

# 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.

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  - (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.



## 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 *Act*, each regulator will, so far as is reasonably possible, act in a way which is compatible with, and most appropriate for advancing, its *statutory objectives* as set out in the *Act* and will have regard to the regulatory principles in section 3B of the *Act*.
  
- 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 *consumers*. A key concern in this regard for each regulator will be to be satisfy itself that each *consumer* 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

**Procedure: initial steps**.....

When an *insurance business transfer scheme* is being considered, the scheme promoters should discuss the scheme with the *appropriate regulator* 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.

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  - (4) [deleted]
  - (5) [deleted]

**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 **G** 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 **G** 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 **G** 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 **G** 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 **G** *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 *PRA* will lead when carrying out consultation with *EEA regulators* and/or other foreign regulators.
- 18.2.24 **G** The *guidance* set out in ■ SUP 18.2.25 G to ■ SUP 18.2.30 G derives from the requirements of the *Solvency II Directive* and the associated agreements between *EEA regulators*. Schedule 12 of the *Act* implements some of these requirements.
- 18.2.25 **G**
- (1) If the transferee is (or will be) an *EEA firm* (authorised in its *Home State* to carry on *insurance business* under the *Solvency II Directive*) or a *Swiss general insurance company*, then the *appropriate regulator* has to consult the transferee's *Home State regulator*, who has 3 months to respond. It will be necessary for the *appropriate regulator* to obtain from the transferee's *Home State regulator* a certificate confirming that the transferee will meet the *Home State's* solvency margin requirements (if any) after the transfer.
  - (1A) If the transferee is (or will be) an *EEA firm* (authorised in its *Home State* to carry on *insurance business* under the *Reinsurance Directive*) it will be necessary for the *appropriate regulator* to obtain from the transferee's *Home State regulator* a certificate confirming that the transferee will meet the *Home State's* solvency margin requirements (if any) after the transfer.
  - (2) If the transferee is *authorised* in the *United Kingdom*, the *appropriate regulator* will need to certify that the transferee will meet its solvency margin requirements after the transfer. If the *appropriate regulator* has required of a *UK firm* a "recovery plan" of the kind mentioned in the *PRA Rulebook: Solvency II firms: Undertakings in Difficulty*, the *appropriate regulator* will not issue a certificate for so long as it considers that *policyholders'* rights are threatened within the meaning of these paragraphs.
- 18.2.26 **G** The transferor will need to provide the *appropriate regulator* with the information that the *Home State regulator* requires from the *appropriate regulator*. This information includes:
- (1) the transfer agreement or a draft, with:
    - (a) the names and addresses of the transferor and transferee; and
    - (b) the *classes of insurance business* and details of the nature of the risks or commitments to be transferred;
  - (2) for the business to be transferred (both before and after reinsurance):
    - (a) the amount of technical provisions;
    - (b) the amount of *premiums* (in the most recent financial period); and
    - (c) for *general insurance business*, the *claims* incurred (in the most recent financial period);

- (3) details of assets to be transferred;
- (4) details of any guarantees (including reinsurance arrangements), whether provided by the transferor or a third party, to protect the provisions for the business transferred against deterioration; and
- (5) the *states of the risks* or the *states of the commitments* of the business being transferred.

