

Chapter 18

Transfers of business

18.2 Insurance business transfers

Purpose

18.2.1 G Transfers may enable *firms* to manage their affairs more effectively. However they represent an interference in the contracts between a *firm* and its *customers*, without the consent of each *customer*, and may also affect the rights of third parties. An important protection is the requirement for the consent of the court.

The regulators

- 18.2.1A G
- (1) Part VII of the Act prescribes certain statutory functions in relation to *insurance business transfer schemes* for both the *PRA* and the *FCA*. In accordance with the Act, the *PRA* and the *FCA* maintain a Memorandum of Understanding, which describes each regulator’s role in relation to the exercise of its functions under the Act relating to matters of common regulatory interest and how each regulator intends to ensure the coordinated exercise of such functions. Under the Memorandum of Understanding, the *PRA* will lead the process for *insurance business transfers* and will be responsible for specific regulatory functions connected with Part VII applications, including the provision of certificates under section 111 of the Act. Further, the *PRA* will consult with the *FCA* both at the outset and throughout the *insurance business transfer* process. As such, the scheme promoters should first approach the *PRA* but should also consider whether any aspect of their proposals should be discussed with the *FCA* at an early stage. Scheme promoters should also consider ■ SUP 18.2.13 G.
 - (2) By virtue of section 110 of the Act, both the *PRA* and the *FCA* are entitled to be heard in the proceedings. The Memorandum of Understanding confirms that both the *PRA* and the *FCA* may provide the court with written representations setting out their views on the proposed transfer scheme, for example, by way of a report to the court. Each regulator will decide in relation to each *insurance business transfer* whether it is necessary or appropriate to prepare a report bearing in mind its objectives and other relevant matters.
 - (3) As set out in the Memorandum of Understanding, before nominating or approving an *independent expert* under section 109(2)(b) of the Act or approving the form of a *scheme report* under section 109(3) the *PRA* will first consult the *FCA*. Further, where the *PRA* is the *appropriate regulator* it will consult appropriately with the *FCA* before approving the notices required under the Financial Services and Markets Act 2000 (Control of Business Transfers) (Requirements on Applicants) Regulations 2001(SI 2001/3625).

18.2.1B	G	In exercising its functions under the <i>Act</i> , each regulator will, so far as is reasonably possible, act in a way which is compatible with, and most appropriate for advancing, its <i>statutory objectives</i> as set out in the <i>Act</i> and will have regard to the regulatory principles in section 3B of the <i>Act</i> .
18.2.2	G	[deleted]
18.2.3	G	[deleted]
18.2.4	G	[deleted]
18.2.5	G	Transfers may have both positive and negative effects on individual <i>consumers</i> . A key concern in this regard for each regulator will be to be satisfy itself that each <i>consumer</i> has adequate information and reasonable time within which to determine whether or not he is adversely affected and, if adversely affected, whether to make representations to the court.
18.2.6	G	[deleted]
18.2.7	G	[deleted]
18.2.8	G	[deleted]
18.2.9	G	[deleted]
18.2.10	G	[deleted]
18.2.11	G	[deleted]
18.2.12	G	<p>Procedure: initial steps</p> <p>When an <i>insurance business transfer scheme</i> is being considered, the scheme promoters should discuss the scheme with the <i>appropriate regulator</i> as soon as reasonably practical, to enable the regulators to consider what issues are likely to arise, and to enable a practical timetable for the scheme to be established.</p> <p>(1) [deleted]</p> <p>(2) [deleted]</p> <p>(3) [deleted]</p> <p>(4) [deleted]</p> <p>(5) [deleted]</p>

- 18.2.13 G The initial documentary information on the scheme should be provided to the *PRA*, who will share it with the *FCA*, and should include its broad outline and its purpose. Each regulator may indicate to the promoters how closely it wishes to monitor the progress of the scheme, including the extent to which it wishes to see draft documentation.

