



THE OKLAHOMA INSURANCE DEPARTMENT
Guidance Regarding Insurance Business Transfers

Effective November 1, 2018

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Note: This Guidance Is Not Gender Specific

The Oklahoma Insurance Department reserves the right to amend this Guidance at any time



In General – Insurance Business Transfers

Effective November 1, 2018, the Oklahoma Legislature enacted The Insurance Business Transfer Act (36 O.S. §§ 1681-1688) (“IBT Act” or “the Act”). The Act enables a book of insurance policies to be completely separated from one insurer and moved to another. For some purposes, such as economic transfer, traditional reinsurance will suffice, but if one wants to separate the policies permanently from the transferor, reinsurance will not accomplish the objective.

If the number of policies to be transferred is small, the transferring company might novate each one, but most portfolios involve too many policies for novation to be practical. Instead, a transfer and novation is effected by order of a court of general jurisdiction after a thorough review and approval of the transaction by the Insurance Department acting with the assistance of an independent expert.

A novation is defined as the substitution of one party to a contract for another party. In the case of an IBT, the issuer or reinsurer of specified policies is replaced by another insurer. One contractual relationship is terminated and another takes its place.

It is important to note that there are several safeguards in this process to ensure that the interests of policyholders are protected. These safeguards include:

1. IBT Plan filed with the Insurance Department;
2. Notification to all policyholders and reinsurers;
3. Notification to all affected insurance regulators;
4. Notification to all affected guaranty associations;
5. Notification of affected (writing) brokers and agents;
6. In-depth review of the transaction by an independent expert selected by the Insurance Commissioner to assess the impact of the transfer on affected policyholders;
7. Submission of the IBT Plan to the District Court with approval contingent upon a finding that the transfer would not have a materially adverse effect on policyholders and claimants;
8. Opportunity to be heard is afforded any party that asserts adverse effect;
9. Court issues Order novating the policies and implementing the IBT; and
10. The process is designed to ensure that due process is preserved by affording affected parties (a) notice; (b) an opportunity to be heard; and (c) sanction by the Insurance Commissioner and Court.

It is expected that the approval process for transfers may take nine to twelve months to complete, depending on the transfer’s complexity and other facts and circumstances.



1. Introduction

- 1.1 All definitions contained in the Act are incorporated in this guidance. All references to “Applicant” or “Applicants” are meant to refer to the transferring insurer. The use of the word “state” in 36 O.S. § 1686 (A)(1)(m) means a governmental regulatory entity and is not limited to “states” of the United States. “Parties” means both the Transferor and Transferee.
- 1.2 This guidance explains the Department’s procedures for reviewing IBT applications pursuant to the Act. In particular, under Section 6 of the Act, the Department is charged with reviewing applications for approval of IBTs. The assessment that the Department provides to the District Court (the “Court”) is based primarily on our review of the proposed transaction, the capabilities of the assuming insurer and the report of the IE.
- 1.3 This guidance is designed to assist the transferring and assuming companies with the process and considerations of an IBT. The information in this document is generally divided as follows:
 - A. Factors the Parties should consider before contacting the Department and the information that must be provided by the Parties in advance of the pre-application meeting;
 - B. Information regarding the proposed Independent Expert (IE) nominees;
 - C. The Department’s expectations and the key aspects that the Department and the Court will consider when reviewing the proposed transfer; and
 - D. Detail regarding the Plan documents, timing of each stage of the process, the IE report and required communications.
- 1.4 This document is not intended to explain all aspects of the Department’s role in the process or all issues that the Applicant may need to consider. Each transfer will necessarily be somewhat different. The Department will consider each Transfer on its own merits and circumstances. The purpose of this guidance is to help companies identify those areas of difference between the proposed IBT and the Department’s expectations as set out in this Guidance.

2. Initial Considerations

- 2.1 The Department expects to have an early initial meeting with potential Applicants. At the initial meeting, it would be helpful for the Department to review a summary diagram indicating the pre-transfer and post-transfer structure of each Party, a summary of what portfolio is transferring, a listing of any liabilities that are moving, a high-level capital plan indicating how the Parties will meet ongoing capital requirements, and a clear description of any issues or areas of complexity to help the Department understand these points at an early stage in the process.
- 2.2 The Department expects to see a detailed proposed timetable for the transfer as early as



possible, including the points at which the Applicant will want interaction or involvement from the Department.

- 2.3 Once the timetable has been reviewed and agreed upon by the Department, the Applicant should discuss any subsequent changes with the Department as soon as possible so that the Department can plan resource requirements.
- 2.4 As part of these preliminary discussions with the Department, the Applicant should include a description of the business to be transferred. This should include classes of business, numbers of policyholders, numbers of open claims, etc. In addition it is important to highlight any unusual or complex elements of the proposed transaction.
- 2.5 The Applicant must submit documents on time and in as near-final form as possible. Companies should note that the Department may require a minimum of six to eight weeks to review documents.
- 2.6 Regulatory fees must be paid to the Department at the same time as the Applicant submits its proposals for the nomination of the IE.

