Insurance Transfers in Europe

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Foreword

Portfolio transfer mechanisms which permit the transfer of a whole book of business without the need to obtain individual consent from policyholders have always been an extremely useful tool, enabling insurers to divest themselves of capital intensive or non-core portfolios, close down subsidiaries and collapse underwriting pools. Now that Solvency II is looming large on the horizon, and insurers and reinsurers are taking a long hard look at their business in the light of the new capital requirements, portfolio transfers are becoming increasingly popular as insurers seek to rationalise their business in advance of implementation of the new regime. Many insurance groups are reducing the number of subsidiaries they have and moving to a structure with only one risk carrier in the EEA, operating throughout Europe on a passporting basis. Cross border transfers of business within Europe are therefore becoming increasingly common.

The use of the Part VII procedure under the UK Financial Services and Markets Act 2000 has increased exponentially over the past three years. However, that process is broadly only available to UK incorporated (re)insurers or those with a head office outside the EEA and a branch in the UK. (Re)insurers authorised elsewhere in the EEA must look to the portfolio transfer processes available in their home member state. The European insurance and reinsurance directives provide that each member state should have a procedure for transferring portfolios of (re)insurance business underwritten by (re)insurers whose head office is in their state, but the framework laid down at European level for such procedures is minimal. On this rather sketchy foundation, each member state has constructed its own procedure, with the result that the scope of, and requirements for, a transfer process can differ in material respects from one member state to another.

This book was conceived as a high level guide to the portfolio transfer processes in a number of EEA states, with the objective of giving a broad outline of their scope and effect, and their main requirements.

I am indebted to the contributors from the various EEA states (whose details can be found on the next page) for their assistance and their patience with my questions.

I hope this book will prove a useful and practical guide.

Geraldine Quirk

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International Presence

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BELGIUM

1 Statutory Framework

1.1 What are the statutory provisions governing the transfer of insurance and reinsurance portfolios in your jurisdiction?

Articles 74-78 of the Act of 9 July 1975 regarding supervision of insurance undertakings (prior approval of the Belgian National Bank)

Article 28 of the Act of 16 February 2009 on reinsurance (prior approval of the Belgian National Bank); only companies exclusively carrying on reinsurance activities qualify as "reinsurance company" under this Act; companies conducting both insurance and reinsurance activities are governed by the Act of 9 July 1975.

Communication No. 5 of the Belgian Banking, Finance and Insurance Commission of 13 July 1976 (form and documentation to be provided to the Belgian National Bank). Although this Communication only refers to insurance companies, it is practice to also submit a similar file regarding the transfer of re-insurance portfolios.

1.2 Has the authorising body issued any guidelines on its approach to approval of portfolio transfers, and if so, where are these found?

Communication No 5 of the Belgian Banking, Finance and Insurance Commission states that transfers of insurance portfolios will only be allowed taking into account the interests of insurance takers and insured parties. Solvency margin and covering assets will be scrutinized.

However the Belgian Rules of the general good are also taken into account and refusal may take place if the Belgian National Bank is of the opinion that a transfer would jeopardize Belgian or international financial stability.

Each refusal needs to be justified.

1.3 Are there any statutory or other provisions dealing with recognition of transfers concluded under the rules applying in other EEA States?

There are no explicit rules, but recognition is implied in the case of a transfer of risks situated in Belgium by an EEA insurance company transferring to another EEA insurance company (art. 76 Act of 9 July 1975). In such a case, the prior approval of the National Bank of Belgium is only required in order to obtain enforceability of the transfer towards 3rd parties ("opposability") (the transfer as between the parties is valid).

2 Scope of the portfolio transfer process

2.1 Who must use the portfolio transfer procedure in your jurisdiction?

(a) Direct insurance

(i) Prior approval as a necessary element of the process:

For transfers of insurance business undertaken by:

– Belgian insurance companies transferring any of their risks (regardless of where they are situated)

– Belgian insurance companies transferring a portfolio allocated to an EEA branch office to an EEA or non-EEA insurance company

– Non-EEA insurance companies transferring a portfolio allocated to the Belgian branch office to an EEA or non-EEA insurance company

– Any insurance undertaking transferring risks situated in Belgium

(ii) Prior approval in view of obtaining opposability towards 3rd parties:

For transfers undertaken by any insurance company (EEA or non EEA) insofar they concern risks situated in Belgium

(b) Reinsurance

For transfers undertaken by Belgian reinsurance companies (to Belgian, EEA or non-EEA insurance or re-insurance companies, regardless of where the risks are situated and regardless of whether branch offices abroad (EEA or non-EEA) are concerned.

2.2 To whom may (re)insurance business be transferred under the portfolio transfer procedure in your jurisdiction?

(a) Direct insurance

Acquirers of transfers subject to Belgian law can be:

– A Belgian insurance company (regardless whether the acquired business is allocated to EEA or non-EEA branch offices)

– EEA insurance companies (the question whether the EEA acquirer has to incorporate a branch office in Belgium or not depends on whether the EU conditions on free provision of services are fulfilled or not)

– Non-EEA insurance companies subject to the condition that they incorporate a Belgian branch office

(b) Reinsurance

Acquirers of transfers subject to Belgian law can be:

– EEA or non-EEA insurance or reinsurance companies

2.3 Can the procedure be used to transfer (re)insurance portfolios to a transferee/ office of a transferee based outside the EEA?

Yes. For a transfer of direct insurance to a non EEA entity, the incorporation of a Belgian branch is explicitly required

2.4 What types of portfolios may be transferred?

Direct and reinsurance business, both life and non-life.

2.5 Do the provisions in relation to the transfer of reinsurance business apply only to pure reinsurers?

Yes.

2.6 If the answer to 2.5 is "yes", are there any means by which an insurer that wrote both insurance and reinsurance business could transfer the reinsurance business?

Yes, under the provisions of the Act of 9 July 1975 regarding supervision of insurance undertakings.

2.7 Does the portfolio transfer process in your jurisdiction provide for the transfer of reinsurance/retrocession contracts protecting the (re)insurance business being transferred? If not, can the transfer of such protections be achieved by any other means?

There are no explicit provisions on the transfer of outwards reinsurance/retrocessions. The ordinary rules on transfer of contracts apply. If Belgian law applies to the contracts and in case of a non mergerlike transfer, the consent of the reinsurer is required; in case of a merger, demerger or a mergerlike transfer, no consent is required.

2.8 Can pure reinsurers who had ceased to conduct new business at 10 December 2007 use the procedure?

No. Although these reinsurers had to identify themselves to the Belgian regulator, "reinsurers in run off" do not fall within the scope of the Act of 16 February 2009

3 Procedure

3.1 What body is responsible for approving transfers of (re)insurance business?

The Belgian National Bank ("BNB"/"NBB") which replaced the Banking, Finance and Insurance Commission as regulator in 2010.

3.2 Are any other approvals/consents required?

In the case of a transfer of insurance or reinsurance business, where the transferee has its registered office in an EEA state other than Belgium, the regulatory authority in that state must certify that the transferee will have the necessary solvency margin following the transfer.

In the case of a transfer of insurance business only:

- Where the business is being transferred from a branch of a Belgian insurer in another EEA state, the Belgian National Bank must notify and obtain the opinion of the regulator in that state
- If the state of the risk/commitment is an EEA state other than Belgium, the Belgian National Bank must obtain the consent of the regulator in that state.

3.3 How is the application for approval made?

The parties file a request for approval with the Belgian National Bank in the form of a complete application form enclosing specified documents (see the answer to 3.4).

3.4 What supporting information has to be provided?

The application must include the following information:

- a letter of intent from the transferor describing the proposed transfer;
- a copy of the draft portfolio transfer agreement;
- an auditor's report (where one has been obtained);
- a statement from the transferee confirming it meets solvency margin requirements or where the transferee is located in another EEA state, a certificate from the regulatory authority of that state confirming the transferee will meet the applicable solvency margin requirements after the transfer;
- board meeting minutes approving the transfer for both the transferor and the transferee;
- where the transferor is a branch of a Belgian insurance company located in another EEA state, an opinion from the regulator of that state;
- where an insurance transfer concerns risks located in another EEA state, consent from the regulator of that state;
- where the transferor is transferring the whole of its business in a certain class of (re)insurance business to the transferee, a declaration of renunciation by the transferor in respect of that class of (re)insurance business; and
- where the transferee intends to notify policyholders (as is market practice – it is not a requirement), a copy of the draft letter to the policyholders.

3.5 Is there any requirement for any other party to provide any report in support of a proposed transfer? If so, what is the usual form and purpose of such a report?

No, but see paragraph 3.4 above.

3.6 What criteria does the authorising body apply in deciding whether to approve a proposal?

The Belgian National Bank will consider:

- whether the proposed transferor and transferee fall into the transferor and transferee categories as described above;
- the portfolio being transferred and where the risks are located;
- whether it has received the appropriate supporting information as

detailed in paragraph 3.4 from the transferor, the transferee and any other regulatory authorities; and

– if the intention is to transfer the assets and liabilities of the business included in the portfolio, whether the requirements of book XI of the Belgian Company Code have been met.

3.7 How long does the authorising body take to make its decision?

Once the application has been filed (and acknowledged as complete by the Belgian National Bank), the Belgian National Bank notifies the relevant EEA regulators who have 3 months to respond.

Where a certificate of solvency margin is required from an EEA regulator, the Belgian National Bank will make its decision following the 3 month period only if it receives such a certificate within that period. It cannot presume that the solvency margin requirements will be met.

Where consent is required from an EEA regulator in relation to risks located in the relevant EEA state and the EEA regulator refuses to provide consent, the Belgian National Bank cannot approve the transfer. However, if the EEA regulator fails to respond at all within the 3 month time period, it is deemed to have consented and the Belgian National Bank may approve the transfer.

3.8 Are there any requirements to give notice of the transfer to any parties other than the authorising body, and if so who are these parties and when must they be notified?

When approving a transfer of risks situated in Belgium, the decision of the National Bank of Belgium will be published in the Belgian Official Gazette, with the aim of informing policyholders.

There is no requirement under Belgian law for the transferor to give separate notice (beside the publication by the Belgian National Bank) of the transfer to policyholders, beneficiaries of policies or reinsurers.

However, if outwards reinsurance is to be transferred, the consent of the reinsurers may be required and as a practical matter they should therefore be notified.

Depending on the location of the transferee, and whether the business is being transferred from a branch of a Belgian entity in another EEA state, notice will also have to be given to local regulators (see 3.2 above).

3.9 Are there any publicity requirements in relation to portfolio transfers and if so, what are these?

In the case of a transfer of insurance business, the Belgian National Bank will publish notice of its decision approving the transfer in the Belgian Official Gazette. Publication renders the transfer binding on policyholders and any interested third parties.

In the case of a transfer of insurance business including associated assets and liabilities under the Belgian Company Code:

- an extract of the approval decision of the transferee must be published in the annexes to the Belgian Official Gazette in order to make the decision binding on third parties; and
- if a commercial establishment is also transferred, the transfer must also be reflected in the Database of Undertakings (Banque-Carrefour des enterprises/Kruispuntbank van Ondernemingen).

There are no publicity requirements in relation to transfers of reinsurance business by a pure reinsurer.

3.10 Does any party other than the authorising body have a right to raise objections to the transfer, and if so what would be the effect of such an objection?

Policyholders have no right to object to the transfer, but may have the right to terminate their contracts within 90 days of the date of publication of the Belgian National Bank's decision approving the transfer in the Official Gazette. Such termination right is not applicable in case of a merger or a transfer by way of a mergerlike procedure or in case of a transfer between insurance undertakings that are part of the same consolidated whole.

Reinsurers must consent to the transfer of the business if the transfer is not subject to the provisions of the Belgian Company Code, and therefore they may also have the right to object.

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DENMARK

Introduction

Under Danish law insurance portfolios can be transferred with the effect that the transferor is relieved from his obligations if each policyholder accepts the transfer of their policy or if the transfer is approved by the Danish Financial Services Authority ("DFSA") under the applicable procedure as described below.

1 Statutory Framework

1.1 What are the statutory provisions governing the transfer of insurance and reinsurance portfolios in your jurisdiction?

Statutes

Section 204 of the Danish Financial Business Act (Consolidated Act no 342 of 8 April 2011)

Regulations

Executive Order on Transfer of Danish Insurance Companies' Insurance Portfolios Established Applying the Freedom of Establishment or the Freedom to Provide Services (Executive Order No. 313 of 28 March 2007)

Executive Order on Branches of Insurance Companies which Have Been Granted a License in a Country Outside the European Union with which the Community Has Not Entered into an Agreement for the Financial Area (Executive Order No. 1167 of 1 December 2004)

1.2 Has the authorising body issued any guidelines on its approach to approval of portfolio transfers, and if so, where are these found?

No.

1.3 Are there any statutory or other provisions dealing with recognition of transfers concluded under the rules applying in other EEA States?

No.

2 Scope of the portfolio transfer process

2.1 Who may use the portfolio transfer procedure in your jurisdiction?

Danish authorised insurance or reinsurance companies with their registered office in Denmark who carry out insurance or reinsurance business in Denmark.

Danish authorised insurance or reinsurance companies with their registered office in Denmark who carry out insurance or reinsurance business in an EEA member state.

Danish authorised insurance or reinsurance companies with their registered office in Denmark who carry out insurance or reinsurance business in a state outside the EEA.

Foreign authorised insurance or reinsurance companies with their registered office in a state outside the EEA who carry out insurance or reinsurance business in Denmark through a branch.

2.2 To whom may (re)insurance business be transferred under the portfolio transfer procedure in your jurisdiction?

Danish and foreign (re)insurance companies.

2.3 Can the procedure be used to transfer (re)insurance portfolios to a transferee/ office of a transferee based outside the EEA?

Yes. However, in case of transfer of a portfolio underwritten in Denmark for Danish risks, the transferee must obtain authorisation to conduct insurance business in Denmark, which in practice will render it difficult for non-EEA transferees.

2.4 What types of portfolios may be transferred?

All types of insurance and reinsurance portfolios can be transferred.

2.5 Do the provisions in relation to the transfer of reinsurance business apply only to pure reinsurers?

No. Danish provisions on insurance portfolio transfers do not distinguish between reinsurance and direct insurance.

2.6 If the answer to 2.5 is "yes", are there any means by which an insurer that wrote both insurance and reinsurance business could transfer the reinsurance business?

N/A

2.7 Does the portfolio transfer process in your jurisdiction provide for the transfer of reinsurance/retrocession contracts protecting the (re)insurance business being transferred? If not, can the transfer of such protections be achieved by any other means?

Section 204 of the Danish Financial Business Act provides that a transfer of the whole or part of an insurance portfolio may include the transfer of other assets (including real property) and other liabilities. Reinsurance contracts and other ancillary contracts may therefore be transferred along with the inwards (re) insurance portfolio.

2.8 Can pure reinsurers who had ceased to conduct new business at 10 December 2007 use the procedure?

Yes.

3 Procedure

3.1 What body is responsible for approving transfers of (re)insurance business?

In order for the transferor to be relieved of his obligations the transfer of an insurance or reinsurance portfolio must be approved by the Danish Financial Services Authority ("DFSA") unless all the policyholders individually accept the transfer of their policy. In practice it is unlikely to be feasible to obtain acceptances from all policyholders.

3.2 Are any other approvals/consents required?

In the case of a transfer by a Danish branch of a non-EEA (re)insurer to a transferee established in an EEA state, the EEA regulator of the transferee must confirm that the transferee meets the necessary solvency requirements before the DFSA will approve the transfer.

In the case of a transfer of business covering risks/commitments located in another EEA state or underwritten through a branch in another EEA state:

- the transferee's EEA regulator must confirm that the transferee is able to meet the applicable solvency requirements;
- the EEA regulator in the state where the risks/commitments are located must consent to the transfer; and,
- where the risks were written through a branch, the EEA regulator in the state of the branch must be consulted.

3.3 How is the application for approval made?

The transferor must submit a written application to the DFSA. At present, the DFSA has not issued any standard application form. The DFSA carries out an assessment of the requested transfer and the accompanying legislation.

3.4 What supporting information has to be provided?

The application to the DFSA should include information substantiating the transfer including details of the statutory basis for the transfer.

The application must include the following information:

A portfolio transfer agreement, signed by the transferor and transferee. The agreement must be approved by the DFSA and must contain a description of the business being transferred, a balance sheet for the portfolio and provisions determining which party to the agreement will indemnify the DFSA for the costs of dealing with the application. If the business to be transferred is life business, the agreement must include documentation, including a statement from the transferor's actuary, stating that no policyholder will be prejudiced by the transfer.

- Information about the transferring insurance company.
- A certified copy of board resolutions and/or minutes of the general meeting approving the transfer for both the transferor and transferee.
- An assessment of the capacity of the receiving company to handle the insurance portfolio, both in operational and capital terms.
- The application may include reports produced by the parties' accountants or actuaries dealing with the solvency position of the parties before and after the transfer, which the DFSA will consider in determining whether the parties have the necessary solvency margin to proceed with the transfer.

