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Memorandum to New York Life Insurance Company
From Debevoise & Plimpton

**Insurance Business Transfers under Part VII of the UK Financial Services and Markets Act 2000
(a “Part VII Transfer”)**

This note provides a summary of (i) the purpose of a Part VII Transfer, (ii) the principal elements of the process, (iii) the role of regulators and independent experts, (iv) the approach and powers of the court, (v) key considerations where a transferor is in financial distress, and (vi) the consultation process between UK and other European Economic Area (“EEA”) regulators.¹

A. Overview

Purpose

1. A Part VII Transfer is a court sanctioned regulatory process to implement a statutory transfer of a (re)insurance portfolio, along with its related assets and liabilities. Since the transfer is effected by operation of law, the transferor and the transferee are not required to seek individual consents from policyholders.
2. The court has broad powers, including the ability to order the transfer of outwards reinsurance contracts and other ancillary assets and liabilities, even where those contracts contain terms restricting their transfer.
3. The Part VII regime is mandatory for “insurance business transfer schemes” (as defined in the legislation and subject to limited exclusions).

Process

4. Once the transferor and transferee have determined that Part VII applies and otherwise completed their planning and diligence, the principal elements of the process are:
 - (a) Regulator engagement: Initial discussions with UK regulators, the Prudential Regulation Authority (“PRA”) and Financial Conduct Authority (“FCA”), take place at an early stage. Discussions will include the proposals themselves, consideration of likely issues arising (including as to policyholder rights), notifications to policyholders/reinsurers and agreeing the transfer timetable.
 - (b) Appointment of independent expert: A sufficiently qualified individual, approved by the regulators, prepares the scheme report for the transfer. Typically, the relevant criteria the proposed expert must meet are specified by the PRA. The expert is instructed at an early stage in the process and the approval process includes confirmation of their independence. (See Section B below for further details of the independent expert’s role.)

¹ *Note*: This note sets out the position prior to the UK’s withdrawal from the European Union.
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- (c) Documentation: Transferor and transferee work with advisors on detailed development of proposals and key documents. The independent expert also prepares their report at this stage, and if the Part VII Transfer involves long-term business, separate actuarial report(s) from each company's actuaries are usually provided. The key documents prepared by the parties include:
- i. the scheme document, setting out detailed terms of the transfer
 - ii. draft court orders, which will approve and give effect to the scheme once made by the court
 - iii. policyholder communications and notices to be published, which will be reviewed in detail by regulators and the court
 - iv. witness statements for the court process, explaining the proposals and any waivers sought
- (d) Further regulator engagement: Regulators review draft documents and discuss any concerns with the parties. Final documents are approved prior to being submitted to court. The PRA and/or the FCA will also prepare report(s) for the court which include their assessment of the transfer. (See Section B below for further details of the regulators' role.)
- (e) Court proceedings: The transferor and/or transferee begin court proceedings by filing relevant documents, including the scheme document itself, with an initial "directions" hearing being held shortly after to deal with case management issues and any applications to waive notification requirements. The date for the final court hearing is set.
- (f) Consultation and notifications: In the period before the final hearing, the PRA consults with other EEA regulators (if necessary) (see Section D below for further details of this process). The parties also make the agreed notifications to policyholders and reinsurers at this time; the regulators typically require notices to be sent to policyholders at least six to eight weeks before the final hearing. As well as providing notice of the application for the Part VII Transfer to such parties, the application must be generally publicized in specified newspapers. A copy of the independent expert's report is to be given to any person who requests it; a statement setting out the terms of the scheme and a summary of the expert's report is also made available to policyholders. (Certain notification requirements may be waived by the court if requested, for example due to practical difficulties of contacting all policyholders. The court generally looks to the regulators for guidance as to whether to grant the waiver request but may not always follow the regulators' views.)
- (g) Submission of final documents: Refreshed reports from the independent expert, actuaries and regulators are filed with the court, as well as additional witness statements from the parties which deal with any material objections received since the directions hearing, and certain other documents.
- (h) Final court hearing: The PRA and/or FCA may attend the final open court hearing, at which any person alleging the Part VII Transfer would adversely affect them may argue their case. This includes policyholders of either party, reinsurers and others whose contracts are being transferred. The court can only approve a Part VII Transfer if (i) relevant certificates have been obtained, including a certificate of solvency from the transferee's primary prudential regulator, (ii) the transferee has (or will have) requisite authorisations for the transferring business, (iii) all relevant procedural requirements have been complied with, and (iv) it considers that, in all the circumstances, it is appropriate to approve the transfer. (See Section B below for further details of the court's approach and powers.) If approved, the

court will make its order, which, amongst other things, contains the “effective date” when the transfer completes.