- 18.2.27** **G** If the transferee is not (and will not be) *authorised* and will be neither an *EEA firm* nor a *Swiss general insurance company*, then the *appropriate regulator* will need to consult the transferee's insurance supervisor in the place where the business is to be transferred. The *appropriate regulator* 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** If the transferor is a *UK insurer* (other than a *pure reinsurer*) and the business to be transferred includes business carried on from a branch in another *EEA State*, then the *appropriate regulator* has to consult the *Host State regulator*, who has 3 months to respond. The *appropriate regulator* will need to be given the information that the *Host State regulator* requires from it. This information should identify the parties to the transfer and include the transfer agreement or draft transfer agreement or a summary containing relevant information, and describe arrangements for settling *claims* if the branch is to be closed.
- 18.2.29** **G** If the transferor is a *UK insurer* and the business to be transferred includes a long-term insurance contract (other than reinsurance) for which the *state of the commitment* is an *EEA state* other than the *United Kingdom*, then the *appropriate regulator* has to consult the *Host State regulator*. If the transferor is a *UK insurer* and the business to be transferred includes a general insurance contract (other than reinsurance) for which the *state of the risk* is an *EEA state* other than the *United Kingdom*, then the *appropriate regulator* must consult the *Host State regulator*. The *appropriate regulator* will need to be given the information that the *Host State regulator* requires from it. This information should identify the parties to the transfer and include the transfer agreement or draft transfer agreement or a summary containing relevant information. It would be helpful (especially for *long-term insurance business*) if a draft of the *scheme report* was also available. The *appropriate regulator* will also need to have sufficient information about the business proposed to be transferred to be satisfied that the applicants have undertaken sufficient steps to identify the *state of the risk* or the *state of the commitment*, as the case may be. The consent of the *Host State regulator* to the transfer is required, unless he does not respond within 3 months.
- 18.2.30** **G** Where the transferor is a *UK-deposit insurer* and, following the transfer, it will no longer be carrying on *insurance business* in the *United Kingdom*, the *appropriate regulator* will need to collaborate with *regulatory bodies* in the other *EEA States* in which it is carrying on business to ensure that effective supervision of the business carried on in the *EEA* continues. The transferor should cooperate with the *appropriate regulator* and the other *regulatory*

*bodies* in this process and demonstrate that it will meet the requirements of its regulators following the transfer.

### Form of scheme report

- 18.2.31** **G** Under section 109 of the *Act*, a *scheme report* must accompany an application to the court to approve an *insurance business transfer scheme*. This report must be made in a form approved by the *appropriate regulator*. The *appropriate regulator* 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 *appropriate regulator* has approved the form of a *scheme report*, 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 businesspolicyholders*;
- (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** G 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 *independent expert* 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** G A transfer may provide for benefits to be reduced for some or all of the *policies* being transferred. This might happen if the transferor is in financial difficulties. If there is such a proposal, the *independent expert* should report on what reductions he considers ought to be made, unless either:

- (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
- (2) otherwise, he is unable to report on this aspect in the time available.

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 *Act*. Each regulator would wish to consider any such reduction against its *statutory objectives* and section 113 of the *Act* allows the court, on the application of either regulator, to appoint an independent *actuary* to report on any such post-transfer reduction in benefits.

**Notice provisions**

**18.2.42** G 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 *policyholders* of the parties and *reinsurers* (or a person acting on its behalf) any of whose contracts of *reinsurance* are proposed to be transferred as part of the *insurance business transfer scheme*.

It may also be appropriate to give notice to others affected, for example, to anyone with an interest in the *policies* being transferred who has notified the transferor of their interest.

- 18.2.43 **G** The regulations referred to in ■ SUP 18.2.42 G require that notice of the application must be published in:
  - (1) the London, Edinburgh and Belfast Gazettes; and
  - (2) unless the court directs otherwise, in accordance with requirements in those regulations.

Wider publication may be appropriate in some circumstances.

- 18.2.44 **G** The regulations referred to in ■ SUP 18.2.42 G require that the *appropriate regulator* approves in advance the notices sent to *policyholders* and published in the press.

- 18.2.45 **G** 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 **G** 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 **G** As the consent (or presumed consent) of the *Host State* is required for a transfer covering contracts for which another *EEA State* is the *state of the risk* (for *general insurance business*) or the *state of the commitment* (for *long-term insurance business*), it is advisable to obtain the consent of *regulatory body* in the *Host State* to any waiver of publication in that state. The approval of the court will still be required.

**Statement to policyholders**

- 18.2.48 **G** 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** **G** 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** **G** 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** **G** 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** **G** 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** Under section 114 of the *Act* the court must direct that notice of the transfer be published by the transferee in any *EEA State* other than the United Kingdom which is the *state of the commitment* or the *state of the risk* as regards any policy included in the transfer which evidences a contract of insurance (other than a contract of reinsurance). The regulators would expect the transferee to publish notice in at least one national newspaper in each relevant *EEA State*. Such publication should include the notification of the transfer to the policyholders in the *state of the commitment* or the *state of the risk*. The parties should also be mindful of relevant provisions of the

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national laws of the relevant *state of the commitment* or the *state of the risk*.