– If the transferor's entire insurance or reinsurance portfolio is transferred, the transferor must subsequently be liquidated. If the transferor will be liquidated upon the transfer, the transferor must make available to the DFSA the relevant documents for liquidation.

The DFSA will request additional information if the application and/or the enclosed information/documentation is insufficient.

3.5 Is there any requirement for any other party to provide any report in support of a proposed transfer? If so, what is the usual form and purpose of such a report?

Please see paragraph 3.4 above.

3.6 What criteria does the authorising body apply in deciding whether to approve a proposal?

For domestic insurance portfolio transfers (the insurance business comprised by the insurance portfolio transfer is underwritten in Denmark for Danish risks)[1]:

When approving the transfer, the DFSA takes into consideration objections made by the policyholders, substantial social considerations such as the protection of the general interests of policyholders and creditors and the public's continued trust in the financial sector. Furthermore, the DFSA ascertains that the policyholders' rights and obligations will remain the same after the transfer of their policies to another insurance or reinsurance company.

The DFSA will also take into consideration the solvency and administrative capacity of the transferee as well as, in cases where only part of an insurance portfolio is transferred, the assets and liabilities remaining with the transferor.

If the insurance business comprised by the insurance portfolio transfer is underwritten in Denmark for Danish risks by a branch of a foreign authorised insurance or reinsurance company with a registered office in a non-EEA state and the transferee is established in an EEA state, the EEA regulator of the transferee must declare that the transferee is able to meet the applicable solvency requirements, before the DFSA will approve the insurance portfolio transfer.[2]

For cross border insurance portfolio transfer (the insurance business comprised by the insurance portfolio transfer is underwritten on cross border basis within the EEA or through a branch in an EEA state)[3]:

The transfer must be approved by the DFSA. The DFSA will approve the insurance portfolio transfer when (i) the EEA regulator of the transferee has declared that the transferee is able to meet the solvency requirements, (ii) the EEA regulator of the place of the risk has consented to the insurance portfolio transfer and (iii) in case of underwriting by a branch, the EEA regulator of the place of the branch has been heard.

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[1] Cf. Section 204 of the Danish Financial Business Act.
[2] Cf. Section 18(2) of Executive Order no 1167 of 1 December 2004.
[3] Cf. Executive Order no 313 of 28 March 2007.

3.7 How long does the authorising body take to make its decision?

The following applies to the transfer of insurance or reinsurance portfolios pursuant to Section 204 of the Danish Financial Business Act.

The applicant will be notified about the decision of the DFSA no later than 2 months after receipt of the application. If the DFSA concludes that the application is incomplete, the applicant will be requested to send additional documentation/information. The DFSA is obliged to inform the applicant of its decision no later than 2 months after the additional requested information has been forwarded to the DFSA.

Policyholders have 3 months from the date of publication of notice of the transfer by the DFSA (see 3.8 below) to object to the transfer.

The final decision from the DFSA must be made no later than 6 months after receipt of the application. This time limit is indispensable for the DFSA even if the applicant has not submitted the required documentation to the DFSA.

However, the time limits may be extended by 3 months in order to allow policyholders an opportunity to object. Hence, this will allow up to 9 months for the DSFA to make a decision.

The DFSA makes its final decision in writing to the applicant.

3.8 Are there any requirements to give notice of the transfer to any parties other than the authorising body, and if so who are these parties and when must they be notified?

(a) Other regulator(s)

Depending on the location of the establishment of the transferee and/or the transferor and the location of the risks that are to be transferred, the regulatory authorities in other countries have to be included in the approval procedure.

(b) Policyholders

The following applies to the transfer of insurance or reinsurance portfolios pursuant to Section 204 of the Danish Financial Business Act.

Upon receiving the application for approval of the transfer of the insurance or reinsurance portfolio, the DFSA publishes a notice of the contemplated transfer in the Danish Official Gazette ("Statstidende") as well as in one of the Danish national newspapers.

The notice describes the transfer including the companies involved, the time frame for the transfer and an assessment that no changes to the general terms and conditions of the policies will incur upon transfer.

In the notice the DFSA requests the policyholders to object to the transfer in writing no later than three months after the publication of the notice.

When the DFSA publishes the notice, the transferor must at the same time inform all policyholders, in writing to an address known to the company, of the contemplated transfer.

(c) Beneficiaries of cover other than actual policyholders

Beneficiaries of cover are not entitled to be notified of the contemplated transfer separately.

(d) Reinsurers

Reinsurers are not entitled to be notified of the contemplated transfer separately. However, reinsurance contracts generally require the prior consent of the reinsurer to an insurance portfolio transfer and/or provide for termination rights of the reinsurer if insurance contracts which cover risks ceded to a reinsurer are to be transferred. Therefore, it is often necessary to inform the reinsurer of the contemplated transfer in order to obtain approval for the transfer by the reinsurer.

(e) Brokers

Brokers are not entitled to be notified of the contemplated transfer separately.

(f) Others

No other people, legal entities or authorities are entitled to be notified of the contemplated transfer separately. However, if the transfer of an insurance or reinsurance portfolio also includes the transfer of other assets or liabilities or if the transfer is carried out as a merger or acquisition, the general rules on change of debtor set out in the Danish legislation apply in addition to section 204.

3.9 Are there any publicity requirements in relation to portfolio transfers and if so, what are these?

The following applies to the transfer of insurance or reinsurance portfolios pursuant to Section 204 of the Danish Financial Business Act:

(a) Newspapers

The DFSA must publish a notice of the contemplated transfer in a national Danish newspaper.

(b) Official Gazette/Journal

The DFSA must publish a notice of the contemplated transfer in the Danish Official Gazette ("Statstidende"),

(c) Other

There is no legal or regulatory obligation to publish a notice of the contemplated transfer anywhere else than mentioned above.

3.10 Does any party other than the authorising body have a right to raise objections to the transfer, and if so what would be the effect of such an objection?

The following only applies to the transfer of insurance or reinsurance portfolios pursuant to Section 204 of the Danish Financial Business Act:

(a) Regulator(s)

Before publishing the notice of the transfer, the DFSA decides whether or not it will approve the transfer on the basis of the information at hand, see Section 3.4. Upon the expiry of the three-month period mentioned above under Section 3.7, the DFSA will take into account any objections raised by the policyholders when finally deciding whether to approve the transfer.

(b) Policyholders

Policyholders may object to the transfer within the three-month period. The objections will be taken into account by the DFSA when considering the approval of the transfer. However, the transfer does not give the policyholders the right to cancel their policy.

(c) Other beneficiaries

Other beneficiaries are not entitled to raise any objections.

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FRANCE

1 Statutory Framework

1.1 What are the statutory provisions governing the transfer of insurance and reinsurance portfolios in your jurisdiction?

Articles L. 324-1 et seq and R. 324-1 et seq of the French Insurance Code ("FIC")

Article L. 354-1 of the FIC

Article L. 364-1 of the FIC

1.2 Has the authorising body issued any guidelines on its approach to approval of portfolio transfers, and if so, where are these found?

No but the French authorising body's old website summarises the procedure .

1.3 Are there any statutory or other provisions dealing with recognition of transfers concluded under the rules applying in other EEA States?

No.

2 Scope of the portfolio transfer process

2.1 Who may use the portfolio transfer procedure in your jurisdiction?

The following types of insurance firms may use the procedure:

- French insurance firms and their branches;
- French branches of non-EU insurance firms whose registered office is located in an EEA member state or in Switzerland[5]; and
- French branches of specially authorised firms whose registered office is located in a non-EEA state.

French reinsurance firms and their branches may also use the procedure if they carry on reinsurance activities exclusively.

2.2 To whom may (re)insurance business be transferred under the portfolio transfer procedure in your jurisdiction?

An insurance firm may transfer a (re)insurance portfolio to one or more:

- French insurance firms and their branches;
- Insurance firms whose state of origin is an EU member state or their branches established on the territory of the EU; or
- Insurance firms established in the state where the risk is located and licensed in that state.

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[4] http://www.acam-france.fr/transfert_portefeuille
[5] Article L. 310-10-1 of the FIC

A reinsurance firm may transfer a reinsurance portfolio to one or more (re) insurance firms established in France, another EU member state, an EEA member state or to their branches established in an EEA member state.

2.3 Can the procedure be used to transfer (re)insurance portfolios to a transferee/ office of a transferee based outside the EEA?

No, the provisions mentioned in 1.1 do not mention this possibility.

2.4 What types of portfolios may be transferred?

All or part of a portfolio of insurance contracts where the risk is located in an EU member state.

All or part of a portfolio of reinsurance contracts or claims to be paid.

It does not matter where the business was originally underwritten as long as it is carried on in either France or the EEA.

2.5 Do the provisions in relation to the transfer of reinsurance business apply only to pure reinsurers?

This point remains subject to discussion. On the face of the provision, it only applies to authorised reinsurers. This point was pointed out by academics and the official position of the ACP is awaited. In the absence of confirmation that the new procedure of article L.324-1-2 FIC is available, the traditional way (i.e. securing the consent of cedants) will be required for the reinsurance part.

2.6 If the answer to 2.5 is "yes", are there any means by which an insurer that wrote both insurance and reinsurance business could transfer the reinsurance business?

If the restrictive interpretation prevails (i.e. the transfer procedure only applies to pure reinsurers), the traditional way of getting the consent of the cedants will always apply (see 2.7).

2.7 Does the portfolio transfer process in your jurisdiction provide for the transfer of reinsurance/retrocession contracts protecting the (re)insurance business being transferred? If not, can the transfer of such protections be achieved by any other means?

No, but the transferor and the transferee may contractually agree on the transfer of such contracts if they obtain the consent of the other contracting party (unless this is not required under the relevant contract).

2.8 Can pure reinsurers who had ceased to conduct new business at 10 December 2007 use the procedure?

The position regarding transfer by reinsurers in run off is still a subject of debate under French law. However, on its face, article 324-1-2 FIC only applies to authorised Reinsurance Companies, i.e. not to reinsurance companies in run off.

3 Procedure

3.1 What body is responsible for approving transfers of (re)insurance business?

The French Regulator, l'Autorité de Contrôle Prudentiel ("ACP"), approves transfers of (re)insurance business, however, applying for approval to the ACP is not mandatory. The transferor and transferee may instead decide to seek the consent of the other contracting parties (the policyholders) in accordance with the French Civil Code unless this requirement is waived in the contract.

3.2 Are any other approvals/consents required?

If the transferee has its registered office in an EU state other than France, the regulator of that state must certify that the transferee meets solvency margin requirements and that it will continue to meet them after the transfer.

If the transferor is a branch located in an EU member state other than France of an insurance firm, the ACP has to notify and obtain the opinion of the regulator of that state.

If the transferor is an insurance firm and the risk of any transferring policy is located in an EU member state other than France, the ACP has to notify and obtain the consent of the regulator of that state.

Furthermore, the ACP is likely to want to be satisfied that the regulator of a non-EEA entity carrying on business in France (for example, by a branch) will not object to the transfer, however, the FIC makes no provision for this.

3.3 How is the application for approval made?

The transferor and transferee must submit a request to the ACP for approval.

The application will be reviewed by a special committee of the ACP, which meets 6 times a year (at regular 2 month intervals), at dates fixed at the beginning of each year. It is advisable to provide at least a draft of the application 6 weeks before the next scheduled meeting so that the request can be added to the agenda.

3.4 What supporting information has to be provided?

The following supporting information must be provided:

- transfer request duly executed by the authorised representative of the transferor;
- a decision of the transferee confirming its intention to purchase the portfolio;
- the board minutes of both transferor and transferee recording the decision to effect the transfer;
- copy of the notification to the workers' committee (if applicable);
- a draft transfer balance sheet (bilan de transfert) as at the preceding 31 December attaching a detailed list of financial investments;

- transfer agreement (convention de transfert);
- minutes of the extraordinary shareholders' meeting of both transferor and transferee at which a resolution to effect transfer was considered;
- the accounts as at 31 December of the preceding year of both transferor and transferee, including the coverage of regulated commitments (couverture des engagements réglementés) and the solvency margin (marge de solvabilité).
- statements showing the coverage of regulated commitments and solvency margins of the transferor and transferee after the transfer;
- a statement (i) recording the book value (valeur comptable) and the realisation value (valeur de réalisation) of all investments listed as assets and (ii) detailing the share of investments that corresponds to obligations to the insured and beneficiaries of the insurance contracts, when the transfer concerns firms underwriting life insurance or capitalisation transactions;
- if applicable, a list of the EEA states in which the insurance undertakings carry on their business through branches under the principle of freedom of establishment and/or carry on their insurance business under the principle of freedom to provide services.

The list of documents to be filed with the ACP for the approval of a portfolio transfer can be found at:

http://www.ceassur.fr/sections/procedures/transfert_de_portefe/downloadFile/attachedFile/CEAcompositiondossier0106.pdf?nocache=1140531361.33

3.5 Is there any requirement for any other party to provide any report in support of a proposed transfer? If so, what is the usual form and purpose of such a report?

No. An inspector of the ACP will control the financial aspects of the transfer, including satisfying itself that the transferee has the necessary margin of solvency. Where the transferee is based in another EEA state, the ACP will seek a solvency certificate from the transferee's home state regulator (see paragraphs 3.2 above and 3.7 below).

3.6 What criteria does the authorising body apply in deciding whether to approve a proposal?

The ACP will only approve a proposed (re)insurance transfer by an insurance firm if:

- it considers that the transfer will not adversely affect the interests of creditors and insured parties (including the policyholders of any policies which are to remain with the transferor);
- it has received all the documents/information to be filed with the application (see paragraph 3.4 above); and
- it has received any necessary certificates, opinions and/or consents from regulators of other EU member states (see paragraph 3.2 above). These

regulators have a three month period from receipt of the request by the ACP to provide any necessary documents.

The ACP will only approve the transfer of a reinsurance portfolio by a pure reinsurer if it has received a certificate from the regulator of the state where the transferee is established certifying that the transferee will meet the applicable solvency margin requirements after the transfer.

In addition, the transferee must have the authorisation required to enable it to carry on the business which is to be transferred in the place to which it is to be transferred.

3.7 How long does the authorising body take to make its decision?

Following submission of the request for approval to the ACP as described above in paragraph 3.3 with the supporting documents referred to in paragraph 3.4, the file will be passed to the inspector of the ACP which renders its opinion in around 6 weeks. ACP then presents the file at the next meeting of the special committee.

ACP arranges for notice of the proposed transfer to be published in the French Official Journal. Policyholders and creditors have a 2 month period from the date of publication to make observations on the proposed transfer.

As mentioned in paragraph 3.2 above, where the transfer includes risks located in another EEA state or business concluded through a branch in another EEA state, ACP must consult the regulators in those states and seek their opinion (in the case of branch business) or consent (in the case of risks located in that state). Any opinions or consents must be provided within 3 months from the date of receipt of the request from the ACP, failing which consent can be deemed to have been given.

Where the transferee is based in another EEA state, ACP must request the regulator in that state to provide a certificate confirming that the transferee will have the required solvency margin following the transfer (see paragraph 3.2 above). This certificate should be provided within 3 months of the date of receipt of the request from ACP. However, the ACP cannot presume that the solvency margin requirements will be met by the transferee after the transfer if the certificate is not received within that period.

The time between submitting the request for approval to the ACP to the ACP issuing its written decision can be up to 5 months.

3.8 Are there any requirements to give notice of the transfer to any parties other than the authorising body, and if so who are these parties and when must they be notified?

As stated in paragraph 3.7, ACP will publish notice of the transfer in the French Official Journal, which invites creditors (including policyholders, insured parties or beneficiaries in the case of a transfer by an insurance firm) and ceding companies (in the case of a transfer including reinsurance business) to comment on the proposed transfer within a 2 month period from the date of publication. Creditors' comments will be considered by ACP, but they have no power to prevent the transfer from occurring.

A transferor who is a pure reinsurer will also need to notify and obtain consent to the transfer from every cedant company whose contracts of reinsurance are to be transferred. A decision by the ACP to approve the proposed transfer will not be binding on cedants unless they have consented to it.

When the transferor intends to transfer both insurance and reinsurance business, the position is still not clear (see 3.5 above).

In addition, if the proposed transfer includes outwards reinsurance contracts, the reinsurance treaties may require the consent of the reinsurer and/or provide for termination rights of the reinsurer. In that case, the reinsurer will need to be notified and consent requested. There is no specific requirement to do this under the FIC.

Other regulators may also have to be consulted (see paragraph 3.2 above).

If the transfer results in the dissolution of the transferor, the Companies Registry will need to be informed.