- (i) **Publicity:** Following the court’s approval, the order is publicized in relevant EEA states, either as specified by the EEA regulators, or as directed by the court.
5. The process is broadly the same whether general or long-term insurance business is being transferred.
6. The typical timeframe for completing a Part VII Transfer is between six and twelve months, given the time required for the court process itself, relevant notifications to be made and consultations with regulators in other jurisdictions.

B. Roles of Regulators and Independent Expert; the Court’s Approach and Powers

Regulators’ Role

1. The UK regulators have a significant statutory role in the Part VII process. The PRA acts as lead regulator but the FCA will also be involved (and may take a closer interest in long-term business transfers); in particular, the PRA must consult with the FCA before approving an independent expert’s appointment or form of report and before approving required notices.
2. One of the key roles of the regulators is producing report(s) for the court. The report sets out what the regulators have considered in relation to the Part VII Transfer and their assessment of the proposals in the context of their regulatory objectives. This means the transaction having been considered by the PRA in light of its objectives to promote the safety and soundness of insurers and secure an appropriate degree of policyholder protection, and by the FCA in light of its consumer protection objective and the promotion of competition between financial services providers (if relevant).
3. The regulators take all circumstances into account when assessing proposals. They are not obliged to object to a proposed Part VII Transfer if the proposal is not adverse to policyholder interests just because another possible scheme could result in a better outcome. However, they have indicated in guidance that “treating customers fairly” obligations could in some circumstances require the parties to consider or implement an alternative scheme.
4. Although the court considers the proposals separately, it would be rare in practice for it to override the views of the regulators. This may happen, however, in the context of a request to waive policyholder notification requirements, where the court may take a more pragmatic approach and agree to the waiver request against the regulators’ recommendation.
5. As noted in Section A above, the regulators are also involved in appointing the independent expert and approving the form of notices to policyholders, and have the right to appear in court. They must liaise with EEA regulators in the situations set out in Section D below. To the extent the PRA is consulted by another EEA regulator as the “home” regulator of a transferee under that state’s insurance business transfer regime, it will also provide a certificate of solvency in respect of the transferee.

Independent Expert’s Role

6. The independent expert acts as a witness for the court and his or her report carries significant weight. The report is significant in the regulators’ assessment of the parties’ proposals, and will also be relied on by policyholders and other affected parties.

7. For a Part VII Transfer involving general business, the independent expert will need to be competent in assessing technical provisions and understanding the relevant liabilities; where long-term business is being transferred, the expert should be an actuary familiar with the role of the actuarial function-holder/with-profits actuary preparing the actuarial report(s) noted above.
8. The contents of the expert's report are detailed in regulatory guidance, and include (i) information about the expert, (ii) purpose of the scheme, (iii) summary of the scheme terms, (iv) information considered, (v) people and information relied on, (vi) opinion on likely effects on transferring policyholders, non-transferring policyholders and transferee's policyholders, and (vii) opinion on likely effects on reinsurers of the transferor whose contracts will transfer. There is additional guidance where long term business is involved; in such case the report should also (i) describe the effect on policyholders' rights to participate in profits, (ii) compare the value of any compensation offered if such rights are to be diluted, (iii) consider the effect on the approach to calculating non-guaranteed benefits and discretionary charges, (iv) describe various safeguards, and (v) assess whether the scheme is equitable to all classes and generations of the policyholders of each party.
9. The terms and conditions of the expert's report typically contain a liability cap as well as a general disclaimer of responsibility in terms of who can rely on it; it is generally understood that the primary role of the expert is to inform the court, although regulators, policyholders and any other parties that may be adversely affected by the Part VII Transfer may well rely on the report in practice. As a general principle, the court is protective of independent experts; while challenges to a proposed scheme often focus on the expert's independence, such challenges have not been successful to date. The regulators pay particular attention to ensuring that the expert is truly independent (other than payment of his or her fees by the parties) during the appointment process.

Court's Approach and Powers

10. The court's principal concern when assessing whether it is appropriate to approve a Part VII Transfer is whether policyholders (or certain other stakeholders) would be adversely affected by it. The key issue is whether the Part VII Transfer is, as a whole, fair as between the interests of the different classes of persons affected. In coming to a view, the court will consider the policyholders' relative security and reasonable expectations with and without the transfer. It is not up to the court to assess if this is the best scheme possible but to assess whether the one presented to it is fair.
11. Under statute, the court has broad powers when approving a Part VII Transfer: its order can provide for the transfer of other contracts, assets and liabilities making up the transferring insurance business alongside the underlying policies. This includes the transfer of outwards reinsurance contracts and other contracts with terms that would usually require counterparty consent to be transferred. The court may also amend the terms of transferring policies, but additional scrutiny will be given to notifications made if significant changes are requested.
12. However, registration requirements to perfect the transfer of certain classes of assets (*e.g.* real property) will still apply, including local law steps to perfect transfers of foreign assets.
13. A judge presented with an application for a Part VII Transfer will have been selected as a Commercial Court judge in the usual way from a pool of Queen's Counsel, and is not required to have previous experience with insurance generally or Part VII Transfers in particular.

