- (15) S.I. 2001/2511; as amended by S.I. 2003/1473. [Back \[15\]](#)
- (16) [1992 c.40](#). [Back \[16\]](#)
- (17) Subsections (1A), (1B) were inserted by [S.I. 1996/1669](#). Subsection (1A) was amended by S.I. 2001/3649 and 2004/3379. [Back \[17\]](#)
- (18) [2006 c.46](#). [Back \[18\]](#)
- (19) 1985 c.6. [Back \[19\]](#)
- (20) Subsection (1) was amended by [S.I. 1996/189](#) and 2001/3649. [Back \[20\]](#)
- (21) Subsection (3) was amended by S.I. 2001/3649. [Back \[21\]](#)
- (22) S.I. 2000/262; as amended by S.I. 2000/2952, S.I. 2004/3379 and S.I. 2006/3221. [Back \[22\]](#)
- (23) S.I. 2000/309; as amended by S.I. 2000/2952, S.I. 2004/1259, S.I. 2004/3379 and S.I. 2006/3221. [Back \[23\]](#)

Part C: Insurance Business Transfers

APPENDIX B : Explanatory Notes of Part VII of the FSMA 2000

of Part XI as if the investigator were appointed under section 167(1). This means that the procedures set out in section 170 must be followed and that the investigator will have the powers set out in section 171.

Section 98: Advertisements etc in connection with listing applications

190. This section makes it an offence to issue an advertisement or other information of a kind specified in listing rules (for example an invitation to purchase securities) unless the contents have been approved by the competent authority or the issue of an unapproved advertisement or information has been authorised by the competent authority. This offence only applies where listing particulars are, or are to be, published.

191. *Subsection (3)* provides a defence against this criminal offence where someone reasonably believed that the advertisement had been approved or its issue authorised by the competent authority.

Section 100: Penalties

192. This section provides that the competent authority must not seek to recover its costs when imposing financial penalties. It also provides that it must operate a scheme to redistribute monies received from financial penalties to issuers. It must consult on the scheme and have regard to representations before making the scheme. The provisions of this section are analogous to those applying to the Authority more generally under paragraph 16 of Schedule 1.

Section 102: Exemption from liability in damages

193. This section gives the competent authority and its staff immunity against legal action for damages in respect of anything done or omitted in the discharge of its functions. This immunity does not apply where the act or omission was in bad faith or where it was unlawful as a result of section 6(1) of the Human Rights Act 1998. Section 6(1) of that Act makes it unlawful for a public authority to act in a way which is incompatible with a right conferred by the European Convention on Human Rights and Fundamental Freedoms which is included in Schedule 1 to the 1998 Act.

PART VII: CONTROL OF BUSINESS TRANSFERS

194. This Part provides a mechanism for transferring, with the sanction of the courts, all or part of the business of certain kinds of authorised persons. In broad terms, the mechanism covers 2 types of transfer:

- transfers of insurance business; and
- transfers of banking business.

195. The mechanism, as it relates to transfers of insurance business, replaces the arrangements under sections 49 to 52B of, and Schedule 2C to, the Insurance Companies Act 1982, which implement requirements of the EC insurance directives. Banking business transfers have usually required a private act of Parliament, which can involve a lengthy procedure and substantial cost to the firms concerned.

Section 104: Control of business transfers

196. This section establishes that the arrangements under Part VII are generally the exclusive route for giving effect to the types of transfer to which the Part applies. However, the definition of insurance business transfer schemes under section 105 provides for qualifying cross-border transfers to be approved in other member States, in accordance with the directives.

Section 105: Insurance business transfer schemes

197. This section defines the insurance business transfers covered by the new mechanism. It only applies to transfer schemes where, after the transfer, the business transferred will be carried on from an establishment in the EEA, and where prior to the transfer all or part of the business to be transferred is:

- carried on, wholly or in part, in the EEA by a "UK authorised person" (defined in *subsection (8)*); or
- reinsurance business and it is carried on in the UK branch of an EEA firm (see Schedule 3); or
- carried on, wholly or in part, in the United Kingdom by an authorised person who is neither a UK authorised person nor an EEA firm.

198. In each case the authorised person transferring the business must have the appropriate permission under Part IV of, or Schedule 3 to, the Act.

199. However, *subsection (3)* sets out a series of cases for which the new mechanism does not apply. The mechanism does not apply where the transferor is a friendly society (referred to as case 1). Such transfers are covered by provisions in the Friendly Societies Act 1992. The other cases are where the arrangements under this Part do not apply are:

- transfers of reinsurance business by UK authorised persons which have been approved by a court in another EEA State or by the relevant regulator in the State or States in which it is carried on (case 2);
- transfers of business carried on outside the EEA which do not include policies (other than reinsurance policies) against risks arising in the EEA, and which have been approved by the courts or relevant authorities in a non-EEA State (case 3);
- where each of the policyholders has consented to the transfer, in cases of reinsurance business and entities where the policyholders are 'controllers' (within the meaning of Part XII) of the firm or other firms in the same group, essentially "captive" insurers (case 4).

200. *Subsections (5) to (7)* ensure that the powers of a court to make orders under the Companies Act (and the equivalent Northern Ireland provisions) dealing with schemes for reconstruction (compromises or arrangements agreed with creditors) can apply in transfers covered by the arrangements under the Part.

Section 106: Banking business transfer schemes

201. This section enables parties to a transfer of business involving accepting deposits to apply to the court for an order sanctioning the transfer. *Subsection (1)* applies the arrangements under this part to transfers of the business of authorised persons domiciled in the United Kingdom with permission to accept deposits, wherever the business is carried on. It also applies the arrangements where an overseas firm carrying on banking business in the United Kingdom transfers its business to another firm. However, the arrangements do not apply to transfers from building societies (for which separate arrangements exist under the Building Societies Act 1986) or credit unions or transfers falling within section 427A of the Companies Act.

Section 107: Application for order sanctioning transfer scheme

202. This section enables either a transferee, or the transferor, or both, to apply to the court for an order sanctioning a transfer of an insurance or banking business. *Subsection (3)* makes provision as to the court to which an application may be made. The appropriate court will depend on the country or territory in which the businesses are registered or have their head office.

Section 108: Requirements on applicants

203. This section confers on the Treasury a power to specify, by regulations, requirements with which firms must comply before seeking an order sanctioning a transfer under section 111. Where firms have not complied with those requirements, the court would not be able to sanction the transfer.

204. *Subsection (3)* confirms that regulations made under this section may include requirements to give notice and the way in which notice must be given. This may, for example, include giving notice of the proposed transfer to customers or creditors of the firm but the kinds of requirement are not limited.

205. Regulations made under this power may also specify the circumstances in which the court may decide that a firm need not comply with a requirement. This is necessary to ensure that in circumstances where a firm cannot reasonably comply with a requirement, it need not prevent a court from approving a transfer. An example where this might be necessary is in relation to a requirement to give notice to customers of the firm transferring its business to another, in circumstances where it did not have contact details for some of its customers, as sometimes happens in the case of dormant bank accounts or old life insurance policies.

Section 109: Scheme reports

206. Under this section, it is a requirement that a proposal to transfer insurance business is to be accompanied by a report by an expert. The coverage of the report may be determined by the Authority and the appointment of the expert is subject to the approval of the Authority. The purpose of this section is to ensure that the court is presented with a full and accurate report of the proposed transfer by an independent expert in order that the court may properly assess its impact, including the effect on policyholders of the authorised person in question (and any third parties who may rely on their policies).

Section 110: Right to participate in proceedings

207. This section gives the Authority and those affected by the proposed transfer a right to be heard by the court when it is considering an application under section 107. This will mean that the Authority will be able to make representations about matters which, as regulator, cause it concern. It also ensures that any person connected with either the transferor or transferee firm - including customers of either firm or their employees - may also make representations to the court about the implications for them. The court will be able to take these views into account when considering the application.

Section 107: Sanction of the court for business transfer schemes

208. This section sets out the conditions that must be met before the court may sanction a business transfer scheme. The conditions are that the transferee firm has obtained any necessary certificates, which are set out in Schedule 12, and also that court is satisfied that the firm will have the necessary authorisation to carry on that business after the transfer (unless no authorisation is required, as may be the case for some reinsurance undertakings in other territories).

209. The precise requirements imposed under the Schedule will depend on a number of factors including whether the business in question is insurance or banking business, and the location of the business (that is whether it is domiciled in the United Kingdom, another EEA member State or overseas).

210. An insurance business will require:

- a certificate about confirming that it has the necessary margin of solvency (paragraph 2 of the Schedule); and
- a certificate indicating that a host State regulator - in cases involving risks or firms located in another EEA member State - has consented (or failed to object within 3 months) to the transfer (paragraphs 3 to 5).

211. In the case of a bank it will need to produce:

- a certificate confirming that the bank has adequate resources; and
- in the case where either the transferor or transferee company is domiciled in another EEA state, a certificate confirming that the home state regulator has been informed about the transfer.

212. In deciding whether to sanction the scheme, the court must consider whether it is appropriate, in all the circumstances, to do so.