3.9 Are there any publicity requirements in relation to portfolio transfers and if so, what are these?

In the case of a transfer by an insurance company, in addition to the notice published in the French Official Journal before the transfer is approved (see paragraph 3.8 above), the ACP will publish notice of its decision approving the transfer in the French Official Journal. Publication of notice of the decision renders the transfer binding on the insured, policyholders and beneficiaries of cover.

In the case of a transfer by a pure reinsurer, a decision approving the transfer will not be published. The transfer becomes binding following agreement by the cedants.

3.10 Does any party other than the authorising body have a right to raise objections to the transfer, and if so what would be the effect of such an objection?

Policyholders, cedant companies, reinsurers, beneficiaries of cover and creditors (Affected Parties) are given the opportunity to comment on the proposed transfer during a 2 month period following the initial notice published in the Official Journal[6].

The ACP will consider comments from Affected Parties. However, Affected Parties cannot prevent the transfer from occurring. In the case of portfolio transfers by an insurance firm, if the ACP considers that the transfer will adversely affect the interests of creditors and policyholders, it will not approve the transfer. If

[6] Article R. 324-1 of the FIC

the transfer is approved, policyholders have the opportunity to terminate their contracts within one month of the publication of the transfer approval in the Official Journal.

If a cedant company or reinsurer does not consent to the transfer of any reinsurance/retrocession contracts it is party to, these contracts may not be transferred.

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GERMANY

1 Statutory Framework

1.1 What are the statutory provisions governing the transfer of insurance and reinsurance portfolios in your jurisdiction?

The transfer of (re)insurance portfolios in Germany by supervised companies is governed by the German Insurance Supervisory Act (*Versicherungsaufsichtsgesetz*; "**VAG**"). Its provisions distinguish between (1) direct insurance (2) reinsurance portfolio transfers.

Insurance portfolio transfers of unregulated companies are governed by the general civil law provisions (3).

(a) Direct Insurance Portfolio Transfers

The transfer of direct insurance portfolios within Germany is governed by section 14 VAG.

Even though section 14 VAG is contained in the chapter relating to health insurance it is acknowledged that the transfer of direct insurance portfolios of any class is governed by section 14 VAG.

(b) Reinsurance Portfolio Transfers

Under German regulatory law a differentiation has to be made between (a) the transfer of reinsurance portfolios by mixed insurers and (b) the transfer of reinsurance portfolios by pure reinsurers.

(i) Mixed Insurers

The transfer of reinsurance portfolios by mixed insurance companies writing both direct insurance and reinsurance is governed by section 14 VAG.

(ii) Pure Reinsurers

The transfer of reinsurance portfolios by insurance companies writing exclusively reinsurance is governed by section 121 f VAG.

(c) Portfolio Transfers of non-regulated companies

Portfolio transfers of companies writing insurance which are not regulated and subject to the German supervisory system of the German Federal Financial Supervisory Authority (*Bundesanstalt für Finanzdienstleistungsaufsicht;* "**BaFin**"), because the exemptions according to section 1 para. 3 VAG apply (e. g. confederations of local governments; undertakings operating with narrow territorial limits), are not governed by the VAG.

Those insurance companies need to transfer (re)insurance portfolios according to the general German Civil Law which in particular requires the approval of every policyholder which is part of the portfolio (see section 415 German Civil Code).

1.2 Has the authorising body issued any guidelines on its approach to approval of portfolio transfers, and if so, where are these found?

The BaFin has not published any guidance on its approach to approval of portfolio transfers.

1.3 Are there any statutory or other provisions dealing with recognition of transfers concluded under the rules applying in other EEA States?

(a) Direct Insurance

(i) Insurance written in other EEA states by domestic companies domiciled in Germany via branches or cross-border provision of services

If a domestic insurance company transfers a portfolio of insurance contracts concluded in other EEA states via a branch or cross-border services to a company domiciled in a member state (including Germany), the approval of the competent supervisory authority of the transferor, i. e. the BaFin, is required according to section 14 para. 2 VAG.

The approval will be granted if (1) a certification has been filed from the supervisory authority of the home member state of the transferee stating that the transferee will dispose of own funds in the amount of the solvency margin; (2) the supervisory authorities of the EEA states in which the risks in the portfolio are situated have given their approval and (3) in the case of a portfolio transfer from a branch, the supervisory authority of the EEA state where the branch is located has been consulted.

(ii) Insurance written in Germany by companies domiciled in other EEA states via branches or cross-border provision of services

Pursuant to section 111d sentence 1 VAG any contract by which an insurance company domiciled in another EEA state transfers a portfolio of direct insurance contracts written in Germany via a branch or cross-border provision of services to a company domiciled in an EEA state (including Germany) requires approval by the competent supervisory authority of the transferor company in its home member state.

Also approval by the BaFin is required which will be granted if the interests of the insured are safeguarded and the continual fulfilment of the obligations arising out of the insurance contracts is proved.

If the insurance portfolio of a branch does not cover any risks situated in Germany, the Supervisory Authority merely states its opinion on the contract. If the Supervisory Authority does not comment on the request for approval or for an opinion within a period of three months this shall be deemed a tacit approval or positive statement of opinion.

(iii) Insurance written in other EEA states by foreign insurance company

There is no regulation for a transfer of a portfolio of insurance written by a company domiciled in another EEA state in that state to a German insurance company.

(b) Reinsurance

(i) Reinsurance written in other EEA states by companies domiciled in Germany via branches or cross-border provision of services

According to section 121 f para. 1 sentence 1 VAG, any portfolio transfer of a domestic reinsurance company to an insurance company domiciled in a member state (including Germany) requires the approval of the BaFin.

The approval will be granted if (1) a certification has been filed from the supervisory authority of the home member state of the transferee stating that the transferee will dispose of own funds in the amount of the solvency margin taking into account the portfolio transfer.

(ii) Reinsurance written in Germany by companies domiciled in other EEA states via German branches or cross-border provision of services.

There are no statutory provisions for the transfer of reinsurance portfolios written in Germany by companies domiciled in other member states via German branches or cross-border provision of services.

2 Scope of the portfolio transfer process

2.1 Who may use the portfolio transfer procedure in your jurisdiction?

(a) The following may use the portfolio transfer procedure in Germany for direct insurance transfers:

(i) German direct insurance entities:

(A) Section 14 para. 1 VAG regulates the transfer of a portfolio of direct insurance contracts written by a domestic insurance company in Germany to a domestic insurance company.

(B) Section 14 para. 2 sentence 1 VAG regulates the transfer of a portfolio of direct insurance contracts written by a domestic insurance company in other EEA states via branches or cross-border provision of services to another insurance company domiciled in an EEA state (including Germany) (see above 1.3(a)(i)).

(C) Section 14 para. 2 sentence 3 VAG regulates the transfer of a portfolio of direct insurance contracts written by a domestic insurance company in Germany to an insurance company domiciled in another EEA state.

(ii) Branches of insurance companies domiciled elsewhere in the EU/EEA / freedom of movement of services:

(A) Section 111 d sentence 1 VAG regulates the transfer of a portfolio of direct insurance contracts written in Germany by an insurance company domiciled in other EEA states via branches or cross-border provision of services to another insurance company domiciled in an EEA state (including Germany) (see above 1.3(b)(ii)).

(iii) [German branches of] Third country insurance entities:

(A) Section 108 para. 1, 3 VAG regulates the transfer of a portfolio of direct insurance written by a third country insurance company via a German branch to a German branch of another third country insurance company;

(B) Section 108 para. 2 VAG regulates the transfer of a portfolio of direct insurance written in Germany via a branch of a third country insurance company to an insurance company located in an EEA state (including Germany).

(b) In addition reinsurance portfolio transfers may be transferred under the portfolio transfer procedure in Germany by:

(i) Domestic direct insurance undertakings (who also usually have authorisation to conduct reinsurance business).

Section 14 VAG regulates the transfer of a reinsurance portfolio written in Germany by a domestic mixed insurance company (see 10.1(b)(i) above).

(ii) German reinsurance entities (who do not have authorisation to underwrite direct insurance business)

Section 121 f para. 1 and 2 VAG regulates the transfer of a portfolio of reinsurance contracts written by a domestic reinsurance company (see 10.1(b)(ii) above).

(iii) German branches of third country reinsurance entities:

Section 121 i para. 4 VAG regulates the transfer of a portfolio of reinsurance contracts written by a third country reinsurance company in Germany via a branch.

2.2 To whom may (re)insurance portfolios be transferred under the portfolio transfer procedure in your jurisdiction?

A (re)insurance portfolio may be transferred under the portfolio transfer procedure to the following parties:

(a) A (re)insurance entity domiciled and authorised in Germany;

(b) A (re)insurance entity domiciled and authorised in other EEA states;

(c) A German branch of a (re)insurance company domiciled and authorised in a third country.

2.3 Can the procedure be used to transfer (re)insurance portfolios to a transferee/office of a transferee based outside the EEA?

(a) Direct insurance:

See 2.1(a)(iii)(A).

Section 108 para. 1, 3 VAG regulates the transfer of a portfolio of direct insurance written by a third country insurance company via a German branch to a German branch of another third country insurance company.

(b) Reinsurance:

Domestic pure reinsurance companies and German branches of reinsurance companies located in third countries may transfer portfolios of reinsurance to a German branch of another third country (re)insurance company (see 121 f para. 2, 121 i para. 4 VAG).

2.4 What types of portfolios may be transferred?

Direct insurance and reinsurance portfolios; both non-life and life insurance portfolios may be transferred.

2.5 Do the provisions in relation to the transfer of reinsurance business apply only to pure reinsurers?

No, they also apply to direct insurers who also write reinsurance if they are transferring a reinsurance portfolio (see 2.1(b)(i) above).

2.6 If the answer to 2.5 is "yes", are there any means by which an insurer that wrote both insurance and reinsurance business could transfer the reinsurance business?

Not applicable.

2.7 Does the portfolio transfer process in your jurisdiction provide for the transfer of reinsurance/retrocession contracts protecting the (re)insurance business being transferred? If not, can the transfer of such protections be achieved by any other means?

There are no regulations providing for the automatic transfer of reinsurance/retrocession contracts protecting the (re)insurance business being transferred. Neither is there any mechanism obligating the reinsurer to continue the reinsurance/retrocession contracts with the transferee of the transferred (re) insurance portfolio.

The parties may and they usually do, however, agree on the transfer of the reinsurance/retrocession contracts. In the forefront of the transfer (re)insurers therefore usually obtain approval of the reinsurer.

2.8 Can pure reinsurers who had ceased to conduct new business at 10 December 2007 use the procedure?

Yes.

3 Procedure

3.1 What body is responsible for approving transfers of (re)insurance business?

The BaFin approves the transfer of (re)insurance portfolios.

3.2 Are any other approvals/consents required?

(a) Regulators in other states:

In addition to the approval of the BaFin, the following approvals are required in the case of a transfer of direct insurance portfolios:

(i) In case of a transfer of insurance portfolios written in other EEA states by a domestic insurance company via branches or cross-border provision of services to a company domiciled in a member state (including Germany):

– the approval of the supervisory authority of the EEA states in which the risks in the portfolio are situated, and

– in case of a branch also the consultation of the supervisory authority of the EEA state in which the branch is located

is necessary (section 14 para. 2 VAG; see 1.3(a)(i) above).

(ii) In the case of a transfer of insurance portfolios written in Germany by companies domiciled in other EEA states via branches or cross-border provision of services, the approval of the supervisory authority of the EEA state in which the transferor is domiciled is required (see sec. 111d sentence 1 VAG; see 10.3(a)(ii) above).

(iii) In the case of a transfer of a portfolio of direct insurance written in Germany via a branch of a third country insurance company to an insurance company located in an EEA state (including Germany), the approval of the state in which the risks in the portfolio are situated is required (see section 108 para. 2 sentence 2 VAG).

(b) Portfolio transfer of mutual insurance societies

Contracts transferring the portfolio of a mutual society to another company are subject to approval by the senior representative body before coming into effect (section 44 sentence 1 VAG).

3.3 How is the application for approval made?

The German law does not require a special form of the application. However, the application is practically always filed in writing simply because the written transfer agreement (written form requirement) has to be attached to the application.

Both parties have to apply for the approval of the BaFin. However, one party is usually authorised to file the application by the other party.

3.4 What supporting information has to be provided?

The following documents need to be provided with the application to the BaFin:

(a) Transfer agreement (this should identify all assets and liabilities allocated to the insurance portfolio individually) and a declaration that no other side agreements have been made (siehe Prölls, §14 Rn. 21);

(b) Audited annual accounts of the transferor company as at a date which is no more than 6 months prior to the date of the application;

(c) A valuation report of the assets and liabilities of the transferee and transferor with proof that the expectations of the policyholders as to the available surplus will not be impaired post transfer; and

(d) If the transfer is from a reinsurer or to an EEA state proof of equity capital to cover the required solvency margin calculation of the transferee post transfer;

(e) If the transfer is from a mutual society to an insurance corporation, a valuation report concerning the value of membership together with a compensation plan in favour of the members who will lose membership in the transfer;

3.5 Is there any requirement for any other party to provide any report in support of a proposed transfer? If so, what is the usual form and purpose of such a report?

No.

3.6 What criteria does the authorising body apply in deciding whether to approve a proposal?

(a) Where the insurance portfolio transfer is between direct insurers the BaFin must ensure that:

(i) the interests of the insured are safeguarded and

(ii) the continual fulfilment of the obligations arising out of the insurance contracts has been proved (section 14 para. 1 sentence 2 VAG).

As to (i) and (ii), these provisions are the result of an implementation of a decision of the German Constitutional Court. Formerly it was sufficient to prove that the transferee disposes of own funds in the amount of the solvency margin. This however did not ensure that the companies would adequately safeguard the insureds' interests. Even an inadequate consideration did not hinder the BaFin from giving its consent, if the interests were not yet seriously disregarded. The new provisions therefore ensure that the BaFin actively has responsibility for safeguarding the interests of the insured. This requires that the transfer does not lead to a material deterioration of the interests of the insured neither in a factual nor a legal regard. Therefore, the transfer must not devalue or undermine statutory or contractual claims of the insured against the insurer.

(b) Where a transfer relates to pure reinsurance portfolios only compliance with the solvency margin requirements is relevant (section 121f para. 1 sentence 3 VAG).

(c) Policyholders' interests have been statutorily defined by section 14 para 4 VAG where a transfer involves policies of every kind of insurance which promise a policyholder a participation in the insurer's surplus. It is required that the value of the transferee's surplus must be at least equal to that of the transferor. If this is not the case the BaFin cannot approve the transfer. This means a valuation of all assets and liabilities of the transferor and transferee must be carried out.

(d) If the portfolio transfer of a mutual society brings about a loss of membership this loss has to be compensated by an appropriate compensation payment (see section 44a VAG). The adequacy has to be ascertained by the BaFin within the application process.

3.7 How long does the authorising body take to make its decision?

Unless an overseas regulator has to be consulted the decisions will usually take 2 to 3 months.

The BaFin is subject to section 75 of the German Administrative Court Procedures Act (*Verwaltungsgerichtsordnung*, "**VwGO**") and, therefore, should react to any application for a transfer within three months. However, the consequence of failure to meet this timeframe is that the applicant would have the right to file a suit against the BaFin before the administrative court pleading illegitimate inactivity.

In case of a transfer according to section 111d VAG (transfer of insurance portfolio by insurer of other EEA state), the consent of the BaFin will even be assumed if the BaFin does not react to the application for approval within three months.

However, if another EU/EEA Member State has to be consulted as part of the process then their consent must be obtained and relevant solvency certificates must be provided in order for the BaFin to approve the transfer. Under German law there is no option for the BaFin to assume consent has been provided if a Member State does not respond within a certain timeframe. An actual response is required. This can cause delay to the process.

3.8 Are there any requirements to give notice of the transfer to any parties other than the authorising body, and if so who are these parties and when must they be notified?

The transferee must notify policyholders of the transfer after the transfer has come into effect (section 14 para. 7 sentence 2 VAG; section 121f para. 1 sentence 6 VAG). The notice should state that the policy has been transferred, the reasons for the transfer and the consequences of it.

3.9 Are there any publicity requirements in relation to portfolio transfers and if so, what are these?

Once the BaFin has approved the transfer it must be publicised in the German Federal Gazette (section 14 para. 7 sentence 1 VAG; section 121 para. 1 sentence 5 VAG).

The BaFin also usually publishes the insurance portfolio transfers it approves in its monthly BaFinJournal.

3.10 Does any party other than the authorising body have a right to raise objections to the transfer, and if so what would be the effect of such an objection?

(a) Policyholders and beneficiaries under the policies cannot object to the transfer if BaFin approves it, except by challenging the BaFin's decision through administrative law mechanisms.

(b) Reinsurers of the insurance portfolio can only object to the transfer if the reinsurance contract provides for such objection.