Independent expert: qualifications

- 18.2.14 G Under section 109(2) of the *Act* a *scheme report* may only be made by a *person*:
- (1) appearing to the *appropriate regulator* to have the skills necessary to enable him to make a proper report; and
 - (2) nominated or approved for the purpose by the *appropriate regulator*.
- 18.2.14A G The promoters should ensure that any relevant fees are paid before any application will be considered.
- 18.2.15 G The general principles set out in ■ SUP 5.4.8 G, for suitability of a *skilled person*, apply also to the *independent expert*. The regulators expect the *independent expert* making the *scheme report* to be a natural person, who:
- (1) is independent, that is any direct or indirect interest or connection he has or has had in either the transferor or transferee should not be such as to prejudice his status in the eyes of the court; and
 - (2) has relevant knowledge, both practical and theoretical, and experience of the types of *insurance business* transacted by the transferor and transferee.
- 18.2.16 G For a transfer of *long-term insurance business* the *independent expert* should be an *actuary* familiar with the role and responsibilities of the *actuarial function* holder and (if the relevant *insurance business* includes *with-profits insurance business*) a *with-profits actuary*.
- 18.2.17 G For a transfer of *general insurance business* the *independent expert* should normally be competent at assessing technical provisions and the uncertainties of the liabilities they represent (such as an *actuary*). Exceptionally, where issues other than the ability of the transferee to meet the liabilities to be transferred are much more significant in assessing the likely effects of the scheme, this criterion might not be applied. In such a case the *independent expert* would be expected to take advice from an appropriately qualified practitioner about the adequacy of the financial resources of the transferee.
- 18.2.18 G The *independent expert* would not normally be expected to be knowledgeable:
- (1) about *general insurance business* if the business being transferred is *long-term insurance business* only; nor

(2) about *long-term insurance business* if the business being transferred is *general insurance business* only;

but, where either the transferor or transferee is a composite, he should understand the relevance of the *general insurance business* to the security of the *long-term insurance business policyholders* and vice versa and may need to seek independent specialist advice.

Independent expert: appointment

- 18.2.19
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- The suitability of a *person* to act as an *independent expert* depends on the nature of the scheme and the *firms* concerned. On the basis of the preliminary information supplied by the scheme promoters (and any other knowledge it has of the circumstances and the *firms*), the *appropriate regulator* will consider what skills are needed to make a proper report on the scheme and what criteria should therefore be applied to the choice of *independent expert*. The *appropriate regulator* will inform the promoters of any such criteria it is minded to apply.
- 18.2.20
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- Under section 107(2) of the *Act*, the application to the court may be made by the transferor or the transferee or both. As soon as reasonably practical, the intended applicant should choose their nominee for *independent expert* in the light of any criteria advised by the *appropriate regulator*. The intended applicant(s) should then advise the *appropriate regulator* of their choice, unless the *appropriate regulator* wishes them to defer nomination or to make its own nomination. The notification should be accompanied by reasons why the party considers the nominee to be a suitable *person* to act as *independent expert*. Relevant details provided should usually include information about the nominee's experience and qualifications; the proposed terms and conditions of the nominee's appointment, including any *remuneration* arrangements; and any current or previous professional or commercial arrangements with the transferor or transferee or their associated companies, including the remuneration (direct or indirect) for those arrangements with the nominee and/or with any *professional firm* or company in which the nominee has or has had any interest..
- 18.2.21
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- The regulators may wish to have preliminary discussions with the nominee about the transfer before the *appropriate regulator* determines if he is suitably qualified to address issues arising from the transfer. The regulators will consider the suitability of the nominee and the *appropriate regulator* will inform the *firm* that nominated him whether he has been approved. Since the nature of the scheme is a factor in determining the suitability of the nominee, the *appropriate regulator* cannot approve a nominee before the broad outlines of the scheme have been determined.
- 18.2.22
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- The *appropriate regulator* may itself nominate the *independent expert*, either where it indicates that a nomination is not required by the parties, or where it does not approve the parties' own nomination. In either case the *appropriate regulator* will inform the promoters of its nominee.
- 18.2.23
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- Firms* should co-operate fully with the *independent expert* and provide him with access to all relevant information and appropriate staff.