Section 112: Effect of order sanctioning business transfer scheme

213. This section makes it clear that any order of the court sanctioning a business transfer scheme may include any necessary provisions to ensure that any transfer is able to take proper effect. Accordingly, the court will be able to order either that all rights and liabilities of and against the firm whose business is being transferred become rights and liabilities of the transferee firm, or that

appropriate measures are taken to extinguish or reduce such rights and liabilities.

214. A reduction may be necessary, for example, where a firm is insolvent and the transfer of business is part of a "rescue" proposal. In other cases, rights and liabilities may not be suitable for transfer and so alternative arrangements may be required, for example in the case where a bank had taken a floating charge over the assets of the firm in relation to a credit facility, where neither would be relevant to the ongoing business after the transfer.

215. These arrangements are consistent with the previous arrangements under Schedule 2C to the ICA 1982 and relevant companies and insolvency legislation.

Section 113: Appointment of actuary in relation to reduction of benefits

216. This section enables a court, in response to an application from the Authority, to appoint an independent actuary to report on a business transfer in particular circumstances. This is aimed particularly at situations where a company from which business is to be transferred is in financial difficulties and unlikely to be able to meet all of its obligations to policyholders or other creditors. By the application of insolvency law, the policyholders would only be entitled to recover a proportion of the amounts due to them.

217. Section 112 enables the court to sanction a transfer that has the effect of reducing liabilities to policyholders, since in many cases allowing the transfer to a solvent company will be preferable to leaving the policyholder to recover money due from the insolvent insurer. In practice, a transfer would most likely only be approved where the effect was no worse than if it did not go ahead. The purpose of this section is to enable the court to take an informed view about the proposed reduction in benefits, to ensure that policyholders interests are properly protected. A policyholder who suffered loss in such circumstances might be able to make a claim to the compensation scheme under Part XV of the Act.

Section 114: Rights of certain policyholders

218. This section provides that any EEA policyholders whose local law confers on them a right to cancel the policy in the event of a transfer have an adequate opportunity to exercise that right.

Section 115: Certificate for the purpose of insurance business transfers overseas

219. This section is a paving provision for Part III of Schedule 12 which enables the Authority to issue a certificate about the solvency of a UK authorised firm to which insurance business is to be transferred from overseas. Such a certificate would enable the Authority to confirm to a regulatory authority in another EEA member State or Switzerland that the transferee firm was financially sound and able to accept the business being transferred to it.

Section 116: Effect of insurance business transfers authorised in other EEA States

220. This section ensures that, where an insurance business transfer has been approved in another EEA member State in accordance with its domestic procedures, the transfer has effect in UK law. This means that where a person in the United Kingdom has an insurance policy with an EEA company whose business is in another member State, their contract is transferred so that the policyholder continues to enjoy the same rights and to be subject to the same obligations against the new company as they did against the company that issued the original policy.

Section 117: Power to modify this Part

221. This section allows the Treasury by regulations to modify the arrangements in relation to prescribed categories of transfer (for example, to ensure sufficient flexibility to allow for possible exclusions where transfers were subject to approval procedures in overseas jurisdictions). This section also allows the Treasury by regulations to amend the provisions of this Part to provide for its more effective operation.

PART VIII: PENALTIES FOR MARKET ABUSE

222. This Part confers power on the Authority to impose penalties for market abuse or to publish a public statement that someone has engaged in market abuse. The Act sets out the kinds of behaviour which will constitute market abuse and places a duty on the Authority to produce a code which will help to determine whether particular behaviour amounts to market abuse. This code will carry evidential weight, and in certain circumstances will provide a defence, or "safe harbour", against allegations of abuse. This Part also gives the Treasury the power to prescribe the coverage of the regime by specifying both the markets and the investments traded on those markets to which it applies. It sets out the procedures the Authority must follow when proposing to impose a penalty. It also confers a right to refer a decision to impose a penalty to the Tribunal.

Section 118: Market abuse

223. This section sets out the behaviour which constitutes market abuse. It also confers on the Treasury an order-making power to specify which markets and which investments come within the scope of this section.

224. *Subsections (1) and (2)* set out the conditions which must be satisfied before behaviour can be regarded as market abuse (and a penalty possibly imposed or statement published). In order to be abuse the behaviour must:

- take place in relation to qualifying investments traded on a market to which the section applies;
- be behaviour of a particular kind, as set out in subsection (2); and
- be behaviour which is likely to be regarded by a regular user of the market as a failure on the part of the person (A) engaged in the behaviour to observe the standards which the regular user would reasonably expect of a person in A's position. The regular user of the market is defined in *subsection (10)* to be a reasonable person who regularly deals on the market. He is intended to represent the distillation of the standards

APPENDIX C: Extract of Chapter 18 of FSA's Supervision Handbook

An extract of the current version of Chapter 18 of the FSA's Supervision Handbook ("SUP 18") is attached.

We believe that the FSA accept that changes need to be made to SUP 18 in order to reflect recent legislative changes and changes to the normal court process, including the two reports the FSA now normally provide to the Court and the fact that the Independent Expert often now produces a supplementary report. However, it is not clear when SUP 18 will be updated.



18.1 Application

- 18.1.1

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This chapter provides *guidance* in relation to business transfers.

(1)

■ SUP 18.2 applies to any *firm* or to any *member* of Lloyd's proposing to transfer the whole or part of its business by an *insurance business transfer scheme* or to accept such a transfer. ■ SUP 18.2.31 G to ■ SUP 18.2.41 G also apply to the *independent expert* making the *scheme report*.

(2)

■ SUP 18.3 applies to any *firm* proposing to accept certain transfers of *insurance business* taking place outside the *United Kingdom*.

(3)

■ SUP 18.4 applies to any *friendly societies* proposing to amalgamate under section 85 of the Friendly Societies Act 1992, to any *friendly society* proposing to transfer engagements under section 86 of that Act to another body and to any body (whether or not it is a *friendly society*) proposing to accept such a transfer. ■ SUP 18.4 also provides *guidance* to those wishing to make representations to the *FSA* about an application for confirmation of an amalgamation or transfer.
- 18.1.2

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Guidance on *building society* transfers and mergers is given in the Building Societies Regulatory Guide.
- 18.1.3

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Introduction

Insurance business transfers are subject to Part VII of the *Act* and must be approved by the court under section 111. The Financial Services and Markets Act 2000 (Control of Business Transfers)(Requirements on Applicants) Regulations 2001 (SI 2001/3625) also apply. These regulations set out minimum requirements for publicising schemes, notifying certain interested parties directly (subject to the discretion of the court), and giving information to anyone who requests it.
- 18.1.4

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An *insurance business transfer scheme* is defined in section 105 of the *Act* and the definition has been extended to transfers from *members* of Lloyd's to reflect the effect of the Financial Services and Markets Act 2000 (Control of Transfers of Business Done at Lloyd's) Order 2001(SI 2001/3626). With certain exclusions (relating to some schemes approved under foreign legislation, some novations of reinsurance or some captive *insurers*), it includes, in broad terms, any scheme to transfer *insurance business* from one *firm* (other than a *friendly society*) or *members* of Lloyd's to another body (which may be a *friendly society*), if:

- (1) (a) the transferor is an "UK authorised person" and the business is being carried on in one or more *EEA States*; or
 - (b) the business is reinsurance carried on in the *United Kingdom*; or
 - (c) the business is carried on in the *United Kingdom* and the transferor is not an *EEA firm*; and
- (2) in each case, the transferred business will be carried on from an establishment in the *EEA*.

The business transferred may include liabilities and potential liabilities on expired *policies*, liabilities on current *policies* and liabilities on contracts to be written in the period until the transfer takes effect. The parties to schemes approved under foreign legislation or involving novations of reinsurance or a captive *insurer* can apply to the court for an order sanctioning the scheme.

18.1.5



In the opinion of the *FSA*, a novation or a number of novations would constitute an *insurance business transfer* only if their number or value were such that the novation was to be regarded as a transfer of part of the business. A novation is an agreement between the *policyholder* and two *insurers* whereby a contract with one *insurer* is replaced by a contract with the other. In the opinion of the *FSA*, where an *insurer* agrees to meet the liabilities (this may include undertaking the administration of the *policies*) of another *insurer* by means of a reinsurance contract, including Lloyd's *reinsurance to close*, this would not constitute an *insurance business transfer* because the contractual liability remains with the original *insurer*; nor would an arrangement whereby an *insurer* offers to renew the *policies* of another *insurer* on their expiry date.

18.1.6



Under section 112 of the *Act*, the court has wide discretion to transfer property and liabilities to the transferee and to make orders in relation to incidental, consequential and supplementary matters. In the opinion of the *FSA*, the court has the power in such cases and on such terms as may be appropriate, to transfer the benefit of reinsurance contracts protecting the transferred business and to make such amendments to the terms of those contracts as may be necessary to give effect to that transfer of benefit.

18.1.7



Amalgamations of *friendly societies* and transfers of engagements from *friendly societies* to other bodies (whether or not *friendly societies*) are governed by part VIII of the Friendly Societies Act 1992 and Schedule 15 to that Act applies.



18.2 Insurance business transfers

Purpose.....

- 18.2.1

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Transfers enable *firms* to manage their affairs more effectively, both for their own benefit and for that of their *customers*. However they represent an interference in the contracts between a *firm* and its *customers*, unless the *customers* individually consent, and may also affect the rights of third parties. An important protection is the requirement for the consent of the court. Under section 110 of the *Act*, the *FSA* is entitled to be heard by the court. In deciding whether it should appear, the *FSA* will consider the potential risk to its *regulatory objectives* of the scheme compared to not implementing the scheme.
- 18.2.2

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The *FSA's regulatory objectives* include market confidence and the protection of *consumers*. Either or both of these might be impaired if a transfer were approved that led to loss, or perceived loss, to *consumers* or other market participants. On the other hand a transfer that led to improved security or benefits for *consumers* would promote the *FSA's regulatory objectives*. When considering a transfer, the *FSA* needs to take into account the interests of existing *consumers* of the transferee and of *consumers* remaining with the transferor as well as of those whose contracts are being transferred. The *guidance* in this section is intended to protect *consumers*. By so doing it promotes the market confidence objective.
- 18.2.3

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Under section 5(2) of the *Act*, in considering what degree of protection may be appropriate for *consumers*, the *FSA* must have regard to their need for accurate information. Under *Principle 7*, a *firm* must pay due regard to the information needs of *clients* (the scope of the *Principle* is not precisely *consumers*). The extent and nature of the information provided to *consumers* about a proposed scheme will therefore be a factor for the *FSA* in determining its attitude to the scheme. For the court process to be an effective protection, *consumers* and others affected need to learn of the proposed transfer and receive sufficient information on the transfer and its effects in such a form as to enable them to decide if they are likely to be adversely affected, and whether they wish to be heard by the court. The information needed depends on the circumstances and cannot be precisely specified in advance but this chapter contains *guidance* aimed at ensuring that *consumers*, the *FSA* and the court receive adequate information.
- 18.2.4

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Under *Principle 11*, a *firm* must deal with the *FSA* in an open and cooperative way and disclose to the *FSA* appropriately anything relating to the *firm* of which the *FSA* would reasonably expect notice. This chapter contains *guidance* on the information that the *FSA* expects to receive from *firms* and *members* of Lloyd's in the context of *insurance business transfer schemes*.

18.2.5 **G** Under *Principle 6*, a *firm* must treat *customers* fairly (the scope of the *Principle* is not precisely *consumers*) and, under *Principle 8*, manage conflicts of interest fairly. A criterion for the FSA in considering a proposed scheme would be whether it appears that either *Principle* is not being followed. Transfers may have both positive and negative effects on individual *consumers*. In such circumstances it is for *consumers* to balance these effects and assess whether the proposed scheme as a whole is in their interests and whether to make representations to the court about the scheme. The FSA's main concern then becomes to ensure that *consumers* have appropriate information and not to set its judgment over theirs.

18.2.6 **G** A scheme may have a material effect on the transferor or the transferee. The FSA will take any scheme into account in its future regulation of the *firms*, where it continues to regulate them. This could include, for instance, the exercise of own-initiative powers under section 45 of the *Act* to vary a *firm's Part IV permission*, for instance, by requiring a *scheme of operations* (■ SUP 7 contains *guidance* on criteria for varying a *firm's Part IV permission*).

18.2.7 **G** For many transfers it is necessary to cooperate with *overseas regulators*. This section contains *guidance* on such cooperation.

18.2.8 **G** Section 86(8) of the Friendly Societies Act 1992 requires, where a transferee is a *friendly society*, that consent to accept the engagements is passed by special resolution in accordance with paragraph 7 of Schedule 12 to that Act. This section includes *guidance* about the information needed in these circumstances.

18.2.9 **G** Under section 109 of the *Act*, an *insurance business transfer scheme* must be accompanied by a *scheme report* in a form approved by the FSA. This section contains *guidance* on the form of a *scheme report*.

18.2.10 **G** Also under section 109 of the *Act*, the *scheme report* must be made by a *person* nominated or approved by the FSA. This section contains *guidance* on the procedures and general criteria that the FSA proposes to adopt for this purpose.

18.2.11 **G** The FSA has a duty under section 2(3) of the *Act* "to have regard to the need to use its resources in the most efficient and economic way". The extent to which (if at all) it examines and considers the details of a scheme and the resources it devotes to such consideration will depend on the potential risk to its *regulatory objectives*.

Procedure: initial steps

18.2.12 **G** When an *insurance business transfer scheme* is being considered, the scheme promoters (including the transferor and, except possibly if it is a new *company*, the transferee) should discuss the scheme with the FSA as soon as reasonably practical, to enable the FSA to consider what issues are likely to arise, and to enable a practical timetable for the scheme to be agreed. The FSA will wish to consider material issues relating to *policyholder* rights (such as the reasonable expectations of with-profits *policyholders*) or *policyholder* security at the earliest opportunity. In any case the FSA will need time to:

- (1) consider the application, if an application by the transferee for a *Part IV permission* or a variation of *permission* is necessary (■ SUP 6 provides *guidance* on this);

- (2) seek information or approvals from other supervisors (where this applies);
- (3) consider what skills are needed to make a proper report on the scheme and what criteria should therefore be applied to the choice of *independent expert*;
- (4) consider whether the promoters' nominee for *independent expert* is suitable for approval or, if the *FSA* proposes to nominate someone, who the *FSA* should nominate; and
- (5) consider whether to object to the scheme in the light of the report and other circumstances.

18.2.13 G The initial information on the scheme provided to the *FSA* under ■ SUP 18.2.12 G should include its broad outline and its purpose. The *FSA* will indicate to the promoters how closely it wishes to monitor the progress of the scheme, including the extent to which it wishes to see draft documentation.

Independent expert: qualifications

18.2.14 G Under section 109(2) of the *Act* a *scheme report* may only be made by a *person*:

- (1) appearing to the *FSA* to have the skills necessary to enable him to make a proper report; and
- (2) nominated or approved for the purpose by the *FSA*.

18.2.15 G The general principles set out in ■ SUP 5.4.8 G, for suitability of a *skilled person*, apply also to the *independent expert*. The *FSA* expects the *independent expert* making the *scheme report* to be a natural person, who:

- (1) is independent, that is any direct or indirect interest or connection he has or has had in either the transferor or transferee should not be such as to prejudice his status in the eyes of the court; and
- (2) has relevant knowledge, both practical and theoretical, and experience of the types of *insurance business* transacted by the transferor and transferee.

18.2.16 G For a transfer of *long-term insurance business* the *independent expert* should be an *actuary* familiar with the role and responsibilities of the *actuarial function* holder and (if the relevant *insurance business* includes *with-profits insurance business*) a *with-profits actuary*.

18.2.17 G For a transfer of *general insurance business* the *independent expert* should normally be competent at assessing technical provisions and the uncertainties of the liabilities they represent (such as an *actuary*). Exceptionally, where issues other than the ability of the transferee to meet the liabilities to be transferred are much more significant in assessing the likely effects of the scheme, this criterion might not be applied. In such a case the *independent expert* would be expected to take advice from an appropriately qualified practitioner about the adequacy of the financial resources of the transferee.

- 18.2.18** G The *independent expert* would not normally be expected to be knowledgeable:
- (1) about *general insurance business* if the business being transferred is *long-term insurance business* only; nor
 - (2) about *long-term insurance business* if the business being transferred is *general insurance business* only;
- but, where either the transferor or transferee is a composite, he should understand the relevance of the *general insurance business* to the security of the *long-term insurance business* policyholders and vice versa and may need to seek independent specialist advice.

Independent expert: appointment

- 18.2.19** G The suitability of a *person* to act as an *independent expert* depends on the nature of the scheme and the *firms* concerned. On the basis of the preliminary information supplied by the scheme promoters (and any other knowledge it has of the circumstances and the *firms*), the *FSA* will consider what skills are needed to make a proper report on the scheme and what criteria should therefore be applied to the choice of *independent expert*. The *FSA* will inform the promoters of any such criteria it is minded to apply.
- 18.2.20** G Under section 107(2) of the *Act*, the application to the court may be made by the transferor or the transferee or both. As soon as reasonably practical, the intended applicant should choose their nominee for *independent expert* in the light of any criteria advised by the *FSA* and advise the *FSA* of their choice, unless the *FSA* wishes them to defer nomination or to make its own nomination. The notification should be accompanied by reasons why the party considers the nominee to be a suitable *person* to act as *independent expert*, together with relevant details of his experience and qualifications.
- 18.2.21** G The *FSA* may wish to have preliminary discussions with the nominee about the transfer to help the *FSA* determine whether he is suitably qualified to address issues arising from the transfer. The *FSA* will consider the suitability of the nominee and inform the *firm* that nominated him whether it approves him. Since the nature of the scheme is a factor in determining the suitability of the nominee, the *FSA* cannot approve a nominee before the broad outlines of the scheme have been determined. If the *FSA* rejects a nominee, it will normally inform him and, with the agreement of the nominee, the applicant of the reasons for the rejection.
- 18.2.22** G The *FSA* may itself nominate the *independent expert*, either where it indicates that a nomination is not required by the parties, or where it does not approve the parties' own nomination. In either case it will inform the promoters of its nominee.
- 18.2.23** G *Firms* should co-operate fully with the *independent expert* and provide him with access to all relevant information and appropriate staff.

Consultation with other regulators

- 18.2.24** G The *guidance* set out in ■ SUP 18.2.25 G to ■ SUP 18.2.30 G derives from the requirements of the *Insurance Directives* and the associated agreements between *EEA regulators*. Schedule 12 of the *Act* implements some of these requirements.

18.2.25

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- (1) If the transferee is (or will be) an *EEA firm* (authorised in its *Home State* to carry on *insurance business* under the *Insurance Directives*) or a *Swiss general insurance company*, then the FSA has to consult the transferee's *Home State regulator*, who has 3 months to respond. It will be necessary for the FSA to obtain from the transferee's *Home State regulator* a certificate confirming that the transferee will meet the *Home State's* solvency margin requirements (if any) after the transfer.
- (2) If the transferee is *authorised* in the *United Kingdom*, the FSA will need to certify that the transferee will meet its solvency margin requirements after the transfer. If the FSA has required of a *UK firm* a financial recovery plan of the kind mentioned in paragraph 1 of article 38 of the Life Directive (2002/83/EC) or paragraph 1 of article 20a of the *First Non-Life Directive*, the FSA will not issue a certificate for so long as it considers that *policyholders'* rights are threatened within the meaning of paragraph 1.

18.2.26

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The transferor will need to provide the FSA with the information that the *Home State regulator* requires from FSA. This information includes:

- (1) the transfer agreement or a draft, with:
 - (a) the names and addresses of the transferor and transferee; and
 - (b) the *classes of insurance business* and details of the nature of the risks or commitments to be transferred;
- (2) for the business to be transferred (both before and after reinsurance):
 - (a) the amount of technical provisions;
 - (b) the amount of *premiums* (in the most recent financial period); and
 - (c) for *general insurance business*, the *claims* incurred (in the most recent financial period);
- (3) details of assets to be transferred;
- (4) details of any guarantees (including reinsurance), whether provided by the transferor or a third party, to protect the provisions for the business transferred against deterioration; and
- (5) the *states of the risks* or the *states of the commitments* being transferred.

18.2.27

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If the transferee is not (and will not be) *authorised* and will be neither an *EEA firm* nor a *Swiss general insurance company*, then the FSA will need to consult its insurance supervisor in the place where the business is to be transferred. The FSA will need confirmation from this supervisor that the transferee will meet his solvency margin requirements there (if any) after the transfer.

18.2.28

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If the transferor is an *UK insurer* and the business to be transferred includes business carried on from a branch in another *EEA State*, then the FSA has to consult the *Host State regulator*, who has 3 months to respond. The FSA will need to be given the information that the *Host State regulator* requires from it. This information should identify the parties to the transfer and include the transfer agreement or draft transfer

agreement or a summary containing relevant information, and describe arrangements for settling *claims* if the branch is to be closed.

18.2.29 G If the transferor is an *UK insurer* and the business to be transferred includes a long-term insurance contract (other than reinsurance) for which the *state of the commitment* is an *EEA state* other than the *United Kingdom*, then the *FSA* has to consult the *Host State regulator*. If the transferor is an *UK insurer* and the business to be transferred includes a general insurance contract (other than reinsurance) for which the *state of the risk* is an *EEA state* other than the *United Kingdom*, then the *FSA* must consult the *Host State regulator*. The *FSA* will need to be given the information that the *Host State regulator* requires from it. This information should identify the parties to the transfer and include the transfer agreement or draft transfer agreement or a summary containing relevant information. It would be helpful (especially for *long-term insurance business*) if a draft of the *scheme report* was also available. The consent of the *Host State regulator* to the transfer is required, unless he does not respond within 3 months.

18.2.30 G Where the transferor is an *UK-deposit insurer* and, following the transfer, it will no longer be carrying on *insurance business* in the *United Kingdom*, the *FSA* will need to collaborate with *regulatory bodies* in the other *EEA States* in which it is carrying on business to ensure that effective supervision of the business carried on in the *EEA* continues. The transferor should cooperate with the *FSA* and the other *regulatory bodies* in this process and demonstrate that it will meet the requirements of its regulators following the transfer.

Form of scheme report

18.2.31 G Under section 109 of the *Act*, a *scheme report* must accompany an application to the court to approve an *insurance business transfer scheme*. This report must be made in a form approved by the *FSA*. The *FSA* would not expect to approve the form of a *scheme report* unless it complies with ■ SUP 18.2.33 G and would expect to approve the form of a *scheme report* that complies. ■ SUP 18.2.32 G and ■ SUP 18.2.34 G to ■ SUP 18.2.41 G provide additional *guidance* for the *independent expert*.

18.2.32 G There may be matters relating to the scheme or the parties to the transfer that the *FSA* wishes to draw to the attention of the *independent expert*. The *FSA* may also wish the report to address particular issues. The *independent expert* should therefore contact the *FSA* at an early stage to establish whether there are such matters or issues. The *independent expert* should form his own opinion on such issues, which may differ from the opinion of the *FSA*.

18.2.33 G The *scheme report* should comply with the applicable rules on expert evidence and contain the following information:

- (1) who appointed the *independent expert* and who is bearing the costs of that appointment;
- (2) confirmation that the *independent expert* has been approved or nominated by the *FSA*;
- (3) a statement of *independent expert's* professional qualifications and (where appropriate) descriptions of the experience that fits him for the role;

- (4) whether the *independent expert* has, or has had, direct or indirect interest in any of the parties which might be thought to influence his independence, and details of any such interest;
- (5) the scope of the report;
- (6) the purpose of the scheme;
- (7) a summary of the terms of the scheme in so far as they are relevant to the report;
- (8) what documents, reports and other material information the *independent expert* has considered in preparing his report and whether any information that he requested has not been provided;
- (9) the extent to which the *independent expert* has relied on:
 - (a) information provided by others; and
 - (b) the judgment of others;
- (10) the people on whom the *independent expert* has relied and why, in his opinion, such reliance is reasonable;
- (11) his opinion of the likely effects of the scheme on *policyholders* (this term is defined to include *persons* with certain rights and contingent rights under the *policies*), distinguishing between:
 - (a) transferring *policyholders*;
 - (b) *policyholders* of the transferor whose contracts will not be transferred; and
 - (c) *policyholders* of the transferee;
- (12) what matters (if any) that the *independent expert* has not taken into account or evaluated in the report that might, in his opinion, be relevant to *policyholders'* consideration of the scheme; and
- (13) for each opinion that the *independent expert* expresses in the report, an outline of his reasons.

18.2.34



The purpose of the *scheme report* is to inform the court and the *independent expert* therefore has a duty to the court. However reliance will also be placed on it by *policyholders*, by others affected by the scheme and by the FSA. The amount of detail that it is appropriate to include will depend on the complexity of the scheme, the materiality of the details themselves and the circumstances. For instance where it is clear that no-one will be adversely affected by the transfer, a simple explanation for this conclusion plus the details required by ■ SUP 18.2.33 G might be an adequate report.

18.2.35



The summary of the terms of the scheme should include:

- (1) a description of any reinsurance arrangements that it is proposed should pass to the transferee under the scheme; and

18.2.36

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The *independent expert's* opinion of the likely effects of the scheme on *policyholders* should:

- (1) include a comparison of the likely effects if it is or is not implemented;
- (2) state whether he considered alternative arrangements and, if so, what;
- (3) where different groups of *policyholders* are likely to be affected differently by the scheme, include comment on those differences he considers may be material to the *policyholders*; and
- (4) include his views on:
 - (a) the effect of the scheme on the security of *policyholders'* contractual rights, including the likelihood and potential effects of the insolvency of the *insurer*;
 - (b) the likely effects of the scheme on matters such as investment management, new business strategy, administration, expense levels and valuation bases in so far as they may affect:
 - (i) the security of *policyholders'* contractual rights;
 - (ii) levels of service provided to *policyholders*; or
 - (iii) for *long-term insurance business*, the reasonable expectations of *policyholders*; and
 - (c) the cost and tax effects of the scheme, in so far as they may affect the security of *policyholders'* contractual rights, or for *long-term insurance business*, their reasonable expectations.

18.2.37

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The *independent expert* is not expected to comment on the likely effects on new *policyholders*, that is, those whose contracts are entered into after the effective date of the transfer.

18.2.38

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For any mutual *company* involved in the scheme, the report should:

- (1) describe the effect of the scheme on the proprietary rights of members of the *company*, including the significance of any loss or dilution of the rights of those members to secure or prevent further changes which could affect their entitlements as *policyholders*;
- (2) state whether, and to what extent, members will receive compensation under the scheme for any diminution of proprietary rights; and
- (3) comment on the appropriateness of any compensation, paying particular attention to any differences in treatment between members with voting rights and those without.