- 18.2.62 **G** Under section 114A of the *Act* the court may direct that notice of a transfer be published by the transferee in any *EEA State* which is the *state of the commitment* or the *state of the risk* as regards any *policy* included in the transfer which evidences a contract of *reinsurance*.

## 18.3 Insurance business transfers outside the United Kingdom

### Purpose

- 18.3.1 **G** Under section 115 of the *Act*, the *appropriate regulator* has the power to give a certificate confirming that a *firm* possesses any necessary margin of solvency, to facilitate an *insurance business* transfer to the *firm* under overseas legislation from a firm authorised in another *EEA State* or from a *Swiss general insurance company*. This section provides *guidance* on how the *appropriate regulator* would exercise this power and on related matters.

### Appropriate regulator response to proposal

- 18.3.1A **G** Unless otherwise expressly stated by the *appropriate regulator*, all the procedural aspects for dealing with *insurance business transfers* outside the *United Kingdom* should be discussed by *firms* with the *PRA* in the first instance.
- 18.3.2 **G** Under cooperation agreements between *EEA regulators*, if it has serious concerns about the proposed transferee, the *appropriate regulator* should inform the *regulatory body* of the transferor within 3 months of the original request from that *regulatory body*. The *appropriate regulator* is not obliged to reply, but if it does not, its opinion is taken to be favourable. Although the protocol does not apply to Switzerland, the *appropriate regulator* is required to cooperate with the *Swiss regulatory body* and would apply similar principles to a proposed transfer from a *Swiss general insurance company*.
- 18.3.3 **G** The information that the *regulatory body* of the transferor is required to supply will normally be sufficient for the *appropriate regulator* to determine whether the transfer is likely to have a material effect on the transferee.
- 18.3.4 **G** If the effect of the transfer is not likely to be material and the *appropriate regulator* does not already have serious concerns about the transferee, the *appropriate regulator* can reply favourably.
- 18.3.5 **G** If the effect of the transfer may be material, the *appropriate regulator* will need to consider whether to request a *scheme of operations* or other information from the proposed transferee to assist in determining whether the likely effect of the transfer is such that the *appropriate regulator* should have serious concerns.

## 18.3.6

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If the effect of the transfer may have a material adverse effect on the transferee or the security of *policyholders*, the *appropriate regulator* will consider whether it is appropriate to exercise its powers under the *Act* to achieve its *statutory objectives*.

## 18.4 Friendly Society transfers and amalgamations

### Purpose

- 18.4.1 **G** It is for the committee of management of a *friendly society* to decide whether to recommend an amalgamation or a transfer of engagements to the society's members. This section provides some *guidance* on the procedures to be followed and the information to be provided to a friendly society's members so that they are appropriately informed before they exercise their right to vote on the proposals.

### General considerations

- 18.4.1A **G** In general, although the legislation governing transfers of engagements involves *friendly societies* is the Friendly Societies Act 1992, similar issues arise in these transfers as in *insurance business transfers* under Part VII of the Act and so the regulators would expect *firms* to be subject to a similar process followed under the Act. Accordingly, *firms* should usually first discuss the procedural aspects for dealing with *friendly society* transfers and amalgamations with the PRA. The PRA will consult the FCA as required by the Friendly Societies Act 1992, or as may otherwise appear to be appropriate.
- 18.4.2 **G** *Friendly societies* are encouraged to discuss a proposed transfer or amalgamation with the appropriate authority, at an early stage to help ensure that a workable timetable is developed. This is particularly important where there are notification requirements for supervisory authorities in EEA States other than the *United Kingdom*, or for an amalgamation where additional procedures are required.
- 18.4.3 **G** The regulators will want to satisfy themselves that after an amalgamation or a transfer the business will be prudently managed and continue to comply with all applicable requirements.
- 18.4.4 **G** For a transfer to another *friendly society*, if the conditions of 87(1) and 87(2) of the Friendly Societies Act 1992 are met a report is required from the *appropriate actuary* of the transferee to confirm that it will meet the necessary margin of solvency. Where the conditions of 87(1) and 87(3) are met the appropriate authority may require a report from the *appropriate actuary* of the transferee to confirm that it will have an excess of assets over liabilities.