		Consultation with EEA regulators and/or other foreign regulators
18.2.23A	G	Under the terms of the Memorandum of Understanding, the <i>PRA</i> will lead when carrying out consultation with foreign regulators.
18.2.24	G	[deleted]
18.2.25	G	(1) [deleted] (1A) [deleted] (2) The <i>United Kingdom</i> , the <i>appropriate regulator</i> will need to certify that the transferee will meet its solvency margin requirements after the transfer. If the <i>appropriate regulator</i> has required of a <i>firm</i> a "recovery plan" of the kind mentioned in the <i>PRA Rulebook: Solvency II firms: Undertakings in Difficulty</i> , the <i>appropriate regulator</i> will not issue a certificate for so long as it considers that <i>policyholders'</i> rights are threatened within the meaning of these paragraphs.
18.2.26	G	[deleted]
18.2.27	G	If the transferee is not (and will not be) <i>authorised</i> and will not be a <i>Swiss general insurance company</i> , then the <i>appropriate regulator</i> will need to consult the transferee's insurance supervisor in the place where the business is to be transferred. The <i>appropriate regulator</i> will need confirmation from this supervisor that the transferee will meet his solvency margin requirements there (if any) after the transfer.
18.2.28	G	[deleted]
18.2.29	G	[deleted]
18.2.30	G	[deleted]
		Form of scheme report
18.2.31	G	Under section 109 of the <i>Act</i> , a <i>scheme report</i> must accompany an application to the court to approve an <i>insurance business transfer scheme</i> . This report must be made in a form approved by the <i>appropriate regulator</i> . The <i>appropriate regulator</i> would generally expect a scheme report to contain at least the information specified in ■ SUP 18.2.33 G before giving its approval.
18.2.31A	G	When the <i>appropriate regulator</i> has approved the form of a <i>scheme report</i> , the scheme promoter may expect to receive written confirmation to that effect from that regulator.

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

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

- (1) who appointed the *independent expert* and who is bearing the costs of that appointment;
- (2) confirmation that the *independent expert* has been approved or nominated by the *appropriate regulator*;
- (3) a statement of the *independent expert's* professional qualifications and (where appropriate) descriptions of the experience that fits him for the role;
- (4) whether the *independent expert* has, or has had, direct or indirect interest in any of the parties which might be thought to influence his independence, and details of any such interest;
- (5) the scope of the report;
- (6) the purpose of the scheme;
- (7) a summary of the terms of the scheme in so far as they are relevant to the report;
- (8) what documents, reports and other material information the *independent expert* has considered in preparing his report and whether any information that he requested has not been provided;
- (9) the extent to which the *independent expert* has relied on:
 - (a) information provided by others; and
 - (b) the judgment of others;
- (10) the people on whom the *independent expert* has relied and why, in his opinion, such reliance is reasonable;
- (11) his opinion of the likely effects of the scheme on *policyholders* (this term is defined to include *persons* with certain rights and contingent rights under the *policies*), distinguishing between:
 - (a) transferring *policyholders*;
 - (b) *policyholders* of the transferor whose contracts will not be transferred; and
 - (c) *policyholders* of the transferee;
- (11A) his opinion on the likely effects of the scheme on any *reinsurer* of a transferor, any of whose contracts of *reinsurance* are to be transferred by the scheme;

(12) what matters (if any) that the *independent expert* has not taken into account or evaluated in the report that might, in his opinion, be relevant to *policyholders'* consideration of the scheme; and

(13) for each opinion that the *independent expert* expresses in the report, an outline of his reasons.

18.2.34 G The purpose of the *scheme report* is to inform the court and the *independent expert*, therefore, has a duty to the court. However reliance will also be placed on it by *policyholders*, by *reinsurers*, by others affected by the scheme and by the regulators. The amount of detail that it is appropriate to include will depend on the complexity of the scheme, the materiality of the details themselves and the circumstances.