3. Appointment of the Independent Expert

- 3.1 The IBT process includes the appointment of an independent expert to assist the Department and the Court in assessing all relevant facts and circumstances surrounding every proposed IBT. The Parties must jointly nominate at least two individuals to act as IE for their IBT. The Commissioner will review the nominees and either select one or reject all. If the Commissioner rejects the nominees, he will select the IE. Qualified IEs must have demonstrated independence and sufficient skill, experience and resources to furnish an opinion as to whether the IBT, among other things, will have an adverse impact on Policyholders.

Independence

- 3.2 The Department will consider the following when assessing the IE's independence:
 - A. If either of the Parties has previously engaged the IE in any capacity, the Department may have concerns about the IE's independence. While, in some circumstances, the Department may not approve IEs who have previously worked for either Party, this is not an inflexible rule and the Department will consider each case on its merits;
 - B. Whether the IE or his associated firm is connected to, for example, an employee, partner, principal or consultant to a firm which has either Party, any party to the transfer, or member of the group, as a client;
 - C. Whether the IE or his associated firm has any other connection with the Parties, and if this has a material impact on independence.



Sufficient Skill, Experience and Resources

3.3 The Department will consider:

- A. Specific evidence of relevant experience;
- B. The IE's available resources to complete the IE report and provide necessary updates in the agreed timeframe.

3.4 The Department requires the Parties to supply the Department with the following information/documents to support the IE nomination:

- A. A full CV;
- B. A "Statement of Independence" and capacity to do the work;
- C. A draft letter of engagement including full details of the IE's hourly fees, including any discounts offered; and
- D. A full CV and "Statement of Independence" for each of the proposed principal team members expected to work on the project.

4. Regulatory Overview

4.1 The Department will file a report with the Court, setting out its opinion regarding the transfer. The report is meant to assist the Court in its consideration of the Plan. This section sets forth, in further detail, the matters the Department will consider.

These include:

- A. The business rationale for the IBT Plan;
- B. Any background regulatory issues;
- C. Competition considerations;
- D. Changes affecting stakeholders, including Policyholders;
- E. Ongoing regulatory requirements;
- F. Objections;
- G. Unresolved issues; and
- H. The Applicant's communications strategy.



5. **The Plan Document**

5.0 The Department has a particular interest in certain parts of the Plan document, as follows:

Clarity on Business and Liabilities Being Transferred

5.1 There should be no doubt as to which liabilities, if any, remain with the Transferor after the Plan is implemented. Similarly, where the Transferor is proposing to surrender its Certificate of Authority (“COA”), there should be no doubt that all of the possible liabilities are being transferred.

5.2 The business being transferred must be clearly defined and identifiable.

The Department must understand the commercial intention of the Parties and require that the wording of the IBT documents match that intention.

Continuity of Proceedings

5.3 In most cases, the Parties intend that all proceedings which are pending, threatened or in contemplation will continue against the Transferee. The Department would expect to see a standard clause included in the Plan document to this effect.

5.4 The Department expects that these contractual clauses are not restricted and that they include any future proceedings brought, regardless of whether the Transferor or Transferee is aware of or anticipates them. This is partly to avoid any doubt that complaints arising after the transfer in relation to pre-transfer acts and omissions of the Transferor can be made against the transferee and taken to the appropriate insurance department.

Changes to the Plan

5.5 Minor or technical amendments can be made without returning to a prior stage in the IBT process and without requiring re-notification. Some examples include:

- A. Correction of an obvious error;
- B. Changes required by law or regulation;
- C. Changes required by generally accepted actuarial or statutory accounting rules.

5.6 As to any substantive change, the Department expects the Plan to provide adequate time to notify Policyholders and to present objections prior to the hearing in District Court. For example, at least six weeks or a “reasonable period” from the date that the Department’s IBT team acknowledges receipt of notice of the proposed change; and

5.7 Generally the Department will not object to changes if it is “impossible, impracticable



or inequitable” to implement the terms of the Plan without an amendment. In those circumstances, request to the Court would need to be accompanied by an IE report providing an opinion on the potential impact of the change on Policyholders. The Department should be notified in good time for it to consider expressing an opinion to the Court.

- 5.8 The Department would also expect that any significant change is accompanied by an updated IE report or IE certificate, as appropriate, covering all the possible impacts of the change, not just benefit expectations, on all groups of potentially affected Policyholders.