- 18.4.5** **G** For a transfer of *long-term insurance business*, the appropriate authority may, under section 88 of the Friendly Societies Act 1992, require a report from an independent *actuary* on the terms of the proposed transfer and on his opinion of the likely effects of the transfer on long-term *policyholder* members of either the transferor or (if it is a *friendly society*) the transferee. A summary is included in the statement sent to members (see ■ SUP 18.4.13 G) and the full report is required to be made available to anyone on payment of a reasonable fee. The general principles in ■ SUP 18.2.32 G to ■ SUP 18.2.40 G apply to the independent *actuary's* report.
- 18.4.6** **G** Under the Friendly Societies Act 1992 the appropriate authority is required to confirm a proposed transfer of engagements. It will do so only where it is satisfied that the transfer is in the interests of the members of each *friendly society* participating in the transfer (see ■ SUP 18.4.25 G (2)(b)). The appropriate authority will therefore ask that the participating societies' *actuaries* confirm that the transfer is in the interests of the members.
- 18.4.7** **G** Under the Friendly Societies Act 1992, members will normally have the opportunity to vote on a proposed transfer or amalgamation (■ SUP 18.4.11 G and ■ SUP 18.4.12 G describe exceptions). A *friendly society* has to ensure that, before casting their votes, its members are clearly and fully informed of the terms on which the amalgamation or transfer of engagements is to take place and that they have all the information needed to understand how their interests will be affected. If the society's rules permit, delegates can vote except on an "affected members' resolution" under section 86. The appropriate authority may not confirm an amalgamation or a transfer if it considers that information material to the members' decision was not made available to all the members eligible to vote.
- 18.4.8** **G** Amendments to a friendly society's registered rules may be necessary to permit a transfer to it. The *FCA* will need to be consulted in the usual way about registration of the appropriate rules. Similarly for an amalgamation, each of the amalgamating societies has to approve the memorandum and rules of the new society and the requirements of schedule 3 to the Friendly Societies Act 1992 have to be met. It will be necessary to allow adequate time for these processes.
- 18.4.9** **G** For an amalgamation the successor society, and for a transfer the transferee, may need to apply for *permission*, or to vary its *permission*, under Part 4A of the *Act*. The regulators will need sufficient time before a transfer is confirmed to consider whether any necessary *permission* or variation should be given. If the transferee is an *EEA firm* or a *Swiss general insurance company*, then confirmation will be needed from its *Home State regulator* that it meets the *Home State's* solvency margin requirements (see ■ SUP 18.4.25 G (3)).
- 18.4.10** **G** It is likely that the information sent to members will include a statement explaining the reasons for the amalgamation or transfer and the choice of partner. Although this is not a statutory statement and not subject to either regulator's approval, the regulator's views on the content of the statement will be a factor that the appropriate authority will take into account before considering whether to confirm the amalgamation or transfer. A *friendly*

*society* will therefore find it helpful to consult the regulators about the content of such a statement.

#### Exercise of discretion by the appropriate authority

**18.4.11** **G** The appropriate authority has discretion under section 86(3)(b) of the Friendly Societies Act 1992 to allow a transferee society to resolve to undertake to fulfil the engagements of a transferor society by resolution of the committee of management, rather than by special resolution. Among the issues on which the appropriate authority will wish to be satisfied before exercising this discretion, are that the transfer will be in the interests of the members of both societies and that the transfer will not mean a change of policy by the transferee society. The appropriate authority is unlikely to exercise this discretion unless the transferee is significantly larger than the business to be transferred.

**18.4.12** **G** The appropriate authority has discretion under section 89 of the Friendly Societies Act 1992 to modify some of the requirements for a transfer of engagements from a *friendly society*, on the application of a specified number of its members, if it is satisfied that it is expedient to do so in the interests of its members or potential members.

#### Schedule 15 statement to members

**18.4.13** **G** Schedule 15 to the Friendly Societies Act 1992 requires a statement to be sent to every member of a *friendly society* entitled to vote on a transfer or amalgamation. Among other matters this statement has to cover the financial position of the *friendly society* and every other participant in the transfer or amalgamation. The members should be provided with sufficient financial information about the respective financial positions of the participants to gain an understanding of the relative financial strengths and *key features* of the participants. The statement has to include a summary of any *actuary's* report under section 88, though the appropriate authority may direct that the summary is to be provided separately if inclusion appears impractical.

