Chapter 18

Transfers of business
18.1 Application

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

18.1A The ‘appropriate authority’ in this chapter means the regulator within the meaning of section 119 of the Friendly Societies Act 1992.

18.1B References to the ‘regulator’ and ‘regulators’ in this chapter means the FCA and/or the PRA.

18.1C 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.

18.2 [deleted]

Introduction

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:

(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


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

18.1.8  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.