

Chapter 18

Transfers of business

18.1 Application

- 18.1.1** **G** This chapter provides *guidance* in relation to business transfers.
- (1) ■ SUP 18.2 applies to any *firm* or to any *underwriting member* or any former *member* of Lloyd's proposing to transfer the whole or part of its business by an *insurance business transfer scheme* or to accept such a transfer. Some of the *guidance* in this chapter, for example, at ■ SUP 18.2.31 G to ■ SUP 18.2.41 G also applies to the *independent expert* making the *scheme report*.
 - (2) ■ SUP 18.3 applies to any *firm* proposing to accept certain transfers of *insurance business* taking place outside the *United Kingdom*.
 - (3) ■ SUP 18.4 applies to any *friendly societies* proposing to amalgamate under section 85 of the Friendly Societies Act 1992, to any *friendly society* proposing to transfer engagements under section 86 of that Act to another body and to any body (whether or not it is a *friendly society*) proposing to accept such a transfer. ■ SUP 18.4 also provides *guidance* to those wishing to make representations to the appropriate authority about an application for confirmation of an amalgamation or transfer.

Interpretation

- 18.1.1A** **G** The 'appropriate authority' in this chapter means the regulator within the meaning of section 119 of the Friendly Societies Act 1992.
- 18.1.1B** **G** References to the 'regulator' and 'regulators' in this chapter means the *FCA* and/or the *PRA*.
- 18.1.1C** **G** References to the 'Memorandum of Understanding' in this chapter is to the memorandum of understanding in force between the regulators under section 3E of the *Act*.

18.1.2 **G** [deleted]

Introduction

18.1.3 **G** *Insurance business transfers* are subject to Part VII of the *Act* and must be approved by the court under section 111. The following statutory pieces of legislation also apply:

- (1) The Financial Services and Markets Act 2000 (Control of Business Transfers) (Requirements on Applicants) Regulations 2001 (SI 2001/3625), as amended by the Financial Services and Markets Act 2000 (Control of Business Transfers)(Requirements on Applicants) (Amendment) Regulations 2008 (SI 2008/1467) and the Financial Services and Markets Act 2000 (Amendments to Part 7) Regulations 2008 (SI 2008/1468);
- (2) the Financial Services and Markets Act 2000 (Control of Transfers of Business Done at Lloyd's) Order 2001(SI 2001/3626), as amended by The Financial Services and Markets Act 2000 (Control of Transfers of Business Done at Lloyd's) (Amendment) Order (2008/1725); and
- (3) the Reinsurance Directive Regulations 2007 (SI 2007/3253) and the Financial Services and Markets Act 2000 (Reinsurance Directive) Regulations 2007 (SI 2007/3255),

These regulations set out minimum requirements for publicising schemes, notifying certain interested parties directly (subject to the discretion of the court), and giving information to anyone who requests it.

18.1.4 G An *insurance business transfer scheme* is defined in section 105 of the Act and the definition has been extended to transfers from *underwriting members* and former *members* of Lloyd's.

- (1) [deleted]
 - (a) [deleted]
 - (b) [deleted]
 - (c) [deleted]
- (2) [deleted]

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

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

18.1.6 G Under section 112 of the Act, the court has wide discretion to transfer property and liabilities to the transferee and to make orders in relation to incidental, consequential and supplementary matters.

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- 18.1.7** **G** Amalgamations of *friendly societies* and transfers of engagements from *friendly societies* to other bodies (whether or not *friendly societies*) are governed by part VIII of the Friendly Societies Act 1992 and Schedule 15 to that Act applies.
- 18.1.8** **G** Legislation in respect of other transactions, for example, cross-border mergers, does not negate the requirements under Part VII of the Act. It is for the *firms* participating in such transactions to determine whether or not the proposed transfer gives rise to an *insurance business transfer*. The regulators expect *firms* proposing such transactions to discuss the proposal with them as soon as practicable.