**18.4.14** **G** The financial information provided under **■ SUP 18.4.13 G** would normally contain comparative statements of balance sheets at the same date, and include main investments, reserves and funds or technical provisions, with details of the number of members of each participant as at the balance sheet date and the *premium* income of the relevant fund of each participant during the financial year to which the balance sheet relates. **■ SUP 18.4.15 G** to **■ SUP 18.4.18 G** give further *guidance* on the financial information to be included.

**18.4.15** **G** If the information relates to a position some time in the past, the information should state that there has been no significant change or include a clear description of the changes. Differences in accounting *policies* and reporting requirements could lead to the loss of some comparability between participants. Such differences and their estimated financial effects (if any) should be explained.

18.4.16 G The information should state whether any of the participants has any significant future capital commitments. The appropriate authority will require it to state that the transfer of engagements or amalgamation will not conflict with any contractual commitment by a society, any subsidiary or any body jointly controlled by it and others.

18.4.17 G Brief details should be given of the date of the last actuarial valuation and the position revealed (surplus/deficit, necessary margin of solvency and free assets) for each participant.

18.4.18 G The appropriate authority may require confirmation from the auditors of either friendly society involved in the transfer or amalgamation about the reasonableness of any part of the information in the statement. For instance such confirmation would normally be required if the financial information relates to a date more than six months previously.

18.4.19 G The statement is required to include particulars of:
(1) any interest of the members of the committee of management in the amalgamation or transfer; and
(2) any compensation or other consideration proposed to be paid to committee members or other officers of the society and to the officers of every other society or person participating in the amalgamation or transfer.

Under section 92 of the Friendly Societies Act 1992, any compensation must be approved by a special resolution, separate from any resolution approving other terms of the amalgamation or transfer. This enables members to vote on this as a separate issue.

18.4.20 G Under schedule 15 to the Friendly Societies Act 1992, the appropriate authority may require the statement to include any other matter. Under this provision, inclusion of the terms on which the amalgamation or the transfer of engagements is to be made will usually be required.

18.4.21 G The statement should be clearly separate from other information sent to members. It has to be approved by the appropriate authority and if it is not in a self-contained document, the approved element should appear in a separate section.

18.4.22 G ■ SUP 18 Annex 1 provides an example of the information for members required by Schedule 15.

Confirmation procedures and criteria

18.4.23 G Under the Friendly Societies Act 1992:
(1) when the members of a transferor society have approved the transfer of its engagements by passing a special resolution and the transferee

has approved the transfer (by passing a resolution where the transferee is a *friendly society*); or

- (2) when two or more societies have approved a proposed amalgamation by passing a special resolution;

it, or they jointly, must then obtain confirmation by the appropriate authority of the transfer. Notice of the application will need to be published in one or more of the London, Edinburgh or Belfast Gazettes and other newspapers as directed by the appropriate authority. If the appropriate authority confirms a transfer, then the *FCA* will register the society's instrument of transfer after receiving an application on the appropriate form by the transferor society and the transferee. If the appropriate authority confirms an amalgamation, the *FCA* will register the successor society. All the property, rights and liabilities pass on the transfer date specified by the appropriate authority.

**18.4.24** **G** For a *directive friendly society*, if the transfer or amalgamation includes *policies* where the *state of the risk* or the *state of the commitment* is an *EEA State* other than the *United Kingdom*, consultation with the *Host State regulator* is required and ■ SUP 18.2.25 G to ■ SUP 18.2.29 G apply (for an amalgamation they apply as if the business of the amalgamating societies is to be transferred to the successor society). Paragraph 6(1) of Schedule 15 to the Friendly Societies Act 1992 requires publication of the application to the appropriate authority for confirmation of an amalgamation or transfer and the appropriate authority may require the notice of the application to be published in two national newspapers in the *Host State*.

