Part VII Transfers Responding to Brexit

Tom Durkin, LCP
19 June 2019

An increase in Part VII transfers
Number of non-life Part VIIIs – 10 year history

12 Brexit related transfers sanctioned in 12 last months
(lots more expected in the pipeline)

Source: LCP analysis of www.thegazette.co.uk
Where are firms transferring to?
Luxembourg is most popular for completed transfers

Aviva
Fidelis
Travelers
QBE
Admiral
Markel
Sompo
AIG
CNA
Hiscox
RSA
TMK

The role of the Independent Expert (IE)
Are policyholders* materially adversely affected?

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Access to compensation and ombudsman schemes
Key considerations

- Transferring policyholders may lose access to:
  - Financial Services Compensation Scheme (FSCS); and
  - Financial Ombudsman Service
- Not always straightforward to identify which policyholders are covered
- Different (or no) arrangements in destination countries

- IEs typically concluding policyholders not materially adversely affected
- Eg, the unlikely insolvency (and therefore loss of access to compensation schemes) is balanced against the certainty of being able to service policies
- Will this change if likelihood of a Hard Brexit reduces?
Policyholder communications
Waivers from notifying certain policyholders

Key questions for IE:

- What is reasonable and proportionate to ensure policyholders have an opportunity to raise any objections?
- Is the firm’s rationale for the proposed waivers sound?
- Does the communication meet FCA’s expectations for clear communication?

Rationale based on Aviva Judgement:

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<th>Impossibility of contacting policyholders</th>
<th>Practicality of contacting policyholders</th>
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<td>Utility of contacting policyholders</td>
<td>Availability of other information channels</td>
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<td>Proportionality and the impact of collateral commercial concerns</td>
<td>Likely impact of the Proposed Transfer on policyholders</td>
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Judgement of Norris J in the Directions Hearing in Re Aviva International Insurance Limited [2011] EWCH 1901 (Ch.)

Intra-group reinsurance
Typically seeing an increase in intra-group reinsurance post-transfer

Key considerations:

- Impact on firm’s overall operating model
- Policyholder priority on wind-up
- Guarantees, collateral and other enhanced security
- Ensuring arrangements are in place by time of transfer
Aiming for smooth interaction with the regulators
Things to do and things to avoid

### Things to do
- Early engagement with your supervisor
- Clear business rationale for transfer and contingency plans
- Support IE opinions with clear and logical rationale
- Define materiality
- Ensure IE is independent and has capacity
- Checklist against PRA supervisory statement

### Things to avoid
- Complacency – regulators assess transfers case by case
- Too many placeholders in the plans
- Missing information about the proposed transfer
- Delays to the timetable
- Inconsistencies across transfer documents
- (but don’t rush at the expense of quality)

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