18.2.39

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For a scheme involving *long-term insurance business*, the report should:

- (1) describe the effect of the scheme on the nature and value of any rights of *policyholders* to participate in profits;
- (2) if any such rights will be diluted by the scheme, how any compensation offered to *policyholders* as a group (such as the injection of funds, allocation of shares, or cash payments) compares with the value of that dilution, and whether the extent and method of its proposed division is equitable as between different classes and generations of *policyholders*;
- (3) describe the likely effect of the scheme on the approach used to determine:
 - (a) the amounts of any non-guaranteed benefits such as bonuses and *surrender values*; and
 - (b) the levels of any discretionary charges;
- (4) describe what safeguards are provided by the scheme against a subsequent change of approach to these matters that could act to the detriment of existing *policyholders* of either *firm*;
- (5) include the *independent expert's* overall assessment of the likely effects of the scheme on the reasonable expectations of *long-term insurance business policyholders*;
- (6) state whether the *independent expert* is satisfied that for each *firm* the scheme is equitable to all classes and generations of its *policyholders*; and
- (7) state whether, in the *independent expert's* opinion, for each relevant *firm* the scheme has sufficient safeguards (such as principles of financial management or certification by a *with-profits actuary* or *actuarial function holder*) to ensure that the scheme operates as presented.

18.2.40

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Where the transfer forms part of a wider chain of events or corporate restructuring, it may not be appropriate to consider the transfer in isolation and the *independent expert* should seek sufficient explanations on corporate plans to enable him to understand the wider picture. Likewise he will need information on the operational plans of the transferee and, if only part of the business of the transferor is transferred, of the transferor. These will need to have sufficient detail to allow him to understand in broad terms how the business will be run. He would not normally be expected to assess the adequacy of systems and controls in detail.

18.2.41

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A transfer may provide for benefits to be reduced for some or all of the *policies* being transferred. This might happen if the transferor is in financial difficulties. If there is such a proposal, the *independent expert* should report on what reductions he considers ought to be made, unless either:

- (1) the information required is not available and will not become available in time for his report, for instance it might depend on future events; or
- (2) otherwise, he is unable to report on this aspect in the time available.

Under such circumstances, the transfer might be urgent and it might be appropriate for the reduction in benefits to take place after the event, by means of an order under

section 112 of the *Act*. The *FSA* would wish to consider the fairness of any such reduction and section 113 allows the court to appoint an independent *actuary* to report to the *FSA* on any such post-transfer reduction in benefits.

Notice provisions

- 18.2.42** G Under the Financial Services and Markets Act 2000 (Control of Business Transfers)(Requirements on Applicants) Regulations 2001 (SI 2001/3625), unless the court directs otherwise, notice of the application must be sent to all *policyholders* of the parties. It may also be appropriate to give notice to others affected, in particular to:
- (1) reinsurers of the transferor where it is proposed that benefits or liabilities under their contracts should pass to the transferee; and
 - (2) anyone with an interest in the *policies* being transferred who has notified the transferor of their interest.
- 18.2.43** G The regulations referred to in ■ SUP 18.2.42 G require that notice of the application must be published in:
- (1) the London, Edinburgh and Belfast Gazettes; and
 - (2) unless the court directs otherwise, in:
 - (a) two national newspapers in the *United Kingdom*; and
 - (b) in two national newspapers in any other *EEA State* that is the *state of the risk* or the *state of the commitment*.
- Wider publication may be appropriate in some circumstances (especially if not all *policyholders* are sent notices).
- 18.2.44** G The regulations referred to in ■ SUP 18.2.44 G require that the *FSA* approves in advance the notices sent to *policyholders* and published in the press.
- 18.2.45** G Where a transfer involves *members* of Lloyd's as transferor or transferee, any notice requirements of the *Society* will also apply.
- 18.2.46** G The *FSA* is entitled to be heard by the court on any application for a transfer. A consideration for the *FSA* in determining whether to oppose a transfer would be its view on whether adequate steps had been taken to tell *policyholders* about the transfer and whether they had adequate information and time to consider it. The *FSA* would not normally consider adequate a period of less than six weeks between sending notices to *policyholders* and the date of the court hearing. Therefore it would be sensible, before requesting the court for a waiver of the publication requirements or the requirement to send statements direct to *policyholders*, to consult the *FSA* on its views about what waivers might be appropriate and what substitute arrangements might be made. The *FSA* will take into account the practicality and costs of sending notices to *policyholders* (especially for *firms* in financial difficulty), the likely benefits for *policyholders* of receiving notices and the efficacy of other arrangements proposed for informing *policyholders* (including additional advertising or, where appropriate, electronic communication). For instance, the *FSA* would be unlikely to object to a transfer on the grounds that *policyholders* had not been sent notices, if cover for the *policies* concerned had expired and the probability

of them making a *claim* was so small as to make the sending disproportionately expensive (particularly if there had been additional advertising). A *firm* may not be able to send notices to some or all of its *policyholders*, because it does not have their address, or may not even know their identity. This situation is not uncommon for business written through brokers or other agents. In such a case, alternative ways of informing *policyholders* need to be considered.

18.2.47

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As the consent (or presumed consent) of the *Host State* is required for a transfer covering contracts for which another *EEA State* is the *state of the risk* (for *general insurance business*) or the *state of the commitment* (for *long-term insurance business*), it is advisable to obtain the consent of *regulatory body* in the *Host State* to any waiver of publication in that state. The approval of the court will still be required.

Statement to policyholders

18.2.48

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It would normally be appropriate to include with the notice referred to in ■ SUP 18.2.42 G a statement setting out the terms of the scheme and containing a summary of the *scheme report*. Ideally every recipient should understand in broad terms from the summary how the scheme is likely to affect him. This objective will be most nearly achieved if the summary is clear and concise while containing sufficient detail for the purpose. A lengthy summary or one that was hard to understand would not be appropriate. Regulations require the *scheme report*, the notice and the statement to be made available to anyone requesting them. The internet can be used for this purpose if it is suitable for the *person* making the request.

18.2.49

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Where the transferee is a *friendly society*, the notice should include information about the meeting at which a special resolution in accordance with paragraph 7 of Schedule 12 to the Friendly Societies Act 1992 is to be voted on, including the date of the meeting, how notice of the meeting is to be given to members and the terms of the special resolution. After the meeting the *friendly society* should inform the *FSA* whether the special resolution has been passed. The court will also need to be informed, so an appropriate way of informing the *FSA* may be to include it in the affidavit to the court.

18.2.50

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The *FSA* should be given the opportunity to comment on the statement referred to in ■ SUP 18.2.48 G before it is sent, unless the *FSA* has informed the promoters in writing that it does not wish to do so.

FSA assessment of scheme

18.2.51

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The assessment is a continuing process, starting when the scheme promoters first approach the *FSA* about a proposed scheme. Among the considerations that may be relevant to both the depth of consideration given to, and the *FSA's* opinion on, a scheme are:

- (1) the potential risk posed by the transfer to the *regulatory objectives*;
- (2) the purpose of the scheme;
- (3) how the security of *policyholders'* (who include *persons* with certain rights and contingent rights under the *policies*) contractual rights appears to be affected;

- (4) how the scheme compares with possible alternatives, particularly those that do not require approval (whether by the court or the FSA);
- (5) how *policyholders'* rights and reasonable expectations appear to be affected;
- (6) the compensation offered to *policyholders* for any loss of rights or expectations;
- (7) how for other *persons* (besides *policyholders*) who have an interest in *policies*, their rights and the security of those rights appear to be affected;
- (8) the opportunity given to *policyholders* to consider the scheme, that is whether they have been properly notified, whether they have had adequate information and whether they have had adequate time to consider that information;
- (9) the opinion of the *independent expert*;
- (10) for a transfer that involves *members* of Lloyd's as transferor or transferee, the effect on the *Society*;
- (11) the views of other *regulatory bodies* consulted in connection with the proposed transfer; and
- (12) any views expressed by *policyholders*.

18.2.52 G The *scheme report* will be an important factor in the view the FSA forms on a scheme. The FSA will place considerable reliance on the opinions of the *independent expert* and the reasons for them. However it will form its own view taking into account other information and having regard to its *regulatory objectives*.

18.2.53 G The FSA is likely to object to a scheme if it concludes that it is unfair to a class of *policyholders*, unless the *policyholders* of that class have approved the scheme on the basis of information the FSA considers clear and accurate. *Policyholders* are not required to vote on a scheme but would, for instance, normally vote on a demutualisation or on a scheme of arrangement under the Companies Act 1985. The FSA is also likely to object to a scheme if it concludes that it has a material adverse effect on *policyholders'* security. The FSA may wish to satisfy itself that questions of systems and controls are properly addressed. There may also be conduct of business issues, particularly if the market has not fully absorbed the impact of the scheme by its effective date. The FSA would seek to resolve such issues through discussion with the scheme promoters in advance of the application to the court for approval, giving them the opportunity to amend the scheme or documentation, or otherwise to allay the FSA's concerns. Scheme promoters should keep the FSA informed to allow this discussion.