(c) If certain turnover thresholds are reached then the German Federal Cartel Office or the European Commission have to be notified of the proposed insurance portfolio transfer. These bodies could object to the transfer if it would have a negative impact on competition among insurers. The BaFin must not approve the transfer in this case.

(d) Whilst employees or employee representatives have no right to object directly to the insurance portfolio transfer, the interests of employees do have to be taken into account. The works council has to be informed prior to the insurance portfolio transfer if it will result in a business alteration under section 111 Works Constitution Act (Betriebsverfassungsgesetz; "BetrVG"). This will be the case in most large insurance portfolio transfers. The works council may request to enter into negotiations about a compromise which will include a social plan. If these negotiations are ongoing then the insurance portfolio transfer can be blocked. If there will be a change in the company organisation the economic committee might have to be informed according to Section 106 para. 3 no. 6, para. 3 no. 9 BetrVG.

(e) As already mentioned under 3.2 the senior representative body of a mutual society must approve a portfolio transfer (section 44 sentence 1 VAG). Therefore, he is entitled to raise objections.

Data Protection

Under German law there are strict data protection rules. Therefore, in the preparation phase of an envisaged transfer, i. e. while due diligence proceedings are being conducted by numerous transferees, the insurance contracts in question should be made anonymous.

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IRELAND

1 Statutory Framework

1.1 What are the statutory provisions governing the transfer of insurance and reinsurance portfolios in your jurisdiction?

(a) Insurance:

Section 13 of the Assurance Companies Act 1909 (as amended);

Section 36 of the Insurance Act 1989 (as amended);

Article 12 of the European Communities (Non-Life Insurance) Framework Regulations 1994 (as amended); and

Article 35 of the European Communities (Life Assurance) Framework Regulations 1994 (as amended).

(b) Reinsurance:

Regulation 22 of the European Communities (Reinsurance) Regulations 2006 (2006 Regulations)

1.2 Has the authorising body issued any guidelines on its approach to approval of portfolio transfers, and if so, where are these found?

(a) Insurance:

No.

Note: The Central Bank of Ireland (the Central Bank) is the supervisory authority in Ireland for the purposes of Article 12 and Article 35 referred to above, giving it a significant role in the portfolio transfer approval process. However, the authority to sanction portfolio transfers is vested in the High Court of Ireland (the High Court) and it is the 'authorising body' for this purpose.

(b) Reinsurance:

No 'authorising body' is designated by the 2006 Regulations for this purpose.

The 2006 Regulations do not prescribe a specific approach or process for the approval of reinsurance portfolio transfers. They provide that an authorised reinsurance undertaking established in Ireland may transfer its portfolio of reinsurance contracts to another person 'without restriction'. The 2006 Regulations also provide that an Irish reinsurance undertaking proposing to acquire a portfolio of reinsurance contracts must, prior to doing so, obtain a solvency certificate from the Central Bank to confirm that it will have the appropriate solvency margin after the transfer occurs. No other requirements are prescribed.

In the absence of a statutory process for effecting a transfer of reinsurance contracts, it is likely that an Irish-authorised reinsurer can transfer its policies in one of three ways:

(i) With the agreement of each cedant and the transferee, i.e. by individual novation, assuming novation is possible under the governing law of the policy. In connection with this, the transferor and the transferee may wish to enter into a transfer agreement, which would govern the terms of the proposed novations and may provide for 100% retrocession of reinsurance contracts to the transferee, in any case where the cedant does not agree to novation. The process of individual novation can be difficult and time consuming.

(ii) Merger, either:

   (A) of two Irish incorporated companies by a Scheme of Arrangement effecting a merger (**SOAM**) under Sections 201 to 203 of the Companies Act 1963 or, if those companies are public limited companies, under the European Communities (Mergers and Divisions of Companies) Regulations 1987; or

   (B) of an Irish-incorporated company with a company incorporated in another Member State of the European Economic Area (EEA) by way of a cross border merger (**CBM**) carried out under the terms of the European Communities (Cross-Border Mergers) Regulations 2008 (as amended) (the 2008 Regulations).

(iii) Scheme of arrangement (**SOA**): In addition to an SOAM, Section 201 of the Companies Act, 1963 allows the High Court to approve a broad variety of schemes. These are likely to include a scheme under which creditors (the cedants) forego their claim against the transferring reinsurer in return for an assumption by the transferee of that reinsurer's liabilities under the reinsurance contracts. An SOA would be suitable in circumstances where the transferor and transferee do not wish to merge.

For a CBM where an Irish-incorporated company is the surviving merged company (Successor Company), the 'authorising body' is the High Court. For a CBM in which the Successor Company is a company incorporated in another EEA Member State, the authorising body is the designated authority for the purpose of Directive 2005/56/EC in that EEA Member State.

In addition, certificates confirming compliance with certain pre-merger requirements (Pre-Merger Certificates) are required from the authorising bodies in each EEA Member State in which a merging company is incorporated. In Ireland, the authorising body for these certificates is the High Court.

For an SOA and an SOAM, the authorising body is the High Court.

Relevant regulators would also be involved in the process. For example, even if effected by CBM, a portfolio transfer would generally require a certificate of solvency under Directive 2005/68/EC (the Reinsurance Directive) (see 14.3 below).

1.3 **Are there any statutory or other provisions dealing with recognition of transfers concluded under the rules applying in other EEA States?**

(a) Insurance:

There are no specific statutory provisions on this point. Transfers validly carried out under other EEA Members States' laws would be recognised in Ireland, on the basis that Directives 92/49/EEC (the Third Non-Life Directive) and 2002/83/EC (the Consolidated Life Directive) provide that each Member State (i) shall authorise insurers with head offices in its territory to transfer all or part of their portfolios of contracts and shall set the conditions for same; and (ii) a transfers so authorised shall be automatically valid against policyholders, the assured persons or any other person having rights or obligations arising out of the contracts transferred. The effect is that each Member State should recognise the effectiveness of such transfers.

(b) Reinsurance:

Transfers validly carried out under other EEA Members States' laws would be recognised in Ireland, on the basis that the Reinsurance Directive contains a similar provision in respect of reinsurers as that described above for insurers. Although the Reinsurance Directive does not specifically refer to transfers being automatically binding, the 2006 Regulations provide that a transfer by or to an Irish-authorised reinsurer in accordance with those Regulations will be binding on the cedants and any other person having rights or obligations under the contracts transferred.

2 Scope of the portfolio transfer process

2.1 **Who may use the portfolio transfer procedure in your jurisdiction?**

(a) Insurance:

Irish-authorised insurers where the transfer is to an EEA-authorised insurer (including another Irish-authorised insurer).

(b) Reinsurance:

Irish authorised reinsurers. (Note comments above regarding absence of a prescribed 'procedure' under Irish law).

An Irish incorporated reinsurer may merge with another reinsurer incorporated in Ireland or in another EEA Member State. In principle, a reinsurer incorporated in Ireland may enter into an SOA where the reinsurer assuming its reinsurance liabilities is in Ireland, the EEA or elsewhere.

2.2 **To whom may (re)insurance business be transferred under the portfolio transfer procedure in your jurisdiction?**

Insurance:

Portfolios of insurance contracts may be transferred to an insurance undertaking authorised in any EEA Member State, including Ireland, subject to the transferee fulfilling the necessary conditions as to authorisation and solvency.

Reinsurance:

Portfolios of reinsurance contracts may be transferred to another person "without restriction". However, as described at paragraph 1.2, there is no statutory procedure to effect transfer. Paragraph 1.2 sets out certain restrictions that apply depending on the transfer mechanism used. In practice, if a CBM, SOA or SOAM is to be used to effect the transfer, the High Court would generally require strong evidence that cedants would not be materially adversely affected by the transfer and that the Central Bank did not object to the transfer. See also paragraph 2.3 below.

2.3 Can the procedure be used to transfer (re)insurance portfolios to a transferee/ office of a transferee based outside the EEA?

(a) Insurance:

No. The availability of alternative options for transfer outside of the EEA is limited by provisions of the 1909 Act.

(b) Reinsurance:

In principle, yes, given that in the 2006 Regulations permit transfer "without restriction". However, if an SOA is used, the High Court is likely to require a high standard of proof of adequate regulation and solvency to ensure that a transfer to a reinsurer outside the EEA does not have a material adverse effect on cedants.

2.4 What types of portfolios may be transferred?

(a) Insurance:

All or part of the insurance undertaking's portfolio of insurance contracts may be transferred, once the contracts are governed by the laws of Ireland or another EEA Member State. There are no limits or restrictions as to classes of insurance that may be transferred. This is subject to the Central Bank receiving an authorisation and solvency certificate where the transfer is to an insurer authorised in another EEA Member State.

(b) Reinsurance:

The 2006 Regulations do not provide for any restrictions.

2.5 Do the provisions in relation to the transfer of reinsurance business apply only to pure reinsurers?

Yes.

2.6 If the answer to 2.5 is "yes", are there any means by which an insurer that wrote both insurance and reinsurance business could transfer the reinsurance business?

Reinsurance contracts governed by Irish law issued by a transferring insurer could potentially be transferred by means of an ancillary order of the Irish High Court (see below) once this is necessary in order to ensure that the transfer of direct insurance contracts is fully and effectively carried out. However, if reinsurance policies are governed by the laws of another jurisdiction, individual novation may be necessary.

The Insurance Act 1989 (1989 Act) provides that the High Court may make ancillary orders in conjunction with a portfolio transfer. Although the 1989 Act does not grant specific jurisdiction to transfer reinsurance contracts, the High Court has a broad power to make ancillary orders where necessary to ensure that a transfer is fully and effectively carried out. Such an order would be binding under Irish law. On the basis that the High Court's authority to grant such orders derives from domestic Irish legislation, as distinct from an EU directive, it is not clear whether other jurisdictions would recognise such orders as effective.

2.7 Does the portfolio transfer process in your jurisdiction provide for the transfer of reinsurance/retrocession contracts protecting the (re)insurance business being transferred? If not, can the transfer of such protections be achieved by any other means?

(a) Insurance:

An ancillary order could be obtained from the High Court to transfer reinsurance contracts protecting the insurance business being transferred once this is necessary in order to ensure that the transfer of direct insurance contracts is fully and effectively carried out (see above).

If the High Court were to refuse an order or if the order were not recognised under the law governing the reinsurance contract(s) concerned, reinsurance contracts could be individually novated. Alternatively, the benefit and burden of reinsurance contracts may transfer as part of the assets and liabilities transferred to the successor company on a CBM. The transfer of all assets and liabilities of the transferring company should be recognised in all EEA Member States.

(b) Reinsurance:

There is no provision for ancillary orders on a transfer of reinsurance business. Transfer could be achieved by individual novation. In addition, the benefit and burden of retrocession contracts may transfer on a CBM or, by means of an order of the High Court or ,subject to recognition under their governing laws (if not Irish), on an SOA or SOAM.

2.8 Can pure reinsurers who had ceased to conduct new business at 10 December 2007 use the procedure?

Pure reinsurers in run off at 10 December 2007 fall outside the scope of relevant provisions of the 2006 Regulations and the Reinsurance Directive. However, this would not preclude those reinsurers from using a CBM, SOA or SOAM to transfer reinsurance contracts.

3 Procedure

3.1 What body is responsible for approving transfers of (re)insurance business?

(a) Insurance:

See paragraph 1.2.

(b) Reinsurance:

See paragraph 1.2.

3.2 Are any other approvals/consents required?

(a) Insurance:

Yes.

The ‘agreement’ of the supervisory authorities in the EEA Member States (a) where the risks are situate (for a non-life transfer) or (b) of the commitment (for a life transfer) is required.

While not an approval/consent, the supervisory authority of the transferee must provide a certificate to confirm that the transferee possesses the necessary authorisation and will have the necessary solvency margin after taking the transfer into account.

In practice, the High Court requires confirmation from the Central Bank that it does not object to a transfer.

(b) Reinsurance:

While not an approval/consent, under the Reinsurance Directive, the transfer (to an EEA reinsurer) may not be effected, unless the supervisory authority of the transferee provides a certificate confirming that the transferee will possess the necessary solvency margin after taking the transfer into account.

Depending upon the mechanism used to effect the transfer, other approvals/consents may become necessary (see paragraph 1.2).

In practice, in a CBM, SOA or SOAM, the High Court is likely to require confirmation that the Central Bank has no objections to the transfer.

3.3 How is the application for approval made?

(a) Insurance:

By way of an application to the High Court, involving:

- A hearing for directions; at which the High Court is asked to approve the proposals put before it for a range of preliminary matters such as advertising and policyholder notification.
- A final hearing; at which the High Court is asked to approve the transfer.

During the High Court process, the directors of the transferor and the transferee verify a range of matters in furtherance of the Court application to have the Scheme sanctioned.

The Central Bank has a significant influence over whether the portfolio transfer proceeds (1.2), and should be involved and updated continually throughout the process. Drafts of key High Court documents should be provided to the Central Bank for review, in advance of their filing with the High Court.

(b) Reinsurance:

No application process is provided for in the 2006 Regulations.

For a CBM, applications must be made to the designated authorities for the purpose of Directive 2005/56/EC with respect to each of the merging entities. For a CBM into Ireland, this will involve application for Pre-Merger Certificates to the High Court and the designated authority in the transferee's jurisdiction and application to the High Court for final approval of the merger.

For an SOA or an SOAM, application must be made to the High Court.

3.4 What supporting information has to be provided?

(a) Insurance:

The key Court documents include a Petition, which seeks the Court's sanction of a Scheme for the transfer, and a Grounding Affidavit.

The following information is typically required for a portfolio transfer by an Irish authorised insurer

- Information as to the background to, and rationale for, the proposed transfer.
- Information in relation to each of the transferor and transferee.
- Information on the transferring policies.
- Information on the assets and liabilities of each entity, including premium income, etc.
- Information regarding proposed advertising and notification steps in connection with the transfer.
- Copies of basic corporate and regulatory (and other) documents.
- Actuarial support (see paragraph 3.5 below)

(b) Reinsurance:

The Central Bank (or any other EEA Member State regulator) may require certain information in order to provide a solvency certificate (3.2 above), including financial and actuarial information (see paragraph 3.5 below).

The mechanism used to effect the transfer (see paragraph 3.2) will determine the supporting documentation needed.

- For a CBM, the key documentation would include 'common draft terms of merger' and a 'directors' explanatory report' (and, subject to certain exceptions, an independent expert's report on the common draft terms).
- For an SOA or an SOAM, the key documentation would include a Petition to the High Court and Grounding Affidavit.

3.5 **Is there any requirement for any other party to provide any report in support of a proposed transfer? If so, what is the usual form and purpose of such a report?**

(a) Insurance:

An independent actuarial report is required for a life assurance portfolio transfer.

An independent actuarial report is not mandatory for a non-life insurance portfolio transfer. However, the High Court and the Central Bank expect actuarial review of the impact of the transfer on the transferor's and transferee's policyholders. In certain circumstances, it may be prudent to have this review carried out by an independent actuary.

(b) Reinsurance:

No specific requirements are prescribed.

However, the Central Bank (or any other EEA Member State regulator) may require certain information in order to provide a solvency certificate (see paragraph 3.2), including financial and actuarial information.

The mechanism used to effect the transfer will determine the additional supporting documentation needed (including reports). (See paragraphs 1.2 and 3.4). In practice the High Court is likely to require an actuarial report in connection with an SOA, SOAM and in a CBM where the successor company is incorporated in Ireland.

3.6 **What criteria does the authorising body apply in deciding whether to approve a proposal?**

(a) Insurance:

No prescriptive set of criteria are applied by the High Court as the 'authorising body' (or the Central Bank, as the Irish supervisory authority).

However, a key consideration for both the High Court and the Central Bank is the issue of neither company's policyholders being materially adversely affected by the transfer. The Court focuses on the findings of the actuarial report and other financial information (such as audited and management accounts) produced to the Court for this purpose.

(b) Reinsurance:

Irrespective of the mechanism of transfer, if High Court approval is needed for the transfer, cedant and creditor protection issues (particularly ensuring that cedants are not materially adversely affected by the transfer) are the key factors considered by the High Court.

3.7 **How long does the authorising body take to make its decision?**

For all High Court approval processes, the Court normally makes its Order orally at the end of the Hearing. The perfected (written) order is generally issued within a week of that date.

3.8 Are there any requirements to give notice of the transfer to any parties other than the authorising body, and if so who are these parties and when must they be notified?

Under Irish law:

(a) Insurance:

The Central Bank must notify the supervisory authorities of the Member State:

- where the risks to be transferred are situate (non-life) or
- of the commitment (life).

Additionally:

- Life transfers: policyholders must be individually notified in advance of the hearing and provided with copies of certain documentation (including the Petition, Scheme and actuarial report)
- Non-life transfers: there is no equivalent requirement to notify policyholders individually. However this is often done.