18.2.35 G The summary of the terms of the scheme should include:

- (1) a description of any reinsurance arrangements that it is proposed should pass to the transferee under the scheme; and
- (2) a description of any guarantees or additional reinsurance that will cover the transferred business or the business of the transferor that will not be transferred.

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

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

- 18.2.37 **G** The *independent expert* is not expected to comment on the likely effects on new *policyholders*, that is, those whose contracts are entered into after the effective date of the transfer.
- 18.2.38 **G** For any mutual *company* involved in the scheme, the report should:
- (1) describe the effect of the scheme on the proprietary rights of members of the *company*, including the significance of any loss or dilution of the rights of those members to secure or prevent further changes which could affect their entitlements as *policyholders*;
 - (2) state whether, and to what extent, members will receive compensation under the scheme for any diminution of proprietary rights; and
 - (3) comment on the appropriateness of any compensation, paying particular attention to any differences in treatment between members with voting rights and those without.
- 18.2.39 **G** For a scheme involving *long-term insurance business*, the report should:
- (1) describe the effect of the scheme on the nature and value of any rights of *policyholders* to participate in profits;
 - (2) if any such rights will be diluted by the scheme, how any compensation offered to *policyholders* as a group (such as the injection of funds, allocation of shares, or cash payments) compares with the value of that dilution, and whether the extent and method of its proposed division is equitable as between different classes and generations of *policyholders*;
 - (3) describe the likely effect of the scheme on the approach used to determine:
 - (a) the amounts of any non-guaranteed benefits such as bonuses and *surrender values*; and
 - (b) the levels of any discretionary charges;
 - (4) describe what safeguards are provided by the scheme against a subsequent change of approach to these matters that could act to the detriment of existing *policyholders* of either *firm*;
 - (5) include the *independent expert's* overall assessment of the likely effects of the scheme on the reasonable expectations of *long-term insurance business policyholders*;
 - (6) state whether the *independent expert* is satisfied that for each *firm* the scheme is equitable to all classes and generations of its *policyholders*; and
 - (7) state whether, in the *independent expert's* opinion, for each relevant *firm* the scheme has sufficient safeguards (such as principles of financial management or certification by a *with-profits actuary* or *actuarial function* holder) to ensure that the scheme operates as presented.

18.2.40	<div>G</div>	Where the transfer forms part of a wider chain of events or corporate restructuring, it may not be appropriate to consider the transfer in isolation and the <i>independent expert</i> should seek sufficient explanations on corporate plans to enable him to understand the wider picture. Likewise he will need information on the operational plans of the transferee and, if only part of the business of the transferor is transferred, of the transferor. These will need to have sufficient detail to allow him to understand in broad terms how the business will be run.
18.2.41	<div>G</div>	<p>A transfer may provide for benefits to be reduced for some or all of the <i>policies</i> being transferred. This might happen if the transferor is in financial difficulties. If there is such a proposal, the <i>independent expert</i> should report on what reductions he considers ought to be made, unless either:</p> <div><div>(1) the information required is not available and will not become available in time for his report, for instance it might depend on future events; or</div><div>(2) otherwise, he is unable to report on this aspect in the time available.</div><p>Under such circumstances, the transfer might be urgent and it might be appropriate for the reduction in benefits to take place after the event, by means of an order under section 112 of the <i>Act</i>. Each regulator would wish to consider any such reduction against its <i>statutory objectives</i> and section 113 of the <i>Act</i> allows the court, on the application of either regulator, to appoint an independent <i>actuary</i> to report on any such post-transfer reduction in benefits.</p></div>
18.2.42	<div>G</div>	<p>Notice provisions</p> <p>Under the Financial Services and Markets Act 2000 (Control of Business Transfers)(Requirements on Applicants) Regulations 2001 (SI 2001/3625), unless the court directs otherwise, notice of the application must be sent to all <i>policyholders</i> of the parties and <i>reinsurers</i> (or a person acting on its behalf) any of whose contracts of <i>reinsurance</i> are proposed to be transferred as part of the <i>insurance business transfer scheme</i>.</p> <p>It may also be appropriate to give notice to others affected, for example, to anyone with an interest in the <i>policies</i> being transferred who has notified the transferor of their interest.</p>
18.2.43	<div>G</div>	<p>The regulations referred to in ■ SUP 18.2.42 G require that notice of the application must be published in:</p> <div><div>(1) the London, Edinburgh and Belfast Gazettes; and</div><div>(2) unless the court directs otherwise, in accordance with requirements in those regulations.</div><p>Wider publication may be appropriate in some circumstances.</p></div>
18.2.44	<div>G</div>	The regulations referred to in ■ SUP 18.2.42 G require that the <i>appropriate regulator</i> approves in advance the notices sent to <i>policyholders</i> and published in the press.