18.2.54 G The FSA may exercise its other powers under the *Act*, if it considers this a more effective method of achieving its *regulatory objectives*.

18.2.55 G The FSA is not required under its *regulatory objectives* to object to a scheme merely because some other scheme might have been in the better interests of *policyholders*, if the scheme itself is not adverse to their interests. However there may be circumstances where treating *customers* fairly would require a *firm* to consider or to implement an alternative scheme.






- 18.2.56** G Where a transfer involves *members* of Lloyd's as transferor or transferee, the *FSA* will consult the *Society*. Where the business of a *syndicate* is being transferred, the transfer involves all *members* participating in the relevant *syndicate years*.
- 18.2.57** G Regulations require that copies of the application to the court, the *scheme report* and the statement for *policyholders* referred to in ■ SUP 18.2.48 G are also given to the *FSA*. This enables the *FSA* to consider these and determine whether it wishes to be heard by the court. It might assist the *FSA* if these items were given to the *FSA* in draft, in the first instance. This would enable:
- (1) the *FSA* to seek clarification before the documents were finalised; and
 - (2) if the promoters so choose, allow them to amend the scheme to meet any concerns of the *FSA*.
- 18.2.58** G For *long-term insurance business*, the affidavit evidence to the court would normally include copies of reports on the transfer by the *actuarial function* holder and (if the *insurance business* includes *with-profits business*) the *with-profits actuary* of both *firms*, which should be provided to the *FSA* at an early stage. ■ SUP 4.3.17 R (4) requires a *firm* to request the advice of its *with-profits actuary* about the likely effect of material changes in its business plans on the rights and reasonable expectations of the relevant classes of its *with-profits policyholders*. A transfer would be material unless the liabilities transferred were not material relative to the total liabilities of the *firm*. The advice on a transfer would normally be in the form of a formal report by the *with-profits actuary*.
- 18.2.59** G The scheme promoters should advise the *FSA* about any material representations made to them in response to the transfer scheme. Where it is proposed that reinsurance arrangements should pass to the transferee under the scheme, the *FSA* should also be informed about the steps being taken to consult with, or seek the consent of, the reinsurers and the reactions received.
- 18.2.60** G The court is likely to wish to know the *FSA*'s opinion on the scheme and, if the *FSA* does not intend to be heard, the affidavit may include a summary of the views expressed by the *FSA*. The applicants to the court should provide the *FSA* with a copy of all the affidavit evidence that they intend to submit to the court.

18.3 Insurance business transfers outside the United Kingdom

Purpose

- 18.3.1**  Under section 115 of the *Act*, the *FSA* has the power to give a certificate confirming that a *firm* possesses any *required minimum margin*, to facilitate an *insurance business* transfer to the *firm* under overseas legislation from a firm authorised in another *EEA State* or from a *Swiss general insurance company*. This section provides *guidance* on how the *FSA* would exercise this power and on related matters.

FSA response to proposal

- 18.3.2**  Under cooperation agreements between *EEA regulators*, if it has serious concerns about the proposed transferee, the *FSA* should inform the *regulatory body* of the transferor within 3 months of the original request from that *regulatory body*. The *FSA* is not obliged to reply, but if it does not, its opinion is taken to be favorable. Although the protocol does not apply to Switzerland, the *FSA* is required to cooperate with the Swiss *regulatory body* and would apply similar principles to a proposed transfer from a *Swiss general insurance company*.
- 18.3.3**  The information that the *regulatory body* of the transferor is required to supply will normally be sufficient for the *FSA* to determine whether the transfer is likely to have a material effect on the transferee.
- 18.3.4**  If the effect of the transfer is not likely to be material and the *FSA* does not already have serious concerns about the transferee, the *FSA* can reply favorably.
- 18.3.5**  If the effect of the transfer may be material, the *FSA* will need to consider whether to request a *scheme of operations* or other information from the proposed transferee to assist in determining whether the likely effect of the transfer is such that the *FSA* should have serious concerns.
- 18.3.6**  If the effect of the transfer may have a material adverse effect on the transferee or the security of *policyholders*, the *FSA* will consider whether it is appropriate to exercise its powers under the *Act* to achieve its *regulatory objectives*.

APPENDIX D: Additional detail on quantitative and qualitative measures considered by the Independent Expert

This Appendix provides further detail on the quantitative and qualitative measures referred to in Section 6. The list of measures here is not intended to be an exhaustive list, or one that will necessarily contain the measures that will be appropriate in each case. The Independent Expert will need to select those measures that he considers appropriate in the particular circumstances of each specific transfer. Once the relevant measures have been chosen, the Independent Expert will then need to decide what “weight” to place on each measure, when deciding what conclusion he can reach in relation to the transfer.

Measure	Comment
<u>Quantitative measures</u>	
Capital “strength” – Ratio of actual net assets to ICA	If an ICA (or equivalent) is available, or can be produced either by the company or the Independent Expert, then arguably using a comparison of this ratio before and after the transfer for each group of affected policyholders can be one of the most useful measures to assess any change in financial security resulting from the transfer. If the ICA is not derived by the Independent Expert themselves (which is likely to be the case for many transfers) then the Independent Expert will need to decide what level of review of the company’s ICA is necessary. If the Independent Expert carries out some level of review and considers that there are some limitations with the ICA methodology or approach, then this may not necessarily mean that the ICA needs to be changed, rather that the Independent Expert needs to consider what impact such a change might have on the ratio on a pre and post transfer basis.
Capital “strength” – Probability of ruin (or probability of some other level of impairment)	This measure could be calculated on a pre and post-transfer basis, to help assess the probability of the insurer either going insolvent (i.e. “ruin”) or reaching some other less severe level of impairment. A range of different time horizons could be used.
Capital “strength” – TVAR / “Conditional Tail Expectation” measure	As an alternative to the pure probability of ruin, a TVAR type measure could also be used, since it takes into account the size of the downside risk (i.e. effectively “how insolvent” the company goes”).

Measure	Comment
Capital “strength” – Probability of all policyholders being paid in full	This is a further capital strength measure that captures the chance of all current policyholders having all their claims paid in full, given the known capital pre and post-transfer.
Capital “strength” – Ratio of actual net assets to Statutory Minimum Solvency Margin or ECR or QIS4 (or subsequent version)	Likely to be of less use than the ICA ratio above, but could be used just as an alternative measure, if only to understand whether these ratios change pre and post-transfer.
Capital “strength” – Ratio of net assets to technical provisions	Not as useful as the other capital measures above, but worth understanding why such a ratio might have changed as a result of the transfer. If the ratio has gone down post-transfer, this might be deemed reasonable by the Independent Expert if it is known that the volatility surrounding the technical provisions is less post-transfer, due to there being less volatile business in the receiving company.
Other miscellaneous financial measures (e.g. net to gross reserves, premium to surplus ratio etc.)	Less use than the capital measures above, but can help provide an alternative perspective on the broader financial impact of the transfer.
Rating awarded by rating agency (and corresponding knock-on effect to relevant creditors)	Policyholders might pay some attention to this measure, as it will usually be visible to them, and hence might be worth considering by the Independent Expert. In some cases, the post-transfer rating may not be available at the time the Independent Expert does his work, although in such cases, an early indication of a possible rating might be available. If there is a reduction in rating post-transfer for some of the affected groups of policyholder, the Independent Expert will need to consider why this is the case, and take into account the change in other quantitative measures, before reaching his conclusion on the transfer. For some policyholders, if the rating is decreased then any bad debt charge that they might make against the policy asset (e.g. if it were reinsurance) might increase, and hence the Independent Expert might need to consider this issue in some cases.

Measure	Comment
Levels of parent company support / intra-group or inter-company guarantees etc.	For some transfers, there may be one or more intra-group or inter-company guarantees that exist pre and post-transfer. In some cases, the existence of such guarantees, particularly for an internal transfer within a single insurance group, can mean that it is relatively straightforward for the Independent Expert to conclude that the transfer has no impact on the security available to policyholders. In other cases, the guarantees may change as a result of the transfer, and in such cases the Independent Expert will need to consider whether such changes are significant enough when taken into account along with the other financial measures. In some cases, it might be necessary for the Independent Expert to obtain legal input regarding the impact of the transfer on the operation of such guarantees, including possibly whether their enforceability is affected by the transfer. The question as to who can enforce any such guarantees may also possibly be relevant.
Impact of any changes in outwards reinsurance	If the outwards reinsurance benefit provided to the transferring policyholders transfers at the same time as the transfer of the inwards business (as is usually the case with Part VII transfers in the UK) then, in theory at least, there should be no adverse impact on policyholders related to the outwards reinsurance. However, complications arising from outwards reinsurance that, before the transfer, covers both transferring and non-transferring business may need to be considered.
Impact of reinsurance set-off	For transfers involving certain types of reinsurance business, some policyholders may also be reinsurers (and hence debtors) of the companies involved in the transfer. In such situations, the transfer can impact on these policyholders' ability to set-off their creditor and debtor claim amounts (e.g. on an insolvency of the relevant company/companies). Hence, this impact may need to be considered by the Independent Expert in some cases, although it could be argued that the Independent Expert's scope extends only to consideration of the impact of the transfer on the relevant companies' ability to pay their policyholders' valid claims. Furthermore, in some cases, obtaining complete and accurate information on all policyholders' set-off balances may prove to be impractical.

Measure	Comment
Capital structure (e.g. levels of debt compared to equity)	For some transfers, there can be a material change in the capital structure. In most cases, this of itself may not necessarily be cause for concern, assuming that the other quantitative measures show acceptable results. However, in some cases it may need to be considered, if, for example, the ability of the company to draw down on the working capital is materially impaired post-transfer (so that perhaps the liquidity may be relatively worse post-transfer when compared to pre-transfer).
Accounting and tax issues	It is possible that a change in jurisdiction could cause there to be changes in the accounting framework, so at least in theory, it is possible for such changes to impact policyholders. Similarly, there could be tax consequences arising from the transfer. For example, there has been at least one non-UK transfer (i.e not a Part VII Transfer) where VAT issues were relevant.
<u>Qualitative measures</u>	
Claims handling procedures, staffing and service levels	For transfers within a single insurance group (and many of the other qualitative measures here) there is often no, or very limited, change in the claims handling procedures, and hence the Independent Expert's review is relatively straightforward. For transfers between insurance groups, there can also sometimes be transfers of claims and other staff, which can also make this issue relatively straightforward. In other cases, comparisons of claims guidelines, service targets etc. may be necessary.
IT systems and support (where relevant to policyholders)	Same comment as for claims handling.
Customer complaints procedures	Same comment as for claims handling.
Regulatory system in place	For transfers both within single insurance groups, and between different insurance groups, some of the groups of policyholders can, post-transfer, have their policies with insurance companies that are subject to different regulatory regimes/systems than existed pre-transfer (e.g. due to different territories being involved). In this case, the Independent Expert may need to consider any impact of such change on the protection provided to policyholders via the regulatory system.

Measure	Comment
Premium collection procedures / instalment facilities	Same comment as for claims handling.
Business mix	<p>For some transfers, some of the affected policyholders can find themselves as part of a company that has a different mix of business than existed pre-transfer. For example, direct policyholders with relatively stable claims experience may find that after the transfer they are now part of a group that has reinsurance policyholders, with more volatile claims experience. On the other hand, under insolvency, in certain countries, including the UK, they would rank ahead of reinsurance policyholders, so are arguably advantaged by such a transfer. In addition, long tail policyholders could find themselves mixed with short-tail policyholders post-transfer, which could mean that these policyholders are now exposed to the risk that in the early period of the future cash flows any adverse movement in the short-tail claims outgo could adversely impact the long-tail policyholders compared to their position pre-transfer.</p> <p>However, this would not usually of itself cause any particular concerns, as long as the other quantitative and qualitative measures are deemed acceptable by the Independent Expert. For example, the ICAS measures referred to above would be expected to allow for such changes in business mix, and the timing impact referred to above could be considered by looking at risk measures across different future time horizons.</p>

APPENDIX E : Part VII transfers effected under the Financial Services & Markets Act 2000³

Year	Sanction date	Transferor(s)	Transferee(s)	Website link (if applicable)
2009	25 June	The Names at Lloyd's for the 1992 and prior years of account (represented by Equitas Limited)	Equitas Insurance Limited	www.equitas.co.uk www.Lloyds.com
2009	27 March	Scor Insurance (UK) Limited, Scor UK Company Limited	Scor (UK) Company Limited, Scor Global P&C SE	www.scor.com/www/index.php?id=438
2008	17 December	IC Insurance Limited	Groupama Transport	www.clydeco.com/icinsurance
2008	17 December	Royal & Sun Alliance Insurance plc, Alliance Assurance Company Limited, British Engine Insurance Company Limited, Century Insurance Company Limited, The London Assurance, National Vulcan Engineering Insurance Group Limited, Royal & Sun Alliance Insurance (Global) Limited, The Sea Insurance Company Limited, Sun Alliance and London Insurance plc, Sun Insurance Office Limited	Europa General Insurance Company Limited	www.rsagroup.ie/domestication
2008	16 December	Moorgate Insurance Company Limited, formerly Pohjola Insurance Company (UK Limited)	The Ocean Marine Insurance Company Limited	n/a
2008	16 December	Munich Reinsurance America Inc (UK Branch)	Great Lakes Reinsurance (UK) PLC	www.munichreamerica.com www.greatlakes.co.uk
2008	16 December (No. 8354 of 2008)	London General Insurance Company Limited	ACE European Group Limited	n/a

³ This list of Part VII transfers has been taken from the list compiled by Sidley Austin LLP, which also includes life Part VII transfers and is accessible via a link from : <http://www.sidley.com/en-US/partvii/linkedContent.aspx>

Part C: Insurance Business Transfers

Year	Sanction date	Transferor(s)	Transferee(s)	Website link (if applicable)
2008	16 December (No. 8356 of 2008)	London General Insurance Company Limited	ACE European Group Limited	n/a
2008	16 December	London General Insurance Company Limited	Combined Insurance Company Of Europe Limited	n/a
2008	12 December	Zurich Insurance Company (UK Branch), Navigators & General Insurance Company Limited, Zurich GSG Limited, Zurich International (UK) Limited	The UK Branch of Zurich Insurance Ireland Limited	www.zurich.co.uk/changes2009
2008	9 December	The Pharmacy Mutual Insurance Company Limited	NPA Insurance Limited	www.p-m-i.co.uk
2008	2 December	AXA Reinsurance UK Limited	AXA Global Risks (UK) Limited	www.clyde.com/axare
2008	15 August	Consumer Electronics Insurance Company Limited	Amtrust International Underwriters Limited	www.ceicotransfer.co.uk
2008	30 July	Great Lakes Reinsurance (UK) PLC	QBE Insurance (Europe) Limited	www.QBEurope.com/IBT www.greatlakes.co.uk
2008	30 January	Minster Insurance Company Limited, The Contingency Insurance Company Limited and Malvern Insurance Company Limited	Groupama Insurance Company Limited	www.groupama.co.uk and www.minsterins.co.uk
2007	19 December	Pinnacle Insurance plc	Cardif Försäkring AB, Cardif Livförsäkring AB	n/a
2007	13 December	St Paul Reinsurance Company Limited and St Paul Travelers Insurance Company Limited	Unionamerica Insurance Company Limited	www.unionamericainsurancecompany.com
2007	28 November	NRG London Reinsurance Company Limited	NRG Victory Reinsurance Limited	n/a

Part C: Insurance Business Transfers

Year	Sanction date	Transferor(s)	Transferee(s)	Website link (if applicable)
2007	22 November	Integer The Underwriting Members Mutual Club Limited	Centrewrite Limited	www.integermutual.co.uk
2007	21 November	Admiral Syndicate Management Limited (in its capacity as managing agent of Syndicate 2004)	Admiral Insurance Company Limited	www.admiralgroup.co.uk
2007	15 November	Swiss Reinsurance Company UK Limited	Swiss Re Europe S.A.	www.swissre.com/partvii
2007	26 October	New Hampshire Insurance Company, UK Branch	Landmark Insurance Company Limited	www.aigtransfer.co.uk
2007	26 October	Nissan Insurance Company (Europe) Limited	Sompo Japan Insurance Company of Europe Limited	www.sompo-japan.co.jp/english/sje.html
2007	11 October	Generali Assurances Générales	City General Insurance Company Limited	www.citygeneral.co.uk
2007	31 July	Cavendish Insurance Limited	Royal & Sun Alliance Insurance plc	http://www.royalsun.com/cavendishbusinesstransfer
2007	31 July	The Members of Syndicate 37 at Lloyd's as Constituted for the 1994 to 2002 (Inclusive) Years of Account, Ocknam Corporate Limited, the Sole Member of Syndicate 2037 at Lloyd's as Constituted for the 1997 to 2001 (Inclusive) Years of Account and Highway Corporate Capital Limited as Constituted for the 2002 Year of Account	Highway Insurance Company Limited	
2007	30 July	BUPA Insurance Limited	Quinn Direct Insurance Limited	www.bupa.com/irishbranchtransfer www.Quinn-Healthcare.com/transfer
2007	28 March	Sun Alliance Insurance Overseas Limited	Royal & Sun Alliance Insurance plc	http://www.royalsunalliance.com/royalsun/ms/businesstransfer/customerinformation

Part C: Insurance Business Transfers

Year	Sanction date	Transferor(s)	Transferee(s)	Website link (if applicable)
2007	14 March	First Alternative Insurance Company Limited	esure Insurance Limited	www.firstalternative.com/s_faq.htm
2007	8 February	Brit Insurance (UK) Limited	Brit Insurance Limited	www.britinsurance.com
2007	30 January	Sompo Japan Insurance Inc.	Transfercom Limited	http://www.sompo-japan.co.jp/english/transfer.html
2006	19 December	Bradford Insurance Company Limited	Royal & Sun Alliance Insurance plc	n/a
2006	19 December	Nissay Dowa General Insurance Company Limited	Dowa Insurance Company (Europe) Limited	http://www.eversheds.com/nissaydowa
2006	18 December	CX Reinsurance Company Limited	CNA Insurance Company Limited	http://www.cnaeurope.com/news/archive.asp
2006	11 December	Chevanstell Limited, Oslo Reinsurance Company (UK) Limited	Hillcot Re Limited	n/a
2006	29 November	English & Scottish Maritime & General Insurance Company Limited	AXA Global Risks (UK) Limited	http://www.clydeco.com/EnglishandScottish/AGR/Part7Scheme/
2006	17 October	Alliance Assurance Company Limited, Cavendish Insurance Limited, Century Insurance Company Limited, Liverpool Marine and General Insurance Company Limited, The London Assurance, London Guarantee & Reinsurance Company Limited, National Vulcan Engineering Insurance Group Limited, Royal & Sun Alliance Insurance (Global) Limited, Royal & Sun Alliance Insurance plc, Royal & Sun Alliance Reinsurance Limited, Royal International Insurance Holdings Limited, The Sea Insurance Company Limited, Sun Alliance and London plc	British Engine Insurance Ltd	http://www.royalsun.com/royalsun/ms/inwards-re-transfers/inwardsretransfershome?external=true

Part C: Insurance Business Transfers

Year	Sanction date	Transferor(s)	Transferee(s)	Website link (if applicable)
2006	25 September	Hallmark Insurance Company Limited	The National Insurance and Guarantee Corporation Limited	http://www.nig.com/media/press/pressreleases/nig280606.html
2006	20 September	Elders Insurance Company Limited, Fortress Insurance Company Limited, The National Transit Insurance Company Limited, The Pennine Insurance Company Limited, The Union Marine and General Insurance Company Limited	Royal & Sun Alliance Insurance plc	http://www.royalsun.com/businesstransfer
2006	15 September	XL Re Ltd	XL Re Europe Limited	n/a
2006	7 September	Winterthur Swiss Insurance Company	Tenecom Limited	n/a
2006	22 June	GE Frankona Reinsurance Limited	Swiss Reinsurance Company UK Limited	http://www.swissre.com/geispartvii
2006	22 May	NRG Fenchurch Insurance Company Limited	NRG London Reinsurance Company Limited	n/a
2006	17 May	PA(GI) Limited	Groupama Insurance Company Limited	n/a
2006	17 May	Royal & Sun Alliance Insurance plc	Groupama Insurance Company Limited	n/a
2006	28 April	Clinicare Limited	Groupama Insurance Company Limited	n/a
2006	22 February	Haven Insurance Policies Limited	Norwich Union Insurance Limited	http://www.aviva.com/index.asp?pageid=526
2006	8 February	Royal & Sun Alliance Insurance plc	Great Lakes Reinsurance (UK) plc	n/a
2005	19 December	Healthsure Group Limited, Bristol Contributory Welfare Association Limited	HSA Group Limited	n/a
2005	19 December	Ecumenical Insurance Company Limited	Ansvar Insurance Company Limited	n/a
2005	15 December	Aioi Insurance Company of Europe Limited	Aioi Motor and General Insurance Company of Europe Limited	http://www.aioi.co.uk/PartVII/UK/PartVII%20English%20docs.htm
2005	15 December	Privilege Insurance Company Limited	Direct Line Insurance plc	n/a

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Year	Sanction date	Transferor(s)	Transferee(s)	Website link (if applicable)
2005	13 December	The Continental Insurance Company	Continental Management Services	http://www.grmsolutions.com/merger.html
2005	2 November	QBE Insurance Company (UK) Limited	QBE International Insurance Limited	n/a
2005	6 October	The Northern Assurance Company Limited	CGU International Insurance plc, The Ocean Marine Insurance Company Limited	http://aviva.com/index.asp?pageid=492
2005	27 July	Tokio Marine Global Ltd	Tokio Marine Europe Insurance Limited	n/a
2005	27 July	Bestpark International Limited	Kobstaedernes Forsikring	n/a
2005	15 July	Lakewood Insurance Company Limited (formerly Sampo Insurance Company (UK) Limited)	IF Skadeforsakring AB (publ) (Sverige) (also known as IF P&C Insurance Limited (Sweden))	n/a
2005	21 June	Catlin Insurance Company Limited	Catlin Insurance Company (UK) Limited	n/a
2005	20 June	Scottish General Insurance Company Limited	Norwich Union Insurance Limited	http://aviva.com/index.asp?pageid=475

Part C: Insurance Business Transfers

Year	Sanction date	Transferor(s)	Transferee(s)	Website link (if applicable)
2005	25 April	London & Scottish Assurance Corporation Limited, Edinburgh Assurance Company Limited, The Indemnity Marine Assurance Company Limited, The British & European Reinsurance Company Limited, Commercial Union Assurance Company Limited, General Accident Fire and Life Assurance Corporation Limited, General Accident Reinsurance Company Limited, The New Zealand Reinsurance Company (UK) Limited, The Road Transport & General Insurance Company Limited, The Ulster Marine Insurance Company Limited, Scottish Insurance Corporation Limited, The Yorkshire Insurance Company Limited	The Ocean Marine Insurance Company Limited	http://aviva.com/index.asp?pageid=447
2005	22 March	ACE European Group Limited	CIGNA Europe Insurance Company S.A.-N.V.	n/a
2005	17 March	The Guarantee Society Limited	CGU Insurance plc	http://aviva.com/index.asp?pageid=448
2005	17 March	Royal & Sun Alliance Insurance plc	Standard Life Healthcare Limited	n/a
2005	28 January	Global General and Reinsurance Company Limited	Sterling Life Limited	http://www.globalre.com/ggre-uk/part7classiccare/
2005	19 January	Connie Lee Insurance Company	Riverstone Insurance (UK) Limited	n/a
2004	22 December	AGF Insurance Limited	Riverstone Insurance (UK) Limited	n/a
2004	17 December	Continental Reinsurance Corporation (UK) Limited	Continental Management Services Limited	http://www.grmsolutions.com/articles/merger.html

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Year	Sanction date	Transferor(s)	Transferee(s)	Website link (if applicable)
2004	15 December	Chevanstell Limited, Ecclesiastical Insurance Office plc, Nipponkoa Insurance Company (Europe) Limited, QBE Insurance Company (UK) Limited, Marlon Insurance Company Limited, Aioi Insurance Company of Europe Limited, Guildhall Insurance Company Limited, Community Reinsurance Corporation Limited, Oslo Reinsurance Company (UK) Limited, Sovereign Marine & General Insurance Company Limited, OIC Run-Off Limited, Wausau Insurance Company (UK) Limited, Sphere Drake Insurance Limited	Riverstone Insurance (UK) Limited	n/a
2004	13 December	The Continental Insurance Company	Continental Management Services Limited	http://www.grmsolutions.com/merger.html
2004	18 November	Samsung Insurance Company of Europe Limited	Landmark Insurance Company Limited	n/a
2004	4 October	ACE Insurance SA-NV	ACE European Group Limited	n/a
2004	23 August	The Health Scheme	BHSF Limited	n/a
2004	17 May	Pearl Assurance plc, Prudential Assurance Company Limited	Aviation & General Insurance Company Limited	n/a
2004	29 March	Royal & Sun Alliance Insurance plc	PMI Mortgage Insurance Company Limited	n/a
2004	22 March	Stockholm Reinsurance Company (UK) Limited	WASA International Insurance Company Limited	n/a
2004	12 March	Everest Reinsurance Company	Everest Reinsurance (Bermuda) Ltd	n/a

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Year	Sanction date	Transferor(s)	Transferee(s)	Website link (if applicable)
2003	18 December	American Re-Insurance Company	Münchener Rückversicherungs-Gesellschaft Aktiengesellschaft in München	n/a
2003	15 December	Lakewood Insurance Company Limited	RiverStone Insurance (UK) Limited	n/a
2003	21 November	AXA Direct Insurance Limited, Orion Personal Insurances Limited, Guardian Health Limited, The State Assurance Company Limited, Guardian Insurance Limited, Guardian Eastern Insurance Company Limited, The Royal Exchange Assurance, British Equitable Assurance Company Limited, Atlas Assurance Company Limited	AXA Insurance UK plc	n/a
2003	2 October	CNA Insurance Company (Europe) Limited	CNA Insurance Company Limited	n/a
2003	15 May	CGU International Insurance plc	Victoria-Seguros S.A.	n/a
2002	19 December	ORG Re (UK) Limited	Riverstone Insurance (UK) Limited	n/a
2002	23 October	WASA International (U.K.) Insurance Company Limited, AGF Insurance Limited	WASA International Insurance Company	n/a
2002	30 August	Royal International Insurance Holdings Limited	Direct Line Insurance S.p.A.	n/a