(b) Reinsurance:

None under the 2006 Regulations or the Reinsurance Directive.

Depending upon the mechanism used to effect the transfer (1.2), there may be a requirement to give notice to certain persons or bodies.

- For a CBM, various notices must also be given, including notices to (a) the Registrar of Companies in Ireland (and the relevant designated authority for such notices in the EEA Member State in which the transferee is incorporated), (b) shareholders to convene any necessary meetings, and (c) potentially, employees and creditors.
- For an SOA or SOAM, various notices must potentially be given, depending upon the circumstances, including to (a) shareholders and/or creditors regarding any necessary meetings to be convened and (b) affected debenture holders. Creditor (cedant) meetings are mandatory in SOAs and shareholder meetings are mandatory in SOAMs.

3.9 Are there any publicity requirements in relation to portfolio transfers and if so, what are these?

As a matter of Irish law:

(a) Insurance:

Notice must be published in:

- Iris Oifigiúil (the Irish official gazette) prior to the final High Court hearing, and again following the effective date of the transfer
- Two daily newspapers in Ireland following the transfer (as a matter of practice, this is usually also done prior to the final High Court hearing)

Publication must also take place in accordance with the law of any Member State where risk is situate.

The High Court may also direct further publication/advertising depending on the circumstances.

(b) Reinsurance:

None under the 2006 Regulations or the Reinsurance Directive.

Depending upon the mechanism used to effect the transfer (1.2) there may be publicity requirements.

- For a CBM, this would include potentially (a) advertising for the benefit of creditors and (b) publication of certain documents by the relevant designated authority for the purpose of Directive 2005/56/EC (in Ireland, this would be by the Companies Registration Office).
- For an SOA or SOAM, this could include publication of certain procedural notices (e.g. for the convening of meetings) and advertising the proposals in appropriate newspapers and in Iris Oifigiúil.

3.10 Does any party other than the authorising body have a right to raise objections to the transfer, and if so what would be the effect of such an objection?

(a) Insurance:

Yes.

An objection could be raised by the supervisory authorities in the Member States:

- where the risks to be transferred are situate (non-life) or
- of the commitment (life).

Although not an 'objection', the supervisory authority of the transferee could withhold the solvency certificate required in connection with a transfer. In that case, the transfer could not proceed.

The Central Bank could object to the proposal, in which case the High Court would be unlikely to sanction the transfer.

Policyholders could object to the proposed transfer, and could appear before the High Court to voice their concerns. The High Court has a discretion to hear and take into account any objectors.

(b) Reinsurance:

None under the 2006 Regulations or the Reinsurance Directive.

However, depending upon the mechanism used to effect the transfer (see paragraph 1.2) certain parties may have a right to raise an objection to the transfer.

- For a CBM, employees and creditors (including cedants) may raise objections to the proposals, possibly in Court as well as during the transfer process.

- For an SOA, the cedants and other creditors may dissent/object to the transfer.
- For an SOAM, cedants, other creditors or shareholders may object.

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ITALY

1 Statutory Framework

1.1 What are the statutory provisions governing the transfer of insurance and reinsurance portfolios in your jurisdiction?

The Italian Code of Private Insurance of Legislative Decree 209 of 7 September 2005 governs (re)insurance business transfers in Italy.

The Istituto per la Vigilanza sulle Assicurazioni Private e di Interesse Collettivo (the “ISVAP”) has issued two regulations in respect of insurance portfolio transfers. These are as follows:

(a) Regulation 14 of 18 February 2008 “Regulation Concerning the Definition of the Procedures for the Approval of Changes to the Articles of Association and to the Scheme of Operations, for the Authorisation of the Portfolio Transfers and Mergers and Divisions Referred to in Title XIV of Legislative Decree 209 of 7 September 2005 – Code of Private Insurance” (“Regulation 14”). This regulation sets out provisions for the transfer of direct insurance portfolios.

(b) Regulation 33 of 10 March 2010 “Regulation Concerning the Access and Performance of Reinsurance Activity Referred to in Titles V, VI, XIV, XVI of Legislative Decree 209 of 7 September 2005 – Code of Private Insurance” (“Regulation 33”). This regulation sets out the provisions relating to transfers of reinsurance portfolios.

1.2 Has the authorising body issued any guidelines on its approach to approval of portfolio transfers, and if so, where are these found?

No.

1.3 Are there any statutory or other provisions dealing with recognition of transfers concluded under the rules applying in other EEA States?

The recognition of transfers concluded under the rules applying in other EEA states is dealt with by articles 199 and following of the Italian Code of Private Insurance. The ISVAP has also issued guidance concerning this in Regulation 14.

In summary, the position is that the ISVAP, to recognize the transfers concluded under the rules applying in other EEA States, verifies if such operation was authorized by the Authorising body of such State, and also if the solvency margin statement respects the limits under the Italian Code of Private Insurance.

2 Scope of the portfolio transfer process

2.1 Who may use the portfolio transfer procedure in your jurisdiction?

Under articles 198, 199, 200 and 202 of the Italian Code of Private Insurance the following may use the portfolio transfer procedure in Italy:

(a) (Re)insurers with their Head Office in Italy;

(b) Italian branches of (re)insurers whose Head Office is in another EEA state;

(c) Italian branches of (re)insurers whose Head Office is outside of the EEA.

2.2 **To whom may (re)insurance business be transferred under the portfolio transfer procedure in your jurisdiction?**

According to the articles mentioned above, (Re)insurance business may be transferred to the following under the portfolio transfer procedure in Italy:

(a) (Re)insurers whose Head Office is in Italy;

(b) Italian or other EEA branches of (re)insurers whose Head Office is in the EEA; and

(c) Italian branches of (re)insurers whose Head Office is outside the EEA.

2.3 **Can the procedure be used to transfer (re)insurance portfolios to a transferee/ office of a transferee based outside the EEA?**

Only to Italian branches of (re)insurers whose Head Office is outside of the EEA.

2.4 **What types of portfolios may be transferred?**

Life and non-life, direct insurance and reinsurance portfolios.

2.5 **Do the provisions in relation to the transfer of reinsurance business apply only to pure reinsurers?**

No, they apply to those who also write direct business.

2.6 **If the answer to 2.5 is "yes", are there any means by which an insurer that wrote both insurance and reinsurance business could transfer the reinsurance business?**

See 2.5 above.

2.7 **Does the portfolio transfer process in your jurisdiction provide for the transfer of reinsurance/retrocession contracts protecting the (re)insurance business being transferred? If not, can the transfer of such protections be achieved by any other means?**

No.

2.8 **Can pure reinsurers who had ceased to conduct new business at 10 December 2007 use the procedure?**

Yes, providing that the supervisory authority in their home state has given its consent to the transfer.

3 Procedure

3.1 **What body is responsible for approving transfers of (re)insurance business?**

The ISVAP.

3.2 Are any other approvals/consents required?

No. However, according to article 168 of the Italian Code of Private Insurance, policyholders domiciled in Italy are entitled to cancel their contracts within 60 days from the publication of the authorisation to the transfer if the contracts are transferred to a (re)insurer with its Head Office outside of Italy or to foreign branch of a (re)insurer with its Head Office in Italy. This is also the case where the transfer takes place under the rules of another member state.

3.3 How is the application for approval made?

The application for authorisation, according to article 12, point 2 and article 13, point 2 of Regulation 14/2008, shall be submitted to the ISVAP, jointly or individually, by the transferor and the transferee, and supported by the information referred to in article 14 of Regulation 14/2008, set out in 3.4 below.

3.4 What supporting information has to be provided?

The following supporting information has to be provided:

(a) copy of the resolution about the transfer passed by the corporate bodies of the ceding and of the accepting undertaking according to the competences envisaged by the articles of association;

(b) report containing the description of the portfolio to be transferred, information on the contracts and the asset and liability items to be transferred and of the objectives to be achieved through the operation;

(c) statement relating to the solvency margin:

  (i) of the ceding and of the accepting undertaking before the transfer, drawn up as at the date of portfolio valuation; if the accepting undertaking is required to calculate the adjusted solvency in compliance with article 217 of the decree, a statement relating to the adjusted solvency margin at the same date;

  (ii) of the accepting undertaking after the transfer, drawn up as at the date of portfolio valuation and as at 31 December of the year when the transfer becomes effective, with the indication of the assumptions adopted for the estimate of the elements eligible for the available margin and on the amount of the margin required; if the accepting undertaking is required to calculate the adjusted solvency in compliance with article 217 of the decree, a statement relating to the adjusted solvency margin at the same dates;

(d) statement of assets representing technical provisions:

  (i) of the ceding and of the accepting undertaking before the transfer, drawn up as at the date of portfolio valuation;

  (ii) of the accepting undertaking after the transfer, drawn up as at the date of portfolio valuation;

(e) financial positions:
   (i) of the ceding and of the accepting undertaking before the transfer, drawn up as at the date of portfolio valuation; if the accepting undertaking is required to draw up consolidated accounts, the consolidated financial position as at the same date;
   (ii) of the accepting undertaking after the transfer, drawn up as at the date of portfolio valuation and as at 31 December of the year when the transfer becomes effective; if the accepting undertaking is required to draw up consolidated accounts, the consolidated financial position as at the same dates;

(f) profit and loss account:
   (i) of the ceding and of the accepting undertaking before the transfer, drawn up as at the date of portfolio valuation; if the accepting undertaking is required to draw up consolidated accounts, the consolidated profit and loss account as at the same date;
   (ii) of the accepting undertaking after the transfer, drawn up as at the date of valuation of the portfolio transfer and as at 31 December of the year when the transfer becomes effective; if the accepting undertaking is required to draw up consolidated accounts, the consolidated profit and loss account as at the same date;

(g) certified estimate of the technical provisions to be transferred. Failing a certified estimate, if the reference date of valuation of the portfolio does not coincide with the closing date of the financial year, the ceding undertaking shall enclose a report by the auditing actuary certifying the adequacy of the technical provisions to be ceded; if the reference date is later than the application date, the report shall describe all the assumptions and methods used and shall certify their consistency for the assessment of the technical provisions to be transferred.

(h) report on the effects of the transfer on the organisational management and peripheral structure of the accepting undertaking. When the portfolio to be transferred concerns class 10 - Motor vehicle liability, the report shall indicate any changes to the claims representatives in member States;

(i) report on the changes made to the internal control and risk management systems and to anti money laundering procedures;

(j) IT systems integration plan in which the following are specified:
   (i) environments, functions, procedures, applications and data bases involved in the integration process;
   (ii) the timescales associated with each integration phase, with particular attention to the migration of data bases and to the dates on which the integration of portfolios (premiums, claims etc.) will be completed;

(iii) the units and organisational centres which will be assigned the controls and monitoring of the entire integration process;

(k) copy of the communication that the accepting undertaking proposes to send to the policyholders being transferred providing information on the corporate name and head office of the accepting undertaking and on the intermediary to which the contract has been assigned;

(l) information on the use of the trademarks of the ceding undertaking after the transfer has been effected.

It is also to be noted that:

(a) When the portfolio transfer is effected by means of an increase in the capital of the accepting undertaking a copy of the resolution by the corporate bodies of the accepting undertaking regarding the capital increase and the sworn report of the expert appointed by the Court certifying adequacy of the transfer shall be enclosed with the application in addition to the supporting information referred to above at (a) to (l).

(b) When the portfolio transfer is effected by means of a contract of transfer, a copy of the contract, for which ISVAP has granted a conditonal authorisation, containing information about the contracts and the asset and liability items to be transferred as well as the estimate, if any, drawn up by a third party expert or, failing such estimate, the description of the criteria for determining the price shall be enclosed with the application in addition to the supporting information referred to above at (a) to (l)

(c) The documents enclosed with the applications referred to in articles 12 and 13 shall be drawn up according to the standard forms envisaged by the regulations in force and, in case of a ceding undertaking with head office in a third State, the documents, if drawn up in a foreign language, shall be accompanied by a translation into Italian.

(d) In the event that the accepting undertaking has its head office in another member State the relevant documents referred to in this article shall be replaced by attestation by the supervisory Authority of the accepting undertaking pursuant to article 16 (conditions for authorising the transfer of portfolio of Italian insurance undertakings).

3.5 Is there any requirement for any other party to provide any report in support of a proposed transfer? If so, what is the usual form and purpose of such a report?

The ISVAP can request reports from independent parties about the transferee/transferor if it wishes.

3.6 What criteria does the authorising body apply in deciding whether to approve a proposal?

Different criteria apply depending on the nature of the transfer (whether the operation concerns the transfer of an insurance or reinsurance portfolio) and the type of transferee and transferor (where the insurance/reinsurance company is based – i.e. Italian, member State or third country insurer or reinsurer).

In general terms, it is to be noted that articles 198, 199 and 200 of the Italian Code of Private Insurance and Regulation 14 regulate insurance portfolios transfers applied by insurers or by insurers that also underwrite reinsurance.

Moreover, article 202 of the Italian Code of Private Insurance and Regulation 33 regulate reinsurance portfolios transfers applied by pure reinsurers or by insurers that also underwrite reinsurance.

Such criteria are as follows:

(a) Transferor and transferee are insurance companies with registered offices in Italy
    (i) The transferee must be authorised to perform the class of activities subject to the transfer and meet the actuarial reserve and solvency margin required (taking into account the transferred activities) after the transfer;
    (ii) The transferee must meet the requirements in the Italian Code of Private Insurance to carry out insurance business (Chapter II, Title II);
    (iii) The consent of the supervisory authority in the home state of the undertaking or the member state in which the risks are situated, including under the freedom to provide services, is required for insurance portfolio transfers;
    (iv) Where the transfer includes the portfolio of a branch established in another member state the consent of the supervisory authority in that member state (or the member state where the obligation or risk is underwritten) is required;
    (v) The portfolio cannot be transferred to a branch outside Italy of a non-EEA insurance undertaking.
(b) Transferor is an insurance company with its registered offices in Italy and the transferee is an insurance undertaking with registered offices in another member state
    (i) The supervisory authority of the transferee's home member state certifies that the transferee has the required authorisations to carry out the business subject to the transfers, that the transferee has the actuarial reserve and solvency margin required (taking into account the transferred business) after the transfer;
    (ii) The transferee must meet the requirements in the Italian Code of Private Insurance to carry out insurance business (Chapter II, Title II);
    (iii) The portfolio cannot be transferred to a branch outside Italy of a non-EEA insurance undertaking.

(c) Transferor is an insurance company with its registered offices in Italy and the transferee is an insurance undertaking with registered offices in a non EEA state

  (i) The portfolio must be transferred to a branch of the non-EEA insurance undertaking in Italy;

  (ii) The transferee must meet the requirements in the Italian Code of Private Insurance to carry out insurance business (Chapter II, Title II);

  (iii) The portfolio must include undertakings and risks underwritten in Italy or in the non-EEA state where the transferee is established. It can also include other risks in addition to these, but only if the company has complied with the regulatory requirements applicable to pursuing insurance business in the relevant states;

  (iv) The transferee meets the actuarial reserve and solvency margin required (taking into account the transferred activities) after the transfer.

It is to be noted that sections (a), (b) and (c) concern the transfer of insurance business, regardless of the involved companies positions (whether they are insurers or insurers that also write reinsurance).

(d) Transferor is a reinsurance company with its registered offices in Italy and the transferee is a reinsurance undertaking with registered offices in a non EEA state

  The supervisory authority in the non-EEA state where the transferee is established must certify that the transferee will have the necessary solvency margin after the transfer.

(e) Transferor is a reinsurance company based in Italy and the transferee is an Italian branch of a reinsurance company with registered offices in a non-EEA state

  The ISVAP must verify that the transferee is in compliance with article 60-bis of the Italian Code of Private Insurance; the rules in Part II, Title II of Regulation 33, and the rules contained in Chapter II, Title IV of the Italian Code of Private Insurance relating to reinsurance.

(f) Transferor is an Italian branch of a (re)insurance undertaking with its registered offices in a non-EEA state

  The requirements are the same as those set out above, according to whom the portfolio is being transferred to.

It is to be noted that sections (d), (e) and (f) contain additional provisions to those provided by sections (a), (b) and (c) applying when the business being transferred is a reinsurance one, regardless of the involved companies positions (whether they are pure reinsurers or insurers that also write reinsurance).

3.7 How long does the authorising body take to make its decision?

The ISVAP issues a clearance order within 120 days of the application and that order is then published in the ISVAP's bulletin.

If the criteria set out in 3.6 above haven't been met then the applicant will be informed by the ISVAP and given a deadline to submit additional information, failing which the application will be rejected.

3.8 Are there any requirements to give notice of the transfer to any parties other than the authorising body, and if so who are these parties and when must they be notified?

Yes, notification must be given to policyholders under the transferring contracts.

3.9 Are there any publicity requirements in relation to portfolio transfers and if so, what are these?

ISVAP's approval of a (re)insurance portfolio transfer has to be notified to the undertakings involved and published on both the ISVAP's Bulletin and its website.