- 18.2.45

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Where a transfer involves *underwriting members* of Lloyd's as transferor or transferee, any notice requirements of the *Society* will also apply.
- 18.2.46

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The regulators are entitled to be heard by the court on any application for a transfer. A consideration for the regulators in determining whether to oppose a transfer would be their view on whether adequate steps had been taken to tell *policyholders* and, as appropriate, other affected *persons*, about the transfer and whether they had adequate information and time to consider it. The regulators would not normally consider adequate a period of less than six weeks between sending notices to *policyholders* and the date of the court hearing. Therefore it would be sensible, before requesting from the court a waiver of the publication requirements or the requirement to send statements direct to *policyholders*, to consult the regulators on their views about what waivers might be appropriate and what substitute arrangements might be made. The regulators will take into account the practicality and costs of sending notices to *policyholders* (especially for *firms* in financial difficulty), the likely benefits for *policyholders* of receiving notices and the efficacy of other arrangements proposed for informing *policyholders* (including additional advertising or, where appropriate, electronic communication).
- 18.2.47

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[deleted]
- Statement to policyholders
- 18.2.48

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It would normally be appropriate to include with the notice referred to in ■ SUP 18.2.42 G a statement setting out the terms of the scheme and containing a summary of the *scheme report*. Ideally every recipient should understand in broad terms from the summary how the scheme is likely to affect him. This objective will be most nearly achieved if the summary is clear and concise while containing sufficient detail for the purpose. A lengthy summary or one that was hard to understand would not be appropriate. Regulations require the *scheme report*, the notice and the statement to be made available to anyone requesting them. The internet can be used for this purpose if it is suitable for the *person* making the request.
- 18.2.49

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Where the transferee is a *friendly society*, the notice should include information about the meeting at which a special resolution in accordance with paragraph 7 of Schedule 12 to the Friendly Societies Act 1992 is to be voted on, including the date of the meeting, how notice of the meeting is to be given to members and the terms of the special resolution. After the meeting the *friendly society* should inform the *appropriate regulator* whether the special resolution has been passed. The court will also need to be informed, so one way of informing the *appropriate regulator* may be to include it in the affidavit to the court.
- 18.2.50

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The regulators should be given the opportunity to comment on the statement referred to in ■ SUP 18.2.48 G before it is sent, unless the promoters have been informed in writing that this is not necessary.

Assessment of scheme and the regulators' report(s) to the court

- 18.2.51

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The assessment is a continuing process, starting when the scheme promoters first approach the *appropriate regulator* about a proposed scheme. Each regulator will have an interest in assessing the scheme. Among the considerations that may be relevant to both the depth of consideration each gives to, and each regulator's opinion on, a scheme are:

 - (1) the potential risk posed by the transfer to its *statutory objectives*;
 - (2) the purpose of the scheme;
 - (3) how the security of *policyholders*' (who include *persons* with certain rights and contingent rights under the *policies*) contractual rights appears to be affected;
 - (4) how the scheme compares with possible alternatives, particularly those that do not require approval (whether by the court or the *appropriate regulator*);
 - (5) how *policyholders*' rights and reasonable expectations appear to be affected;
 - (6) the compensation offered to *policyholders* for any loss of rights or expectations;
 - (6A) how any *reinsurer* of a transferor, any of whose contracts of *reinsurance* are to be transferred by the scheme may be affected;
 - (7) how for other *persons* (besides *policyholders* and *reinsurers*) who have an interest in *policies*, their rights and the security of those rights appear to be affected;
 - (8) the opportunity given to *policyholders* and other persons affected by the scheme to consider the scheme, that is whether they have been properly notified, whether they have had adequate information and whether they have had adequate time to consider that information;
 - (9) the opinion of the *independent expert*;
 - (10) for a transfer that involves *underwriting members* or *former members* of Lloyd's as transferor or transferee, the effect on the *Society*;
 - (11) the views of other *regulatory bodies* consulted in connection with the proposed transfer; and
 - (12) any views expressed by *policyholders*, *reinsurers* or any other affected parties.
- 18.2.52

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The *scheme report* will be an important factor in the view each of the regulators forms on a scheme. Considerable reliance will be placed on the opinions of the *independent expert* and the reasons for them. However each regulator will form its own view taking into account other relevant information and having regard to its *statutory objectives*.

- 18.2.53** G The regulators are likely to object to a scheme if they conclude that it is unfair to a class of *policyholders*, unless the *policyholders* of that class have approved the scheme on the basis of information the regulators consider to be adequate, clear and accurate.
- 18.2.53A** G If at any time the regulators, or either of them, conclude that *policyholders* and/or, as appropriate, other relevant affected *persons* have not had adequate information and/or sufficient time to consider information, they will seek to resolve such issues with the scheme promoters. This may require further notification. If either regulator remains unsatisfied that such *policyholders* and/or other persons have received adequate information and sufficient time to consider it they are likely to object to a transfer.
- 18.2.54** G Either regulator may exercise its other powers under the *Act*, if it considers this a more effective method of advancing its *statutory objectives*.
- 18.2.55** G Neither regulator is required under its *statutory objectives* to object to a scheme merely because some other scheme might have been in the better interests of *policyholders*, if the scheme itself is not adverse to their interests. However there may be circumstances where either regulator might require a *firm* to consider or to implement an alternative scheme.
- 18.2.56** G Where a transfer involves *underwriting members* or *former members* of Lloyd's as transferor or transferee, the *appropriate regulator* will consult the *Society*. Where the business of a *syndicate* is being transferred, the transfer involves all *members* participating in the relevant *syndicate years*.
- 18.2.57** G Regulations require that copies of the application to the court, the *scheme report* and the statement for *policyholders* referred to in ■ SUP 18.2.48 G are also given to the *appropriate regulator*.
- 18.2.57A** G The provision of reports from one or other (or both) regulators to assist the court is common practice. In most cases, a first report will be provided to the court in advance of the directions hearing and a second report will be provided to the court in advance of the final hearing. Where additional information needs to be given to the court by either regulator, this will be provided using the most appropriate format for the circumstances in each case, and may include the provision of one or more additional reports to the court.
- 18.2.57B** G When assessing a proposed scheme under Part VII of the *Act* each regulator will, taking into account all relevant matters in each case, consider whether it should provide a report to the court. As it will lead the Part VII process for *insurance business transfers*, the *PRA* will usually provide such a report.
- 18.2.57C** G In order to enable each of the regulators to assess the scheme and to facilitate the process, the parties to the proposed scheme will need to ensure timely provision of all relevant information to each regulator for its consideration of that scheme.

- 18.2.57D** G In relation to the matters at ■ SUP 18.2.57A G to ■ SUP 18.2.57C G above and to facilitate the provision to the court of a first report in advance of a directions hearing, near final versions of relevant documents will need to be made available to each of the regulators as soon as practicable. Scheme promoters should be aware that where such documents are produced less than six weeks before the date set for the hearing the regulators will be less likely to be in a position to complete their assessment in advance of the hearing. Final versions of any such documents should be provided as soon as they are available.
- 18.2.57E** G Relevant documents in ■ SUP 18.2.57D G above will usually include:
- (1) the *scheme report*;
 - (2) if the business to be transferred includes *long-term insurance business*, copies of reports on the transfer by the *actuarial function holder* and (if the *insurance business* includes *with-profits business*) the *with-profits actuary* of both *firms*;
 - (3) draft notices under article 3 of 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);
 - (4) where a proposed transfer involves an *underwriting member* or *former underwriting member* of the *Society* as transferor or transferee, a copy of the resolution or certificate required by article 4 of 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 (SI 2008/1725);
 - (5) any witness statements or other evidence which the parties to the proposed transfer intend to submit to the court for the directions hearing;
 - (6) the draft order.
- 18.2.57F** G Matters included at ■ SUP 18.2.57EG (5) should include sufficient information to enable:
- (1) the *appropriate regulator* to decide which other non-UK regulators must be consulted. This information should be provided to the *appropriate regulator* as soon as it is available;
 - (2) the *appropriate regulator* to decide whether to approve the notices at ■ SUP 18.2.57EG (3); and
 - (3) each regulator to form an opinion on any matters arising in connection with press advertising and notifications, including in relation to any waivers the parties to the proposed transfer intend to seek from the court under article 4 of those regulations.

- 18.2.57G** G A copy of any order made at the directions hearing should be provided by the applicant to the *appropriate regulator* as soon as it is available.
- 18.2.57H** G In relation to the matters at ■ SUP 18.2.57A G to ■ SUP 18.2.57C G and to facilitate the provision to the court of a second or final report in advance of the final hearing, near-final versions of relevant documents will need to be made available to each of the regulators as soon as practicable. Scheme promoters should be aware that where such documents are produced less than six weeks before the date set for that hearing, the regulators will be less likely to be in a position to complete their assessment in advance of the hearing. Final versions of any such documents should be provided as soon as they are available.
- 18.2.58** G [deleted]
- 18.2.58A** G Relevant documents in ■ SUP 18.2.57H G will usually include:
- (1) any witness statements or other evidence which the parties to the proposed transfer intend to submit to the court for the final hearing;
 - (2) the notice or notices published and sent in accordance with the order of the court at ■ SUP 18.2.57G G;
 - (3) proof of publication of the notice or notices at (2);
 - (4) any final and/or additional reports of the *independent expert*;
 - (5) any objections or other representations received from *policyholders* and/or other affected persons together with any responses to any such objections or representations;
 - (6) the draft final order.
- 18.2.59** G [deleted]
- 18.2.59A** G Provided that any necessary consents have been obtained in respect of confidential information, where either regulator has made a report it will give a copy of its report to the court and will give a copy of its report as filed with the court to each of the parties to the proposed transfer as soon as practicable after such filing.
- 18.2.59B** G Provided that any necessary consents have been obtained in respect of confidential information, the parties to the proposed transfer should give a copy of any report at ■ SUP 18.2.59A G to the *independent expert*.
- 18.2.59C** G The parties to the proposed transfer should, in each case, consider whether it would facilitate the effective running of the process to give copies to any other person, including any person who alleges that he would be adversely affected by the carrying out of the scheme and intends to be heard in accordance with section 110 of the *Act*. Where any such provision is to be

made, any necessary consents should first be obtained in respect of confidential information.

18.2.59D G The court is likely to wish to know the opinion of each of the regulators. Each regulator will decide in each case, taking all relevant matters into account, the most effective method to make known to the court its opinion.

18.2.59E G Where either regulator has indicated to the parties to the proposed transfer that it intends to appear at any hearing before the court in relation to a proposed scheme under Part VII of the Act a copy set of the bundle of documents filed with the court should be provided to it as soon as practicable.

Post-transfer advertising

18.2.60 G [deleted]

18.2.61 G [deleted]

18.2.62 G [deleted]