C. Transferor in Financial Distress

1. In respect of a Part VII Transfer of an insurance business whose transferor is in financial distress, the regulators and court would be in favour of the business being held by an insurer of suitable financial strength so that the interests of policyholders are well protected. The focus will therefore

be on the standing of the transferee: approval is unlikely to be granted where the financial strength of the proposed transferee is weaker than that of the transferor, since policyholders would be adversely affected by the transfer.

2. In making their assessment of a proposed Part VII Transfer, the regulators and court will consider policyholder protections and service standards. Where a transferor is in financial distress, the protections and service standards are likely to be better in a transferee of superior financial standing. As such, the proposal is likely to be viewed favourably and a transfer to a stronger insurer is one of the methods favoured by the UK regime to ensure continuity of contracts where a life insurer may be in financial difficulties.
3. Regulatory guidelines allow for benefits due under transferring policies to be reduced, for example where the transferor is in financial difficulty. Although this is rare in practice, if such a proposal is made, the independent expert would report on the reductions they consider appropriate. It would also be possible for such reductions to be made by a post-transfer order, where the transfer is urgent. The regulators would consider specified matters and may request the appointment of an independent actuary in such circumstances to make an additional report on any post-transfer reduction in benefits.
4. The position of a transferor in financial difficulty may also be taken into consideration by the regulators when considering requests to waive policyholder notification requirements, given the costs involved in such a process.

D. Consultation with Other Regulators

1. The Part VII Transfer regime is the UK's method for transferring insurance portfolios, as required to be established under the EU's Solvency II Directive.² The objective for the establishment of similar regimes in each member state is that the "home" state regime of the transferor applies to all EEA transferring policies, without the regimes of other member states being triggered.
2. As such, in the following circumstances, the PRA is obliged to notify and consult with the authority responsible for regulating insurance business in the relevant EEA states:
 - (a) the UK transferor's transferring business includes business carried on from a branch in another EEA state
 - (b) the UK transferor's transferring business includes insurance policies (not reinsurance policies) where the risk is "situated" in (for general business) a non-UK EEA state or the "state of commitment" (for long-term business) is a non-UK EEA state³
 - (c) the transfer is from a UK branch or agency of a non-EEA PRA-authorized insurer and the transferring business includes insurance policies (not reinsurance policies) where the risk is "situated" in (for general business) a non-UK EEA state or the "state of commitment" (for long-term business) is a non-UK EEA state
 - (d) the transfer is from a UK branch or agency of a non-EEA PRA-authorized insurer to a branch or agency in a non-UK EEA state

² Note: The same principles apply to the broader group of EEA states.

³ Note: For this purpose, the "state of commitment" is only used with respect to life insurance and refers to the EEA state of an individual policyholder's habitual residence (although this term is not defined, so a judgement will need to be made); the state "in which the risk is situated" is used for non-life insurance and depends on the nature of the insurance (e.g., for a policy relating to a building, the location of the building determines the relevant state; for a policy relating to a vehicle, the state of registration of the vehicle is the relevant factor; and for a liability policy, it is the state of the establishment to which the policy relates).

3. The consultation may involve sharing the expert's report with the foreign regulator, particularly where the transfer involves long-term business. The foreign regulator has three months to confirm non-objection. If no response is received during that time, the foreign regulator is deemed to have consented. Relevant foreign regulators may, for example, advise of local rules for notifications to policyholders.
4. Where the transferee's head office is in a non-UK EEA state, a certificate of solvency from the foreign regulator will need to be provided to the court before the Part VII Transfer can be approved.

This memorandum is solely for the benefit of New York Life Insurance Company and, without our prior written consent, neither our advice nor this memorandum may be relied upon by any other person or disclosed to any other person. This memorandum is limited to the matters stated herein and no views are implied or may be inferred beyond the matters expressly stated herein.

The advice expressed herein is rendered only as of the date hereof, and we assume no responsibility to advise you or any other person of facts, circumstances, changes in law or other events or developments that hereafter may occur or be brought to our attention and that may alter, affect or modify the process described or beliefs expressed herein.