3.10 Does any party other than the authorising body have a right to raise objections to the transfer, and if so what would be the effect of such an objection?

No.

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NETHERLANDS

1 Statutory Framework

1.1 What are the statutory provisions governing the transfer of insurance, and reinsurance portfolios in your jurisdiction?

Section 3.5.1A of the Dutch Financial Supervision Act (Wet op het financieel toezicht, **FSA**) governs the transfer of portfolios with regard to life insurance, non-life insurance and reinsurance.

The Decree on Special Prudential Measures, Investor Compensation and Deposit Guarantees pursuant to the Financial Supervision Act (Besluit bijzondere prudentiële maatregelen, beleggerscompensatie en depositogarantie Wft) gives specifications on the provisions that relate to portfolio transfer in the FSA.

1.2 Has the authorising body issued any guidelines on its approach to approval of portfolio transfers, and if so, where are these found?

There are no guidelines issued by the Dutch Central Bank (De Nederlandsche Bank N.V., **DCB**) on the approval of portfolio transfers.

1.3 Are there any statutory or other provisions dealing with recognition of transfers concluded under the rules applying in other EEA States?

The basic principle is that Dutch law does not impose additional requirements. However, in relation to transfers, approved by a supervisory authority of another state of the European Economic Area (**EEA State**), to a direct insurer having its registered office in that EEA State which include direct insurance contracts 1) concluded from that insurer's branch in the Netherlands or 2) concluded from a place of business elsewhere in the EEA and covering risks in the Netherlands on a freedom of services basis, article 3:124 FSA states that the transferor should publish the transfer in the Government Gazette and in such other way as the Dutch Central Bank determines.

2 Scope of the portfolio transfer process

2.1 Who may use the portfolio transfer procedure in your jurisdiction?

(a) Direct Insurance

- (i) a direct insurer having its registered office in the Netherlands (**Dutch Insurer**) transferring direct insurance contracts concluded from:
  - (A) a place of business in an EEA State (only to a place of business in an EEA State of a direct insurer having its registered office in an EEA State (**EEA Insurer**)).
  - (B) a place of business in the Netherlands (only to a branch in the Netherlands of a direct insurer having its registered office in a non-EEA State (**Non-EEA Insurer**)).

(C) a branch in another EEA State (only to a branch in another EEA State of a Non-EEA Insurer).

(ii) a direct insurer having its registered office in another EEA State, if that EEA State's legislation does not provide for an approval procedure for direct insurance portfolio transfers, when it concerns the transfer of direct insurance contracts concluded from a branch in the Netherlands to a Dutch branch of a Non-EEA Insurer.

(iii) a Non-EEA Insurer may transfer direct insurance contracts concluded from a branch in the Netherlands to a place of business in the EEA of an EEA Insurer or a Dutch branch of a Non-EEA Insurer.

(b) Reinsurance

(i) a reinsurer having its registered office in the Netherlands (**Dutch Reinsurer**) when it concerns the transfer of rights and obligations under a reinsurance contract, concluded from:

(A) a place of business in an EEA State (only to a place of business in an EEA State of another reinsurer having its registered office in an EEA State (**EEA Reinsurer**)).

(B) a place of business in the Netherlands (only to a branch in the Netherlands of a reinsurer having its registered office in a non-EEA State (**Non-EEA Reinsurer**)).

(C) a branch in another EEA State (only to a branch in another EEA State of a Non-EEA Reinsurer).

2.2 To whom may (re)insurance business be transferred under the portfolio transfer procedure in your jurisdiction?

(a) A (re)insurer having its registered office in an EEA State in the context of that insurer's operations from a place of business in an EEA State.

(b) A (re)insurer having its registered office in a non-EEA State in the context of that insurer's operations from a branch in the Netherlands.

(c) A (re)insurer having its registered office in a non-EEA State in the context of that insurer's operations from a branch in an EEA State, other than the Netherlands.

Please note that the transfer to these (re)insurers can only take place within the limitations set out in our answer to question 2.1. This means that the (re)insurers to whom (re)insurance business may be transferred depend on the (re)insurer that transfers the (re)insurance business.

2.3 Can the procedure be used to transfer (re)insurance portfolios to a transferee/ office of a transferee based outside the EEA?

It is possible to transfer (re)insurance portfolios to a transferee based outside the EEA, if the transferee has a branch in the Netherlands or another EEA State.

2.4 **What types of portfolios may be transferred?**

Life and non-life direct insurance portfolios, reinsurance portfolios and insurance portfolios regarding funeral expenses and benefits in kind may be transferred according to the procedure set out in section 3.5.1A of the FSA. However, the latter kind of insurance is left out of the scope of this chapter.

2.5 **Do the provisions in relation to the transfer of reinsurance business apply only to pure reinsurers?**

No, the provisions relating to the transfer of reinsurance business are not limited only to pure reinsurers. Accordingly, the procedure for portfolio transfer in the FSA is also applicable to direct insurers who write reinsurance as part of their business.

2.6 **If the answer to 2.5 is "yes", are there any means by which an insurer that wrote both insurance and reinsurance business could transfer the reinsurance business?**

We refer to our answer to question 2.5. The procedure for portfolio transfer as laid down in the FSA also applies to direct insurers that write reinsurance.

2.7 **Does the portfolio transfer process in your jurisdiction provide for the transfer of reinsurance/retrocession contracts protecting the (re)insurance business being transferred? If not, can the transfer of such protections be achieved by any other means?**

No. If the transferee would like to take over the outwards reinsurance/retrocession contracts, it should negotiate this takeover with the reinsurer that concluded the reinsurance/retrocession contracts with the transferor, depending on the law that applies to the transfer of the reinsurance/retrocession contracts.

2.8 **Can pure reinsurers who had ceased to conduct new business at 10 December 2007 use the procedure?**

The rules regarding portfolio transfer as included in the FSA are not applicable to insurers with their statutory seat in the Netherlands or in a non-EEA State which have ceased to conduct new reinsurance contracts and exclusively administer their existing portfolio in order to terminate their activity at the date of the implementation of Directive 2005/68/EC (the Reinsurance Directive), which is 1 September 2008.

3 Procedure

3.1 **What body is responsible for approving transfers of (re)insurance business?**

The Dutch Central Bank.

Non-life insurers and reinsurers could, alternatively, seek the consent of each policyholder and beneficiary under the (re)insurance policies.

3.2 Are any other approvals/consents required?

(a) Consent

(i) Direct Insurance

The Dutch Central Bank will request the consent of the regulatory authority of the EEA State(s) where the insured risks are located, in the event that the risks or commitments under the insurance contract to be transferred by a Dutch Insurer are located in (an) EEA State(s) other than the Netherlands.

Further, the Dutch Central Bank will request the consent of the regulatory authority concerned if a direct insurance portfolio including insurance contracts concluded from a branch in another EEA State is transferred by a Dutch Insurer to a branch of a Non-EEA Insurer in another EEA State.

Finally, the consent of the regulatory authority in the relevant EEA State is required by the Dutch Central Bank if an EEA Insurer (whose home EEA State does not provide a transfer procedure) wishes to transfer insurance contracts concluded from a branch in the Netherlands to a Dutch branch of a Non-EEA Insurer.

(ii) Reinsurance

The Dutch Central Bank will request the consent of the regulatory authority concerned if the reinsurance portfolio is transferred by a Dutch Reinsurer to a branch in another EEA State of a Non-EEA Reinsurer.

Further, the consent of the relevant EEA regulatory authorities is required by the Dutch Central Bank if a Dutch Reinsurer transfers reinsurance contracts concluded through a branch in another EEA State to a branch in an EEA State of a Non-EEA Reinsurer.

(b) Advice

In the case of a transfer of direct insurance contracts concluded from a branch in an EEA State (other than the Netherlands), to a branch in an EEA State of an EEA Insurer or a Non-EEA Insurer, Dutch Central Bank will request the advice of the regulatory authority of that EEA State on the information submitted by the applicant. The regulatory authority has 3 months to respond to a request from the Dutch Central Bank for advice regarding the proposed transfer. If the regulatory authority does not respond, it is deemed to have no objection.

(c) Certificate of solvency

A certificate of solvency must confirm that the transferee will have the necessary margin of solvency following the transfer.

(i) Direct Insurance

A certificate of solvency will be required from the regulatory authority of an EEA State if:

(A) the transferee has its registered office in that EEA State,

(B) the transferee has its registered office outside the EEA and a branch in the Netherlands and the regulatory authority of the other EEA State is responsible for the supervision on the solvency margin of the branch; or

(C) (in the case of non-life insurance only) the transferee has its registered office in a non-EEA State and a branch in another EEA State.

A certificate of solvency is also requested by the Dutch Central Bank where a Non-EEA insurer wishes to transfer direct insurance contracts to an insurer falling within (A) or (B) according to the procedure in the FSA.

(ii) Reinsurance

A certificate of solvency will be required from the regulatory authority of the EEA where the transferee has its registered office.

Further, a certificate of solvency will be required from the regulatory authority concerned where the transferee has its registered seat in a Non-EEA State and the transfer is to a branch of the transferee in another EEA State.

(d) Recovery plan

Both for the transfer of direct insurance portfolios and the transfer of reinsurance portfolios, the Dutch Central Bank will request that the (re)insurer is not subject to a recovery plan and that no such plan is desired (by the Dutch Central Bank or another regulatory authority) for the transferee, if the transferee has its registered seat in the Netherlands or a branch in the Netherlands or another EEA State.

(e) Other approvals/consents

It is not necessary to inform any other Dutch regulator than the Dutch Central Bank on the transfer of (re)insurance portfolios.

3.3 How is the application for approval made?

By requesting approval of the Dutch Central Bank and by providing the documents mentioned below in section 3.4 to the Dutch Central Bank.

3.4 What supporting information has to be provided?

The following documents/information will need to be provided to the Dutch Central Bank by the applicant:

(a) the applicant's name and address;

(b) a description of the request;

(c) a description of the insurance policies to be transferred;

(d) a draft transfer agreement (if parties sign a transfer agreement prior to consent the Dutch Central Bank consenting to the transfer, they should make sure that the transfer agreement includes a condition precedent stating that the transfer is conditional on the Dutch Central Bank's approval);

(e) draft texts of the announcements to be published in the Government Gazette and other newspapers or newspapers (to be designated by the Dutch Central Bank);

(f) a specification by the transferee of the acquisition price of the rights and duties under the insurance contracts that will be transferred;

(g) a statement of the changes in the available solvency margin resulting from the transfer;

(h) a statement of the extent of the technical provisions to be maintained in connection with the rights and obligations;

(i) a statement of the nature and extent of the investments to be transferred to cover the technical provisions; and

(j) In the event of profit-sharing, a description of the profit definition.

If applicable the Dutch Central Bank also obtains the following from regulatory authorities in other EEA States (we refer to section 3.2 for more information):

(a) Consent.

(b) Advice.

(c) Certificate of solvency.

(d) Confirmation that no recovery plan (or similar) is in place or desired for the transferee.

3.5 Is there any requirement for any other party to provide any report in support of a proposed transfer? If so, what is the usual form and purpose of such a report?

No.

What criteria does the authorising body apply in deciding whether to approve a proposal?

The Dutch Central Bank will only approve the transfer if it has no objections against the portfolio transfer.

Further requirements are:

a. The applicant must have submitted the requested documents and information to the Dutch Central Bank (as mentioned in section 3.4);

b. The transferee has to meet the required solvency margins;

c. The transferee is not subject to a recovery plan (only if the transferee has its registered seat in the Netherlands or a branch in the Netherlands or another EEA State);

d. Consent of the regulatory authority concerned in other relevant EEA States;

e. For life insurance: no objections have been raised by 25% or more of the policyholders; and

f. The necessary publications have been made.

3.6 How long does the authorising body take to make its decision?

In principal, the Dutch Central Bank decides on the request for approval of a portfolio transfer within 13 weeks. The Dutch Central Bank has the possibility to request additional information and to suspend the term of 13 weeks for the time needed to submit the additional information to the Dutch Central Bank.

3.7 Are there any requirements to give notice of the transfer to any parties other than the authorising body, and if so who are these parties and when must they be notified?

For a life insurance transfer, the intention to transfer the portfolio must be published in accordance with section 3.9 below prior to the Dutch Central Bank giving its consent to the transfer.

If a company has established a works council (ondernemingsraad) (which is required if a company has more than 50 employees), it may, under very specific circumstances, be required to inform the works council in order to have an opportunity to provide its opinion to the management board of the company. This for example would apply if a portfolio transfer would result in a "change of the identity of the company".

There are no other notification requirements prior to the Dutch Central Bank giving its consent.

3.8 Are there any publicity requirements in relation to portfolio transfers and if so, what are these?

(a) Direct Insurance

A non-life portfolio transfer does not need to be publicised before it has been approved by the Dutch Central Bank. Once the transfer has been approved by the Dutch Central Bank it has to be announced in the Government Gazette and in such other way as the Dutch Central Bank determines. The Dutch Central Bank usually requires publication in three newspapers or trade journals.

The intention to transfer a life insurance portfolio must be published in the Government Gazette and in such other way to be determined by the Dutch Central Bank prior to the Dutch Central Bank giving its consent. Once the transfer has been approved by the Dutch Central Bank it has to be announced in the Government Gazette.

If the transfer includes insurances that relate to insured risks/commitments that are located in another EEA State, the announcement should also be made in that EEA State. The announcement will require the approval of the Dutch Central Bank.

An insurer that has its registered seat in another EEA state and is transferring business concluded as part of its operation in the Netherlands via a branch or on a services basis must also announce the transfer in the Government Gazette and any other publications required by the Dutch Central Bank.

Where the transferor has its registered office outside the EEA and is transferring insurance contracts with the consent of another regulatory authority, it is also obliged to announce the transfer. In the case of life insurance, notice of the intention to transfer must be published in the Government Gazette and in such other manner as the Dutch Central Bank may determine; and the approval of the transfer must be published in the Government Gazette. In the case of non-life insurance, the transfer must be announced in a manner to be determined by the Dutch Central Bank.

The transfer will take effect towards all the parties involved (other than the insurers concerned) on the second day following the publication date of the Government Gazette in which the notification of the transfer was published.

(b) Reinsurance

A reinsurer that has transferred rights and obligations with consent of the Dutch Central Bank has to make an announcement of the transfer in the Government Gazette.

3.9 Does any party other than the authorising body have a right to raise objections to the transfer, and if so what would be the effect of such an objection?

(a) Non-life insurance

Non-life insurance policyholders have no right to raise objections against the transfer. They have a right to terminate their insurance policy within a three month period following publication of the portfolio transfer in the Government Gazette.

These requirements also apply to a transfer involving a non-life insurer who has its registered seat in another EEA state and operates in the Netherlands via a branch or on a services basis.

(b) Life insurance

Life insurance policyholders have the right to raise objections against the transfer. If 25% or more of the policyholders has objected to the transfer in the period determined by the Dutch Central Bank for that purpose, the Dutch Central Bank cannot approve the transfer.

These requirements also apply to a transfer involving a life insurer that has its registered seat in another EEA state and operates in the Netherlands via a branch or on a services basis.

(c) Reinsurance

Reinsurers do not have any right to object to the portfolio transfer as they are considered to be professional parties that are well equipped to include provisions in individual contracts should they wish to. Many reinsurance contracts will contain such clause that provides for a right to terminate the reinsurance contract in the event of transfer of a reinsurance portfolio.

3.10 Does the transfer procedure apply to a merger or division of an (re)insurer?

The transfer of the rights and obligations under all (non-)life insurance contracts by (non-)life insurers having their registered office in the Netherlands shall be equivalent to the transfer of these rights and obligations in the event of a merger (fusie) as referred to in Section 309 of Book 2 of the Dutch Civil Code or a division (splitsing) as referred to in Section 334a of Book 2 of the Dutch Civil Code. In other words, if there is a merger or division, the rules regarding a portfolio transfer included in the FSA are applicable.

Please note that the FSA does not provide for a portfolio transfer procedure for reinsurers in the event of a merger or division. The Dutch Central Bank cannot consent to such portfolio transfer. As a consequence, the provisions of the Dutch Civil Code apply to such portfolio transfer. The Dutch legislator intends to amend the FSA to provide for a transfer portfolio procedure for reinsurers in the event of a merger or division. Currently, it is not clear yet when the FSA will be amended.

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PORTUGAL

1 Statutory Framework

1.1 What are the statutory provisions governing the transfer of insurance and reinsurance portfolios in your jurisdiction?

The transfer of insurance and reinsurance portfolios in Portugal is governed by Articles 148 to 155-A of the Portuguese Regime of Insurance and Reinsurance Activity (PRIRA) – enacted by Decree-Law 94-B/98, of 17 April (as amended from time to time).

1.2 Has the authorising body issued any guidelines on its approach to approval of portfolio transfers, and if so, where are these found?

No, it has not.

1.3 Are there any statutory or other provisions dealing with recognition of transfers concluded under the rules applying in other EEA States?

Pursuant to Article 154 of the PRIRA, portfolio transfers authorised by the regulatory authority of another Member State of the EEA are enforceable against policyholders, insured entities and any other entities with rights in such transferred policies, from the date in which authorisation is granted, with the following limitations when involving risks/commitments located in Portugal:

(a) in relation to non-life insurance policies, the policy holders and insured entities are granted the right to cancel the insurance policy within 30 days from the date in which publication of the transfer is made in the ISP website;

(b) in relation to life insurance policies, the insured individuals have 60 days from the date in which notification is served to them by the ISP in which to oppose to the transfer. The ISP cannot grant authorisation for the transfer of life insurance portfolios when 20% or more of the insured individuals oppose to the transfer.

2 Scope of the portfolio transfer process

2.1 Who may use the portfolio transfer procedure in your jurisdiction?

(a) Insurance business may be transferred by:

- Insurance companies with their head office in Portugal.
- Portuguese branches of insurance companies with their head office outside the EEA.

The portfolio transfer procedure set out in the PRIRA may be used in relation to business written in Portugal, business written through a branch in another EU Member State of an insurer with head office in Portugal and business concluded under the freedom of services.

As regards the transfer procedure involving business written through a branch of a Portuguese company located in another EU Member State, the regulatory authority of such other EU Member State must be consulted by the ISP.

(b) Reinsurance business may be transferred by (Article 155-A of the PRIRA):
   - Reinsurance Companies with their head office in Portugal;
   - Portuguese branch of reinsurance Companies with their head office outside the EEA.

2.2 To whom may (re)insurance business be transferred under the portfolio transfer procedure in your jurisdiction?

(a) Insurance business may be transferred to:
   - Transferees with their head office in Portugal;
   - Transferees with their head office in the EEA;
   - Transferees with their head office outside the EEA and a branch in another EU Member State;
   - Transferees with head office in Switzerland and a branch in Portugal (only applicable to transfer of non- life insurance portfolios).

(b) Reinsurance business may be transferred to:
   - Transferees with head office in an EU Member State: the ISP (as defined in 3.1 below) is the entity with powers to authorise the transfer if the transferor has its head office in Portugal but the regulatory authorities of the EU Member State of the transferee must verify that the transferee has the required margin of solvency;
   - Transferees with head office or branch in Portugal: the ISP (as defined in 3.1 below) is the entity with powers to authorise the transfer and verify that the transferee has the required margin of solvency, if the transferor is a Portuguese branch of a reinsurance Company with head office in a jurisdiction outside the EEA.

2.3 Can the procedure be used to transfer insurance portfolios to a transferee/office of a transferee based outside the EEA?

In general, transfer of insurance portfolios under the PRIRA may only be effected when the transferee has its headquarters in the EEA. Under the PRIRA there is an exception to this rule which allows the transfer of non-life insurance business to a branch in Portugal of a Switzerland based transferee.

2.4 What types of portfolios may be transferred?

Life and non-life insurance and reinsurance portfolios, with the limitations set out in 2.1 to 2.2 above.

2.5 Do the provisions in relation to the transfer of reinsurance business apply only to pure reinsurers?

The PRIRA does not set out specific rules for pure reinsurers. The rules are applicable depending on the nature of the portfolios.

2.6 If the answer to 2.5 is "yes", are there any means by which an insurer that wrote both insurance and reinsurance business could transfer the reinsurance business?

N/A.

2.7 Does the portfolio transfer process in your jurisdiction provide for the transfer of reinsurance/retrocession contracts protecting the (re)insurance business being transferred? If not, can the transfer of such protections be achieved by any other means?

Reinsurance/retrocession contracts can be transferred along with the underlying insurance and reinsurance contracts if the transfer agreement provides for this. However, consent of the reinsurers/retrocessionaires may be required under the terms of the relevant reinsurance/retrocession contract.

2.8 Can pure reinsurers who had ceased to conduct new business at 10 December 2007 use the procedure?

Yes.

3 Procedure

3.1 What body is responsible for approving transfers of (re)insurance business?

The *Instituto de Seguros de Portugal* (the "**ISP**").

3.2 Are any other approvals/consents required?

Where the transferee's head offices are not in Portugal, a certificate is required from the home state regulator confirming that the transferee will meet the solvency margin requirements after the transfer.

Where the transfer involves the transfer of risks (non-life business) or commitments (life business) located in a jurisdiction which is not the jurisdiction of the transferor, consent of the regulator in the relevant jurisdiction is required.

Consent of the regulator in the jurisdiction of a branch from which business is being transferred is also required.

Where the transfer is being made by the Portuguese branch of a non-EEA insurer to a branch of a non-EEA insurer in another EU Member State, the regulator in the EU Member state of the transferee branch must consent to the transfer, confirm that the transferee will have the necessary margin of solvency after the transfer, and confirm that the laws of that EU Member State permit the transfer (as set out in Article 151º, b) of the PRIRA)

As mentioned above, where reinsurances/retrocession are being transferred, the consent of the reinsurer/retrocessionaire may be required, depending on the terms of the contract.

If the insurance regulators set out above have not notified the ISP of their opinion or consent within three months of receipt of a request, consent is deemed to have been given.

Additionally, portfolio transfers may determine a notification to the following authorities:

- Portuguese Data Protection Commission; and
- Portuguese Competition Authority for authorisation purposes if the thresholds set by the Portuguese Competition Law are met (market share or turnover).

3.3 How is the application for approval made?

Portuguese legislation does not contain any specific provisions dealing with the form of application or the minimum information/documents to be provided to the ISP in the context of the approval procedure. Market practice is to send a formal notification with details of the transaction and the parties involved, as well as a draft of the relevant transfer agreement, details of the insurance policies to be transferred (life / non life), the list of policyholders, a report issued by an independent auditor on the underlying business and details of allocation of responsibilities relating to the claims made and to be made under the insurance policies to be transferred.

3.4 What supporting information has to be provided?

Please see 3.3 above.

3.5 Is there any requirement for any other party to provide any report in support of a proposed transfer? If so, what is the usual form and purpose of such a report?

Please see 3.3 above.

3.6 What criteria does the authorising body apply in deciding whether to approve a proposal?

Portuguese law does not set out specifically the criteria to be applied by the ISP for authorisation. In general, the main criteria verified by the ISP are:

- Assessment of an adequate solvency margin of the transferee; and
- Protection of legitimate interests of policyholders/insured entities.

3.7 How long does the authorising body take to make its decision?

Portuguese legislation does not refer to any specific timing for the ISP to make a decision.

3.8 Are there any requirements to give notice of the transfer to any parties other than the authorising body, and if so who are these parties and when must they be notified?

Depending on the location of the branch of the transferee and/or the transferor and the location of the risks or commitments that are to be transferred, regulators in other jurisdictions may need to be consulted in relation to the transfer.

As regards life insurance portfolios, the insured individuals must be notified of the proposed transfer and have 60 days from the date in which notification is served by the ISP to object to the transfer.

3.9 Are there any publicity requirements in relation to portfolio transfers and if so, what are these?

Where the transfer involves risks/commitments located in Portugal, notice of approval of the transfer by the ISP and/or other regulators within the EEA must be published in Portuguese in the ISP website and in two national newspapers.

Policyholders and insured entities have 30 days from the date of publication of notice of the ISP's approval of the transfer to cancel their policies.

As regards life insurance portfolios, the policyholders and insured individuals must be notified of the proposed transfer by the ISP and have 60 days from the date in which notification is served to object to the transfer. Please see 3.8 above.

3.10 Does any party other than the authorising body have a right to raise objections to the transfer, and if so what would be the effect of such an objection?

In general policyholders and insured entities have 30 days from the date of publication of notice of the ISP's approval of the transfer to cancel their policies.

As regards life insurance portfolios, the insured individuals must be notified of the proposed transfer by the ISP and have 60 days from the date in which notification is served to oppose to the transfer. if at least 20% of the insured individuals object to the transfer, the ISP will not authorise the transfer.

If the ISP is consulted as the regulator of the Member State of the commitment (life insurance), this procedure applies to the part of the portfolio situated in Portugal. The transfer will not be approved if objections are received from 20% or more of insured individuals under policies where the state of the commitment is Portugal.

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SPAIN

1 Statutory Framework

1.1 What are the statutory provisions governing the transfer of insurance and reinsurance portfolios in your jurisdiction?

The Consolidated Act on the Regulation and Supervision of Private Insurance Activity and the Regulation and Supervision of Private Insurance.

1.2 Has the authorising body issued any guidelines on its approach to approval of portfolio transfers, and if so, where are these found?

No.

1.3 Are there any statutory or other provisions dealing with recognition of transfers concluded under the rules applying in other EEA States?

Not explicitly but this can be implied from the provisions.

2 Scope of the portfolio transfer process

2.1 Who may use the portfolio transfer procedure in your jurisdiction?

The following may use the portfolio transfer procedure in Spain:

(a) Spanish reinsurance companies authorised by the Ministry for the Economy and Treasury;

(b) Spanish insurance companies authorised by the Ministry for the Economy and Treasury;

(c) Insurance and reinsurance undertakings domiciled elsewhere in the EEA which are authorised to carry out reinsurance business;

(d) Insurance and reinsurance undertakings of third countries which carry out reinsurance operations in their own country whether or not they have a branch in Spain.

2.2 To whom may (re)insurance business be transferred under the portfolio transfer procedure in your jurisdiction?

The same types of entities as set out in 2.1 above.

2.3 Can the procedure be used to transfer (re)insurance portfolios to a transferee/ office of a transferee based outside the EEA?

Yes.

2.4 What types of portfolios may be transferred?

Whole portfolios of life or non-life (re)insurance contracts. Partial transfers are only permitted in limited circumstances.

2.5 Do the provisions in relation to the transfer of reinsurance business apply only to pure reinsurers?

No.

2.6 **If the answer to 2.5 is "yes", are there any means by which an insurer that wrote both insurance and reinsurance business could transfer the reinsurance business?**

See 2.5 above.

2.7 **Does the portfolio transfer process in your jurisdiction provide for the transfer of reinsurance/retrocession contracts protecting the (re)insurance business being transferred? If not, can the transfer of such protections be achieved by any other means?**

The provisions do not deal with this issue.

2.8 **Can pure reinsurers who had ceased to conduct new business at 10 December 2007 use the procedure?**

Yes.

3 Procedure

3.1 **What body is responsible for approving transfers of (re)insurance business?**

The Treasury Department is responsible for approving portfolio transfers based on the recommendations of:

(a) The Spanish Insurance Authorities, in the case of insurance portfolio transfers; or

(b) The Directorate General for Insurances and Pension Funds in the case of reinsurance portfolio transfers (delegated by the Ministry for the Economic and Treasury).

3.2 **Are any other approvals/consents required?**

The consent of the supervisory authority in the relevant member state will be required where the portfolio transfer involves contracts written on a freedom of establishment or freedom of services basis.

3.3 **How is the application for approval made?**

An application is made by submitting the documents in 3.4 to the relevant Authority as set out in 3.1.

3.4 **What supporting information has to be provided?**

The following supporting information has to be provided:

(a) Portfolio Transfer Agreement which must include a detailed inventory of the assets and liabilities to be transferred, the date of the transfer, the price and the conditions of the corresponding administrative authorisation;

(b) Minutes of the meetings of the relevant governing bodies approving the Portfolio Transfer Agreement and, if required, any changes to the Company's purpose or the Company's dissolution;

(c) Balance sheet and profit and loss statements for the transferor and the transferee, produced in the previous six months (with auditor input as required);

(d) Status of the calculation and coverage of the technical provisions regarding the portfolio transfer; and

(e) The draft notice to be published in the Public Gazette.

3.5 Is there any requirement for any other party to provide any report in support of a proposed transfer? If so, what is the usual form and purpose of such a report?

No.

3.6 What criteria does the authorising body apply in deciding whether to approve a proposal?

The Treasury Department, and relevant supervisory body, mainly considers any possible disadvantage to the rights of policyholders resulting from the transfer.

Any objections will be considered. If these objections are not considered relevant and the documents required by law are submitted, the Treasury Department must authorise the transfer.

3.7 How long does the authorising body take to make its decision?

The decision usually takes 3-6 months, although longer if there is opposition to the portfolio transfer.

3.8 Are there any requirements to give notice of the transfer to any parties other than the authorising body, and if so who are these parties and when must they be notified?

Notice of the transfer must be given to the relevant supervisory authority as set out in 3.1 above.

Policyholders must also be notified of the transfer.

3.9 Are there any publicity requirements in relation to portfolio transfers and if so, what are these?

Yes, the proposed portfolio transfer must be published in two newspapers, one which has the widest circulation where the transferor has its registered address and the other having national circulation.

The authorisation is published in the Spanish Official Gazette.

3.10 Does any party other than the authorising body have a right to raise objections to the transfer, and if so what would be the effect of such an objection?

Policyholders have the right to submit objections within one month of the publication of the proposed transfer to the relevant supervisory authority.

Policyholders are entitled to terminate their contracts if the transferee does not assume all rights, liabilities and obligations under the transferred contracts.

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SWEDEN

1 Statutory Framework

1.1 What are the statutory provisions governing the transfer of insurance and reinsurance portfolios in your jurisdiction?

Chapter 15 of the Swedish Insurance Business Act (*Sw. Försäkringsrörelselagen* (1982.713)).

1.2 Has the authorising body issued any guidelines on its approach to approval of portfolio transfers, and if so, where are these found?

The Swedish Financial Supervisory Authority has not published any guidance.

1.3 Are there any statutory or other provisions dealing with recognition of transfers concluded under the rules applying in other EEA States?

No.

2 Scope of the portfolio transfer process

2.1 Who may use the portfolio transfer procedure in your jurisdiction?

An insurance company that has a license to conduct insurance business in Sweden.

2.2 To whom may (re)insurance business be transferred under the portfolio transfer procedure in your jurisdiction?

(Re)insurance business may be transferred to the following:

(a) a Swedish insurance company;

(b) an overseas insurer with authority to conduct insurance business in Sweden; or

(c) an overseas insurer with authority to conduct insurance business in another EEA country.

2.3 Can the procedure be used to transfer (re)insurance portfolios to a transferee/office of a transferee based outside the EEA?

Only if the transferee has authority to conduct insurance business in Sweden or another EEA country.

2.4 What types of portfolios may be transferred?

Life and non-life, direct insurance and reinsurance business may be transferred.

2.5 Do the provisions in relation to the transfer of reinsurance business apply only to pure reinsurers?

No, they also apply to insurers who write both direct insurance and reinsurance.

2.6 If the answer to 2.5 is "yes", are there any means by which an insurer that wrote both insurance and reinsurance business could transfer the reinsurance business?

See 2.5 above.

2.7 Does the portfolio transfer process in your jurisdiction provide for the transfer of reinsurance/retrocession contracts protecting the (re)insurance business being transferred? If not, can the transfer of such protections be achieved by any other means?

No, the Swedish Financial Supervisory Authority does not have the power to transfer these contracts as part of an insurance portfolio transfer. The consent of the reinsurer/retrocessionaire would be required.

2.8 Can pure reinsurers who had ceased to conduct new business at 10 December 2007 use the procedure?

Yes.

3 Procedure

3.1 What body is responsible for approving transfers of (re)insurance business?

The Swedish Financial Supervisory Authority.

3.2 Are any other approvals/consents required?

It may be necessary to obtain the consent of regulators in other member states (usually where there is a non-Swedish transferee). In these circumstances the regulator is able to comment on the transfer but has no direct right to prevent it.

The competition authority may need to be informed of the insurance business transfer in certain circumstances.

The Swedish Companies Registration Office must be notified of the approval of the transfer by the transferor's general meeting and also of the consent of the Swedish Financial Supervisory Authority.

3.3 How is the application for approval made?

The application should be made by both the transferor and transferee to the Swedish Financial Supervisory Authority, preferably in writing.

3.4 What supporting information has to be provided?

The following supporting information/documents must be provided:

(a) Sale and Purchase Agreement detailing the conditions of the insurance portfolio transfer;

(b) Solvency Certificate, where the transferee is a non-Swedish entity, provided by the relevant regulator;

(c) Draft notification to be published in the Swedish Official Gazette and sent to policyholders;

(d) The registration which will be sent to the Swedish Companies Registration Office;

(e) Actuarial report for the transferor analysing the transfer and its effects;

(f) Actuarial report for the transferee analysing the transfer and its effects;

(g) A statement given by the transferor's board of directors on the circumstances which should be considered prior to deciding on the transfer; and

(h) A report by the transferor's accountants commenting on 7 above including the financial impact of the transfer.