**18.4.25** **G** The criteria that the appropriate authority must use in determining whether to confirm a proposed amalgamation or transfer are set out in schedule 15 to the Friendly Societies Act 1992. These criteria include that:

- (1) confirmation must not be given if the appropriate authority considers that:
- (a) there is a substantial risk that the successor society or transferee will be unable lawfully to carry out the engagements to be transferred to it;
  - (b) information material to the members' decision about the amalgamation or transfer was not made available to all the members eligible to vote;
  - (c) the vote on any resolution approving the amalgamation or transfer does not represent the views of the members eligible to vote; or
  - (d) some relevant requirement of the Friendly Societies Act 1992 or the rules of any of the participating societies was not fulfilled (but it can modify some requirements and direct that certain failures may be disregarded, see ■ SUP 18.4.12 G and ■ SUP 18.4.27 G);
- (2) the appropriate authority must be satisfied that:
- (a) the transferee or successor society will have any *permissions* necessary under Part 4A of the *Act*;

- (b) for a transfer, it is in the interests of the members of each *friendly society* participating in it (see ■ SUP 18.4.6 G); and
  - (c) for a *directive friendly society* where a transfer includes *policies* where the *state of the risk* or the *state of the commitment* is an *EEA State* other than the *United Kingdom*, the *Host State regulator* has been notified of the transfer and has consented or has not refused consent to the transfer; and
- (3) for a transfer, the transferee possesses the necessary margin of solvency after taking the proposed transfer into account or, where it is not required to maintain a necessary margin of solvency, possesses an excess of assets over liabilities (for a transferee that is a *Swiss general insurance company* or an *EEA firm*, this is evidenced by a certificate from its *home state regulator*).

18.4.26 **G** If *authorisation* or a *Part 4A permission* is needed, the appropriate authority will need to consider the application for *authorisation* or *permission* in the usual way. If the *authorisation* or *permission* is refused, confirmation cannot be given even if all the other criteria are met.

18.4.27 **G** The appropriate authority may (as an alternative to refusing confirmation) direct the society or societies to remedy certain procedural defects in a proposed transfer or amalgamation, and after they have been remedied confirm the application. If it appears to the appropriate authority that failure to meet a "relevant requirement" of the Friendly Societies Act 1992 or the rules of the *friendly society* could not be material to the members' decision, then it may direct that this failure is to be disregarded.

**Confirmation procedures: representations**

18.4.28 **G** Any interested party has the right to make representations to the appropriate authority about an application for confirmation of a transfer or amalgamation. This includes any *person* (whether a member of the *friendly society* or not) who claims that he would be adversely affected by the amalgamation or transfer. The *person* making the representations should state clearly why he or she claims to be an interested party and the ground or grounds to which the representations are directed.

18.4.29 **G** Written representations, or written notice of a *person's* intention to make oral representations, or both, are required to reach the appropriate authority by the date published in the relevant Gazettes and other newspapers. Those giving notice of intent to make oral representations are advised to state the nature and general grounds of the oral representations they intend to make. *Persons* who make written representations but subsequently decide also to make oral representations are required, nevertheless, to give notice of that intention, in writing, to the appropriate authority by the same date.

18.4.30 **G** The appropriate authority will send copies of all written representations to the society(ies), and will afford them an opportunity to comment on the representations. It may consider the written representations and a society's response to them, before the date set for hearing oral representations. A synopsis of the written representations (probably in the form of a summary

of each of the points made and the numbers of *persons* making each point) and a society's responses will be made available to those participating in the hearing. This is intended to inform those making oral representations of the points already being considered by the appropriate authority.

**18.4.31** **G** The regulators expect that any documents referred to in a society's comments will be made available by the society for inspection at its registered office and, if reasonably possible, at the venue of the hearing on the date of the hearing. However if a society applies to put documents which it considers to be sensitive to the regulator(s) in confidence, the regulators will balance any disadvantage this might cause interested parties in making representations against the commercial damage that publication of the documents might cause, and the appropriate authority may permit the documents or sensitive parts of them not to be available for inspection.

**Confirmation hearing**

**18.4.32** **G** Interested parties may be represented and may make collective representations. Such arrangements should be notified to the appropriate authority in advance to enable it to make appropriate arrangements.