6. The Independent Expert’s Report

6.1 The Department is responsible for approving the form of the IE's report. The Department’s review will not be limited to a high-level check of whether the report covers the appropriate topics [see 36 O.S. § 1686 (n)]. It also intends to ensure that there has been sufficiently detailed analysis and challenge of the Applicant’s assertions to allow the Court to rely on the conclusions.

6.2 The Department will try to review the report as much as possible from the perspective of a policyholder. As such, the Department expects the report to be easily readable and understandable by all its users and for them to note the following:

- A. Technical terms and acronyms should be defined on first use;
- B. There should be an executive summary that explains, at least in outline, the proposed transfer and the IE's conclusions;
- C. The business to be transferred should be described early in the report;
- D. The detail given should be consistent with the issues being discussed and the materiality of the transfer when seen as a whole. While all material issues must be discussed, IEs should try to avoid presenting reports that are unreasonably long; and
- E. IEs should prepare their reports in a way that makes it possible for non-technically qualified readers to understand.

6.3 The Department will require IE reports to include detailed analysis, critical review and reasoning to support a conclusion that there is likely to be no material adverse effect on Policyholder groups. Care must be exercised to ensure IE reports include sufficient consideration and comparison of:

- A. Reasonable benefit expectations, including impact of costs;
- B. Type and level of service, including claims handling; and
- C. Management, administration and governance arrangements.



- 6.4 This section sets forth the Department's expectations and gives some specific examples of the things the Department will consider when reviewing the IE's report. These include:
- A. The level of reliance on the Applicant's assessments and assertions;
 - B. Sufficient comparative regulatory framework analysis;
 - C. Balanced judgments and sufficient reasoning;
 - D. Sufficient regard to relevant considerations affecting Policyholders;
 - E. Commercially sensitive or confidential information;
 - F. The level of reliance placed on the work of other experts;
 - G. Examples of over-reliance on the work of other experts;
 - H. Ambiguous language or a lack of clarity;
 - I. Demonstrated challenge; and
 - J. Technical actuarial guidance.

7. Communications

- 7.1 The Applicant should recognize that the requirement to notify Policyholders and publish the Plan is a fundamental protection within the IBT process.
- 7.2 One of the essential ways in which Policyholders' interests are protected within an IBT is that each Policyholder is given the opportunity to fully consider the Plan and its possible impact on them. The Policyholder then has the option to make appropriate arguments to the Court. Because individual Policyholders' contractual rights are being overridden, it is important that Policyholders have the chance to object to their policies being transferred.
- 7.3 This section details the Department's expectations of the communications strategy as a whole. Full, fair and timely communications constitute a critical due process justification for the novation process.

Identifying and Tracing Policyholders and Other Relevant Persons

- 7.4 The Applicant should ensure that it has included all potential classes of Policyholders in its communication strategy, including:
- A. Transferring Policyholders;



- B. Policyholders remaining with the Transferor; and
- C. The Transferee's existing Policyholders.

Where there are sub-groups of Policyholders within these classes that require different treatment and notification, the Applicant's documents should clearly identify and describe them. The Applicant should clearly set out the rationale for not proposing to contact a Policyholder group.

- 7.5 The Department also expects the Applicant to confirm and demonstrate that it has taken all reasonable efforts to identify, trace and contact Policyholders.
- 7.6 Where Policyholder records are incomplete, the Department's expectations are detailed below:
 - A. Where records exist but are not in the form of electronic media, the Department expects the Applicant to explain its method for obtaining information from any non-electronic/manual sources;
 - B. Where records are incomplete or not available, the Applicant should explain the mechanics for locating Policyholder information, such as public database searches, using credit reference agencies and web site searches;
 - C. Records may be kept by a third party, such as a broker or third-party provider of connected services such as bank accounts. In these cases, the Department expects the Applicant to demonstrate that it has taken all reasonable steps to obtain those records or to assist the third party in making notifications on the Applicant's behalf;

Content of Communication

- 7.7 The Department's interest is to ensure that the Applicant's communications (including the formal Legal Notice required, the individual Policyholder communications, website material and any publications) are clear, fair and not misleading.
- 7.8 As such, all communications must:
 - A. Be understandable by a person with limited technical insurance knowledge;
 - B. Provide sufficient information and balanced explanation to allow Policyholders to make an informed decision about the possible impact of the transfer on them, any potential adverse impacts they should consider further and whether to make objections to the Applicant and/or the Court; and
 - C. Where appropriate, direct Policyholders to additional material including specific information about the potentially adverse impacts.
- 7.9 Specifically with regard to the Legal Notice, the Department requires the notice to:



- A. Identify the parties in a way that allows Policyholders to readily recognize them.
- B. Give free telephone contact numbers, staffed by representatives of the Applicant at set times;
- C. Clearly state that if the Policyholder believes he may be adversely affected by the transfer, he can make objections which will be considered by the Court.
- D. Where the Legal Notice asks that Policyholders respond by a certain date for practical reasons, it should be clear that this is a request and not a requirement. It should also be clear that Policyholders can still make objections up to and during the hearing before the Court; and
- E. Clearly state that a representation of adverse impact can be made in writing to the designated address, by telephone to the designated contact number, by email to the designated email address, and/or in person or by the legal representative to the Department or the Court.

Individual Notifications

- 7.10 The Department's review of the notifications will include the document's tone, content, and clarity. The Department expects Policyholder notifications to be transparent, balanced and not misleading.

The Applicant should avoid giving the impression that because the Department, the IE, and the Court are considering the proposal, this implicitly means that Policyholders are relieved of this obligation.

Cover Letters

- 7.11 Regarding cover letters, the Department understands the Applicant's desire to avoid information overload, but the Department considers cover letters to be useful in providing an overview of the transfer, the Court process, which documents Policyholders should read and how to ask questions or raise objections. The Department expects that cover letters should also refer to key aspects of the transfer that will be relevant to Policyholders and state where to obtain additional information.

Other Communication Documents

- 7.12 In addition to the information specified in 36 O.S. 1686 (B)(7), communications to Policyholders should include but are not limited to the following:
- A. First Notice of Proposed IBT;
 - B. IE's Report Summary;
 - C. Supporting documents such as a Q&A or FAQ which gives further details and



issues for note by Policyholders;

- D. Notice of Department's authorization to proceed to Court.

Deficiencies in Notifications

- 7.13 The Applicant is required to report to the Court and the Department on its compliance with the notification requirements regarding Policyholders and other relevant persons. If the Applicant has not been able to fully comply with such notification requirements, the report should enumerate the steps they have taken to rectify any failures.
- 7.14 The Applicant should keep a record of correspondence received from stakeholders and should provide regular updates regarding such correspondence to the Department and the IE, especially any objections received, or any correspondence which could be construed as an objection.

END



Appendix One Business Transfer Act Guidance

Sample IBT Transfer Timeline – For Illustration Only

<u>Days Elapsed</u>	<u>Date</u>	<u>Action</u>
1	November 1, 2018	The Oklahoma Insurance Department (“OID”) receives an inquiry about a contemplated Insurance Business Transfer (“IBT”) from the counsel for a proposed Transferring Company. OID schedules a meeting where the Transferring and Assuming companies explain the transaction in detail to the OID IBT team.
15	November 15, 2018	Department’s IBT team meets with the representative of the proposed parties to the IBT. Transaction is explained and Transferring Company (“Applicant”) is advised to submit a draft IBT plan with exhibits and the names of their nominees for independent expert (“IE”).
44	December 14, 2018	The Applicant submits the preliminary IBT Plan and IE nominations. \$10,000 processing fee is paid by Applicant.
58	December 28, 2018	OID notifies Applicant that based upon evaluation of the transaction, independence and expertise of the IE nominees, one of them is acceptable and is selected by the OID (or that none are acceptable and the OID has selected another individual). The Applicant submits written confirmation of OID notice of selection and appointment.
65	January 4, 2019	Applicant provides IE with Preliminary IBT Plan and any other information requested by the IE.
84	January 23, 2019	IE and OID request additional information from the Applicant.
112	February 20, 2019	The Applicant provides additional information and answers written questions from OID and IE, as necessary, and submits the letter of approval or non-objection from the transferring company’s domiciliary insurance regulator.
140	March 20, 2019	IE’s Report is provided to OID.
153	April 2, 2019	OID notifies IE of OID challenges to or questions regarding the IE Report or requests for additional information.



196	May 15, 2019	OID determines the Applicant is authorized to submit the IBT Plan to District Court, ¹ and notifies the Applicant in writing.
225	June 13, 2019	Applicant files petition in District Court for approval of IBT and provides notice to all interested parties per District Court Rules.
252	July 10, 2019	Applicant files motion with the Court setting petition for hearing.
252	July 10, 2019	Motion for Scheduling Order (aka Motion to Enter) heard by District Court and Scheduling Order issued.
267	July 25, 2019	Applicant provides notice of hearing per 36 O.S. § 1685 and 60-day comment period begins.
336	October 2, 2019	Applicant presents IBT for approval by District Court after hearing. ²
363	October 29, 2019	Court either disapproves IBT or Orders the IBT Plan to be implemented. If disapproved, Applicant may file an amended IBT Plan. Reimbursement of OID for IBT expense per 36 O.S. §1688 is due within 30 days of order implementing Plan.

¹ OID review period may extend 90 days from filing. If Applicant is not “authorized,” Applicant is afforded up to 60 days to amend filing.

² Upon hearing, the court may approve or disapprove and grant leave to Applicant to file amended petition.