3.5 Is there any requirement for any other party to provide any report in support of a proposed transfer? If so, what is the usual form and purpose of such a report?

Yes, the following parties must provide a report (as explained in 3.4 above):

(a) Transferor's actuary;

(b) Transferee's actuary;

(c) Transferor's board of directors; and

(d) Transferor's accountants.

3.6 What criteria does the authorising body apply in deciding whether to approve a proposal?

The Swedish Insurance Business Act provides that the following criteria will be applied when deciding whether to approve a proposal for an insurance portfolio transfer:

(a) Policyholders' and beneficiaries' rights under the insurance contracts are not impaired;

(b) The transferee has sufficient capital; and

(c) Any regulator in another member state has either approved or not commented on the insurance portfolio transfer.

3.7 How long does the authorising body take to make its decision?

The Swedish Financial Supervisory Authority usually takes up to three months to examine an application for an insurance portfolio transfer when it includes risks situated in Sweden and usually up to five months where the risks are situated outside of Sweden.

There are some legislative/regulatory timeframes within this period which can impact on the timetable and these tend to be minimum timeframes rather than maximum. The Swedish Financial Supervisory Authority must publish the proposed transfer in the Swedish Official Gazette at least a month before it makes its decision as to whether to approve it or not in order to give policyholders an opportunity to object. In addition, if other EEA regulators need to be consulted the Swedish Financial Supervisory Authority must not make a final decision as to whether to approve the transfer or not until the earlier of receipt of a response from those regulators or expiry of a period of three months from the date on which they were notified of the transfer.

3.8 Are there any requirements to give notice of the transfer to any parties other than the authorising body, and if so who are these parties and when must they be notified?

The following parties must be notified in addition to the Swedish Financial Supervisory Authority:

(a) The Swedish Companies Registration Office once the transferor's general meeting agrees the transfer and again once when the Swedish Financial Supervisory Authority has given its approval;

(b) The competition authority may also need notifying of the transfer;

(c) Policyholders must be notified about the insurance portfolio transfer – the Swedish Financial Supervisory Authority will decide on the form of this notification;

(d) In the case of a life transfer, annuitants must also be notified in the same manner as policyholders about the insurance portfolio transfer; and

(e) In practice it may be necessary to notify reinsurers of a transfer even though there is no strict legal requirement to do so.

3.9 Are there any publicity requirements in relation to portfolio transfers and if so, what are these?

The Swedish Insurance Business Act requires the Swedish Financial Supervisory Authority to announce the application to transfer the insurance portfolio in the Official Swedish Gazette and other local newspapers as it deems appropriate. This must take place a month before it makes its decision about the insurance business transfer.

3.10 Does any party other than the authorising body have a right to raise objections to the transfer, and if so what would be the effect of such an objection?

Policyholders are able to make an objection to an insurance portfolio transfer to the Swedish Financial Supervisory Authority. However, they do not have a direct right to prevent an insurance portfolio transfer taking place. Policyholders will usually have one month in which to send their objections to the Swedish Financial Supervisory Authority once the announcement has been placed in the Swedish Official Gazette.

In the case of a life transfer, beneficiaries generally have no right to object but annuitants have been given such a right and have the same rights as policyholders.

Employees do not have a right to object to an insurance business transfer per se. However, under Swedish employment law employees do have a right to object to a transfer of their employment contracts. Therefore, if the insurance portfolio transfer will involve a transfer of employment contracts employees will have a right to object.

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THE UNITED KINGDOM

1 Statutory Framework

1.1 What are the statutory provisions governing the transfer of insurance and reinsurance portfolios in your jurisdiction?

Part VII of the Financial Services and Markets Act 2000 (the Act)

The Financial Services and Markets Act 2000 (Control of Business Transfers) (Requirements on Applicants) Regulations 2001 (SI 2001/3625)

The Financial Services and Markets Act 2000 (Control of Transfer of Business Done at Lloyd's) Order 2001 (SI 2001/3626)

Portfolio transfers under the United Kingdom procedure are referred to in the legislation as insurance business transfer schemes. They are commonly referred to as Part VII Transfers.

1.2 Has the authorising body issued any guidelines on its approach to approval of portfolio transfers, and if so, where are these found?

Yes. The guidance is found in the FSA's Handbook of Rules and Guidance at SUP 18.2 and 18.3.

1.3 Are there any statutory or other provisions dealing with recognition of transfers concluded under the rules applying in other EEA States?

Yes. Section 116 of the Act provides for recognition of transfers of UK policies by the following:

- Direct insurers whose home member state is an EEA state and who are authorised by the relevant authorities in that state to carry out direct insurance business
- Pure reinsurers whose home member state is an EEA state and who are authorised by the relevant authorities in that state to carry out reinsurance business
- Direct insurers whose head office is outside the EEA and who are authorised by the relevant authorities in an EEA state to carry out direct insurance business
- Pure reinsurers who head office is outside the EEA and who are authorised by the relevant authorities in an EEA state to carry out reinsurance business.

UK policies are, for these purposes, policies where the applicable law is the law of some part of the United Kingdom.

The effect of the provisions is that the transfer of rights and obligations under UK policies will be effective under UK law, provided the transfer was authorised in the relevant EEA state in accordance with the requirements of the insurance directives or reinsurance directive (as applicable).

2 Scope of the portfolio transfer process

2.1 Who may use the portfolio transfer procedure in your jurisdiction?

The process may be used by:

- Insurers and reinsurers incorporated in any part of the United Kingdom and authorised under the Act to carry out insurance and/or reinsurance business
- Direct insurers whose head office is elsewhere in the EEA and who are operating in the UK on a freedom of establishment basis under the insurance directives, but only in relation to reinsurance business carried on by them in the UK
- Insurers and reinsurers who do not fall into either of the above two categories, but who are authorised for the purposes of the Act to effect and carry out contracts of (re)insurance

2.2 To whom may (re)insurance business be transferred under the portfolio transfer procedure in your jurisdiction?

Any (re)insurer authorised to carry on (re)insurance business in the EEA.

2.3 Can the procedure be used to transfer (re)insurance portfolios to a transferee/ office of a transferee based outside the EEA?

The procedure can only be used where the business will be carried on from an establishment in the EEA following the transfer. It can be used to transfer business to a (re)insurer whose head office is outside the EEA, provided that (re)insurer has an authorised branch in the EEA from which the business will be carried on.

2.4 What types of portfolios may be transferred?

Direct and reinsurance portfolios of life and non-life business.

2.5 Do the provisions in relation to the transfer of reinsurance business apply only to pure reinsurers?

No. The procedure may be used by insurers authorised to carry on both direct and reinsurance business to transfer their reinsurance business.

2.6 If the answer to 2.5 is “yes”, are there any means by which an insurer that wrote both insurance and reinsurance business could transfer the reinsurance business?

See 2.5.

2.7 Does the portfolio transfer process in your jurisdiction provide for the transfer of reinsurance/retrocession contracts protecting the (re)insurance business being transferred? If not, can the transfer of such protections be achieved by any other means?

Yes.

2.8 Can pure reinsurers who had ceased to conduct new business at 10 December 2007 use the procedure?

Yes.

3 Procedure

3.1 What body is responsible for approving transfers of (re)insurance business?

The transfer is approved by the High Court of Justice of England and Wales.

3.2 Are any other approvals/consents required?

The Financial Services Authority (**FSA**) plays a key role in the transfer process, and its views are relied on by the Court. The FSA is required under the Act to give the following consents/approvals:

(a) Approval of the form of the notice to policyholders stating that an application to sanction an insurance business transfer scheme has been made (see 3.8 and 3.9 below)

(b) Approval of an individual (Independent Expert) to be appointed to prepare a report on the transfer under section 109 of the Act (see 3.5 below)

(c) Approval of the form of the report prepared by the Independent Expert

(d) Where the transfer includes policies where the state of the risk or the state of the commitment is an EEA state other than the UK, the FSA must provide a certificate confirming that it has notified the relevant authorities in that state and that they have either consented to the transfer or not refused their consent within 3 months of notification

(e) Where the transfer is from a branch elsewhere in the EEA of a UK incorporated and authorised insurer, the FSA must provide a certificate confirming that it has notified the relevant authorities in that state and that they have either consented to the transfer or not refused their consent within 3 months of notification

(f) Where the transferee is incorporated and authorised in the UK, the FSA must provide a certificate of solvency confirming that the transferee will have the required margin of solvency following the transfer

Where the transfer involves policies where the location of the risk or commitment is another EEA state, or is a transfer from a branch of a UK authorised and incorporated insurer in another EEA state, the FSA must notify the relevant authorities in that state. If they do not refuse their consent within three months of notification, the transfer may proceed.

As a result of the reform of financial regulation in the UK, it is expected that from 1 January 2013 the FSA will cease to be responsible for regulation of (re)insurance in the UK. (Re)insurers will from that date be regulated by two authorities, the Prudential Regulation Authority (**PRA**), which will be responsible for prudential regulation; and the Financial Conduct Authority (**FCA**), which will be responsible for conduct of business regulation. It is expected that the PRA will take the lead in relation to Part VII transfers after this date, although the FCA will need to be satisfied, as a minimum, that the transfer will not adversely affect policyholders of the (re)insurers involved.

3.3 How is the application for approval made?

The application is made by means of a Court application. There are two parts to the application:

- A directions hearing, at which the background to the transfer is explained, and the applicant seeks approval of its proposals for notifying policyholders and reinsurers.
- A sanction hearing, before a Judge, at which the transfer is approved and following which it will become effective.

The application, together with a copy of a statement setting out the terms of the transfer and containing a summary of the Independent Expert's report (see 3.5 below) must be served on the FSA at least 21 days before the second hearing, failing which the Court will be unable to sanction the transfer.

As already mentioned, the FSA plays a key role in any Part VII transfer, and as a result will need to be involved in the proposals as soon as practicable, to enable any issues to be identified and a practical timetable for the process to be agreed. The following information should be presented to the FSA at an early stage, well before the initial Court application is made:

- Outline of the terms on which the transfer will take effect;
- A description of the business to be transferred and any associated reinsurances
- Details of the authorisation status of the transferor and the transferee
- An outline of the proposed approach to notification of policyholders and reinsurers
- CV of the proposed Independent Expert
- Copy of the draft transfer agreement and transfer scheme (if available).
- Target timetable for the transfer.

3.4 What supporting information has to be provided?

For the initial directions hearing, the applicant must provide a witness statement setting out details of the transferor and transferee and the background to and rationale for the transfer, and attaching:

- The transfer scheme, which is the document setting out the terms of the transfer which will be sanctioned by the Court
- The Independent Expert report (see 3.5 below) in the form approved by the FSA
- The notice of the application to sanction the transfer to be published and sent to policyholders in the form approved by the FSA
- The circular to be sent to policyholders setting out the background to the proposals, and incorporating the notice, a summary of the terms of the transfer and a summary of the terms of the Independent Expert's report

The witness statement must also set out how the applicant intends to go about notifying policyholders and reinsurers of the transfer, and any waivers of notification requirements it is seeking (see 3.8 and 3.9 below); and explain the authorisation status of the transferee and transferor.

The FSA will also file its own report, in which it will deal with any issues of regulatory concern, confirm its approval of the Independent Expert's appointment and the form of his/her report, confirm its approval of the form of the notice and its views on any waivers of notification requirements sought by the applicant (see 3.8 and 3.9 below).

For the sanction hearing, the applicant must provide:

- Evidence that it has carried out the Court approved programme for notifying policyholders and reinsurers
- Copies of the certificates provided by the FSA (see 3.2 above)
- Details of any objections received and how these have been resolved
- A copy of a supplemental Independent Expert report, dealing with any matters that have arisen that might affect the conclusions in the initial report, and any update to the financial information on which those conclusions were based or confirming that the position remains the same.

The FSA will submit a further report, attaching the certificates it is obliged to provide and dealing with any issues of regulatory concern and confirming that it continues to have no objection to the transfer.

3.5 Is there any requirement for any other party to provide any report in support of a proposed transfer? If so, what is the usual form and purpose of such a report?

Under section 109 of the Act, the Independent Expert (usually an actuary, and necessarily an actuary in the case of a life transfer) must be appointed to report on the transfer and how policyholders will be affected by it. The choice of expert and the form of his report must be approved by the FSA. The expert must be independent of both the transferor and the transferee.

The report must cover a number of issues the most important being the effect of the transfer on the security of policyholders' contractual rights. The expert's report is critically important to the business transfer process as it is heavily relied on by the FSA and the Court when determining whether or not to approve a transfer. For an insurance business transfer to be approved the report must conclude that the transferring policyholders and the other policyholders of the transferor and the transferee will not be materially adversely affected by the transfer.

In the case of a life transfer, a report on the transfer will be required from the actuarial function holders of both the transferor and the transferee.

The Independent Expert's report must be finalised prior to the first court hearing. The Independent Expert will provide a supplemental report prior to the sanction hearing either confirming that the position remains as outlined in the initial report, or dealing with any issues that have been raised by affected parties and any update to the financial information on which the initial report was based.

3.6 What criteria does the authorising body apply in deciding whether to approve a proposal?

The Court must be satisfied that the proposed transfer falls within the scope of Part VII of the Act and that the procedural requirements have been satisfied. It may not sanction a transfer unless:

– It is satisfied that the certificates required from the FSA (see 3.2 above) have been provided

– It is satisfied that the transferee will have the necessary authorisation to carry on the business in the place in which it is to be carried on after the transfer

– The form of the notice sent to policyholders and reinsurers was approved by the FSA

– A copy of the application together with a copy of the statement summarising the terms of the transfer and containing a summary of the Independent Expert's report has been served on the FSA at least 21 days prior to the sanction hearing.

Once these requirements are met, the Court has absolute discretion over whether to sanction a transfer, but will seek to give due recognition to the commercial objectives and judgement of the boards of the transferor and transferee. The Court will not necessarily reject a transfer merely because one or more persons or classes of persons are adversely affected by it, provided it considers that overall it is fair to policyholders generally. It places heavy reliance on the opinion of the Independent Expert and of the FSA.

The key factors the FSA will consider in reaching an opinion on the transfer are as follows:

– The purpose of the transfer

– How the security of policyholders' contractual rights appears to be affected

– How the transfer compares with possible alternatives

– The opinion of the Independent Expert

– Any views expressed by policyholders

– The opportunity given to policyholders and any other persons affected by the transfer to consider it; and

– The adequacy of the information provided.

3.7 How long does the authorising body take to make its decision?

There are no specific deadlines for the FSA to provide its views or the certificates referred to in 3.2. A timetable should be agreed with the FSA at an early stage.

The FSA usually expects at least 6 weeks notice of the sanction hearing to be given, which means that a minimum of 8 weeks should be allowed between the two hearings to allow time for the process of dispatching and publishing notices. The Court's decision is usually made on the day of the sanction hearing.

Overall, a typical timeframe for a straightforward Part VII Transfer is 9 months.

3.8 Are there any requirements to give notice of the transfer to any parties other than the authorising body, and if so who are these parties and when must they be notified?

Notice stating that an application has been made for an order sanctioning a transfer must be sent to:

– every policyholder of the transferor and the transferee

– every reinsurer of the transferor

The notices must be approved by the FSA and contain an address from which a copy of the circular setting out the terms of the scheme and containing a summary of the Independent Expert report may be obtained free of charge.

It is possible to obtain a waiver of these requirements. The decision as to whether to grant a waiver rests with the Court, but it will take account of the views of the FSA. Any proposed waiver requests should be discussed and if possible agreed with the FSA before the Court process beings.

3.9 Are there any publicity requirements in relation to portfolio transfers and if so, what are these?

Notice stating that an application has been made for an order sanctioning a transfer must be published in:

– the London, Edinburgh and Belfast Gazettes

– two national newspapers in the United Kingdom

– two national newspapers in any EEA state where a risk or commitment under a direct policy included in the transfer is located

– one business newspaper published or circulated in any EEA state which is the state of the establishment to which a reinsurance policy included in the transfer relates.

As with the notice referred to at 3.8, the form of the notice must be approved by the FSA and contain an address from which a copy of the circular setting out the terms of the scheme and containing a summary of the Independent Expert report may be obtained free of charge.

It is possible to obtain a waiver of these requirements, except the requirement to publish notice in the Gazettes. As is the case with waivers of notification requirements, the decision as to whether to grant a waiver rests with the Court, but it will take account of the views of the FSA. Any proposed waiver request should be discussed and if possible agreed with the FSA before the Court process begins.

3.10 Does any party other than the authorising body have a right to raise objections to the transfer, and if so what would be the effect of such an objection?

Any person (not policyholders alone) who alleges that he would be adversely affected by the transfer can attend the final hearing and make representations to the Court. This includes employees of the transferor or the transferee. However, as mentioned above, the Court will not necessarily reject a transfer merely because one or more persons or classes of persons are adversely affected by it, provided it considers that overall it is fair.

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