**18.4.33** **G** The hearing referred to in **■ SUP 18.4.30 G** will be at a time and place that will be notified to the participants and will be conducted by the appropriate authority's representatives. The hearing may last longer than one day and may be adjourned. The appropriate authority will try to tell participants when they may expect to make their representations and when the society may be expected to respond.

**18.4.34** **G** The appropriate authority expects that oral hearings will be held in public though this is not required. At the start members of the general public and the press will be asked to wait outside while participants are asked if any of them has good reason to object to the admission of the general public or the press. Unless an objection by a participant is upheld by the appropriate authority's representatives, the press and the general public will then be admitted, within the limits of the space available. However, the appropriate authority's representatives may decide that parts of the hearing will be in private if that appears to them to be desirable.

**18.4.35** **G** The procedure will be informal. All participants will be expected to speak concisely and avoid repetition. The appropriate authority will, as far as practicable, help those who are not professionally represented. Those taking the hearing may question the participants. The sequence of events will normally be broadly:

- (1) any preliminary matters (such as the admission of the public or other procedural questions) will be dealt with;
- (2) the chair of the hearing will introduce the proceedings;
- (3) the society representatives will be invited to speak on the application, including a description of the events at the meeting at which the resolution to amalgamate or transfer was put to the members, a

statement of the voting on the resolution, and any other matters which they wish to introduce at that stage;

- (4) the other participants will be invited to speak to their representations. The appropriate authority expects to call them in order of a list arranged, so far as possible, by subject matter;
- (5) the society representatives will be invited to reply to, or comment on, the points made by the other participants; and
- (6) the other participants will be invited to comment on the society replies.

**18.4.36** **G** The above procedure may be varied according to the circumstances at the hearing, and is intended only as a guide. The hearing may be adjourned if the appropriate authority's representatives consider that necessary to enable facts to be checked or additional information to be obtained.

**18.4.37** **G** The appropriate authority will not decide whether to confirm the transfer or amalgamation at the hearing. A copy of its written decision, including its findings on the points made in representations, will be sent to the society(ies) and to those making representations. It will also be available to any other *person* on request and may be published.



**Friendly Society transfer or amalgamation (Information requirements related to Schedule 15 Friendly Societies Act 1992) (This belongs to SUP 18.4.22G)**

Transfer/Amalgamation of [Society A] to/with [Society B]		
Proposed effective date:		
<b>Comparative financial positions</b>		
(a) Balance Sheet as at 31 December 20-	Society A	Society B
<b>ASSETS</b>		
Land and buildings (4)		
Government securities		
Equities		
Other investments (6)		
Fixed assets		
Other assets		
Cash at bank and in hand		
	_____	_____
	_____	_____
<b>LIABILITIES</b>		
Benefit funds [technical provisions] (7)		
[Management fund]		
Other liabilities and provisions		
Reserve funds [Reserves] (8)		
	_____	_____
	_____	_____
<b>NOTES</b>		
(1)	The above figures are extracted from the audited accounts [unaudited accounts] of [Society A and Society B] for the year [period] ended:	
(2)	There has been no significant change in the financial position of the [participants] [except for ]	
(3)	The future capital commitments of [the participants] are:[None of [the participants] has any significant future capital commitments.]	
(4)	Land and buildings have been brought into account on the following bases: (include statement of any differences in accounting policies and where material any estimated financial effects)	
(5)	Investments have been brought into account on the following bases: (include statement of any differences in accounting policies and where material any estimated financial effects)	
(6)	Other investments comprise: (include statement of any differences in accounting policies and where material any estimated financial effects)	

- (7) Benefit Funds [Technical Provisions] comprise:(include statement of any differences in accounting policies and where material any estimated financial effects)
- (8) Reserve Funds [Reserves] comprise:
- (9) The membership at [ ] and premium income received during [ ] for each [participant] were:
- (10) Brief summary of the financial position of each [participant] as shown in the last actuarial investigation:
- (11) Summary of independent actuary's report under section 88 of the Friendly Societies Act 1992:
- (12) The interests of committee members of the [participants] in the transfer [amalgamation] are:
- (13) Proposed compensation to be paid to committee members and[/or] to other officers is:
- (14) The terms of the transfer[amalgamation] are: