

Insurance briefing: Part VII insurance business transfers – Issue 1

Preparing for an insurance business transfer

This is the first in our new series of briefings on insurance business transfers (IBTs) under Part VII of the Financial Services and Markets Act 2000 (Act). In each briefing we will focus on a different aspect of an IBT, highlighting the key risks that may arise and outlining how they may be mitigated. These briefings assume that the reader has a basic understanding of IBTs; the purpose for which they are used; and of the IBT process.

The recommendations that we make in this, and other briefings in this series, are necessarily general and should not be read as legal advice. If you wish to discuss how these recommendations may apply in a particular case please contact Hammad Akhtar or Adam Levitt (details below).

In this briefing we outline ten typical areas of focus when preparing for an IBT.

1. Selecting an independent expert

Section 109 of the Act makes clear that an application for an IBT must be accompanied by a "report on the terms of the scheme". The report may only be made by a person nominated or approved by the PRA. SUP 18 contains useful guidance on the qualifications, appointment and role of an independent expert.



The independent expert undoubtedly has one of the most significant roles on an IBT. The selection of an appropriate person to fulfil that role is, therefore, imperative. Aside from excellent technical expertise and independence, in our experience leading independent experts share the following characteristics:

- they are supported by a team of first class supporting actuaries;
- they have deep experience of IBTs;
- they have a reputation for willing to challenge, yet are pragmatic and commercial; and
- they have time to undertake the independent expert role and are willing to work within the project timetable.

Ashurst have extensive experience of working with most of the actuaries that perform independent expert roles on life IBTs and are often asked by our clients for our thoughts on independent expert candidates.

IBTs are likely to run more smoothly where the parties, their external solicitors and the independent expert can work together efficiently and effectively.

2. Appointing external lawyers

IBTs can be transformational projects. Aside from price, insurers will probably wish to consider the following factors when selecting which law firm should advise them on an IBT:

- relevant experience, including experience of advising on IBTs since legal cutover when the PRA and FCA came into being;
- strength in depth of the team put forward;
- ability to work well with the internal client team, the independent expert and any other advisers;
- relationship with the relevant persons at the PRA and FCA;
- if required, project management expertise; and
- if required, the experience and availability of solicitors in other areas of practice (for example,

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outsourcing experts, derivatives experts and litigators).

3. Establishing an internal project team

In our experience, insurers can vary in the approach that they take to allocating internal resource on an IBT. We have, for example, advised on IBTs where internal solicitors are heavily

involved and others where they have had no involvement.

We find that it is helpful to allocate resource from the following areas to an IBT project:

- internal actuarial to support, in the case of a life business transfer, the actuarial function holder and, where relevant, the with-profits actuary;
- finance;
- legal;
- communications;
- tax; and
- project management.

4. Project management resource

Significant IBTs of life insurance business usually take at least ten months to implement. In recent years, it has become more difficult to push an IBT through in a shorter period, largely because transfers now receive closer scrutiny from the PRA, FCA and the Court.

Effective project management can significantly influence the timetable for an IBT project and, to some degree, the likelihood of the Court sanctioning an IBT. In our experience, insurers increasingly prefer to allocate dedicated professional project management resource to IBT projects. We welcome this development, but caution against project management being undertaken by individuals who do not have detailed experience of IBTs.

We adopt a flexible approach and undertake as much or as little project management as our clients prefer. We find that projects tend to run more smoothly where we assume responsibility for project management or work closely with the dedicated internal project manager.

5. Setting a budget for the IBT

Most insurers will seek fee estimates from their external advisers (such as legal, actuarial and tax) prior to their appointment. Advisers may be asked to refresh any estimate that they have provided at regular intervals in the project and/or at key milestones. In some respects it is harder to budget for the internal resource that may be required to support an IBT, but consideration should be given to this.

Aside from advisers' fees, the following tasks or work-streams can entail significant cost:

- updating a policyholder databases (see 9 below);
- extraction of data from policyholder databases (for example, to allow the transfer mailing to be despatched), particularly if the relevant databases are managed by a third party provider;
- the printing and mailing of the policyholder communications about the IBT; and
- due diligence into the transferring business.

6. Determining the scope and purpose of the IBT

The core objective of an IBT is to effect the transfer of insurance business from an insurer to one or more other insurers. IBTs, however, can have ancillary purposes; for example, to effect changes to contractual terms and to amend or replace previous schemes.

Such matters can increase the cost and complexity of an IBT and perhaps increase the likelihood of objection to the transfer. For this reason, insurers should carefully consider the likely implications of seeking to deal with such matters as part of the IBT process and seek legal advice. If it is regarded as more important to effect the transfer, it may be better to avoid the risk of that being jeopardised by objections to ancillary elements of the scheme.



7. Establishing the project governance framework

The core project team should understand the reporting lines and tools that will be used to track progress and any material issues that arise. Typical tools include risk logs and issues lists. In our experience, it is helpful for the core project team to include at least one representative from each major work-stream and to discuss the project overall at least once a week.

8. Developing a realistic timetable for obtaining Court approval of an IBT

We are often asked how long it is likely to take to obtain Court approval of an IBT. This depends on a range of factors, including:

- complexity of the proposed transfer;
- whether it is necessary to take any steps to update any relevant policyholder database (as this can take several months);
- whether the PRA is required to consult regulators in any other EEA state about a proposed IBT; if so, this usually means that there needs to be at least three and a half months between the date of the first Court hearing and the final Court hearing;
- how long the PRA and FCA are likely to require to conduct their review of a proposed IBT and the relevant documentation; the guidance in SUP 18.2.57 indicates that six weeks is usually sufficient but it is advisable to discuss this with the regulators at an early stage;
- how long it is likely to take to develop the transfer proposals and the key documentation; often work on the actuarial analysis cannot begin in earnest until the audited year-end numbers and regulatory returns have been prepared;
- how much due diligence is required;
- whether any infrastructure assets and employees are to be transferred;
- whether any commercial contracts will need to be amended or replaced;



- how long it will take to print and despatch policyholder mailings; and
- the availability of the Court to hear applications for approval of an IBT.

We recommend discussing a high-level timetable that includes key dates with the PRA, the FCA and the independent expert at an early stage in an IBT project to flush out any initial concerns that they may have about the proposed timetable.

A more detailed timetable should then be shared with them.

Our next briefing in this series will take a more detailed look at IBT timetabling issues.

9. Updating policyholder databases

The Regulations require that notice of an application for an order sanctioning an IBT scheme be sent to every policyholder of the parties to a proposed transfer. While this requirement is usually waived, such notice will usually be sent to a significant proportion of the policyholders.

In order to help ensure that policyholders within the mailing population will receive the notification pack that is proposed to be sent to them, it may be necessary for the relevant insurers to undertake a policyholder database updating exercise to help ensure that the contact information that it holds for the relevant policyholders is up to date and complete.

The need to conduct such an exercise is influenced by a number of factors, including:

- the number and percentage of policyholders that the insurer does not hold usable contact information for. In our experience, the FCA is particularly likely to expect that a data cleansing exercise be undertaken if there are 15 per cent or more policyholder "gone-aways"; and
- the nature and extent of the business-as-usual steps that have been taken to ensure that the relevant policyholder databases contain complete and accurate contact information for each policyholder.

It may help to persuade the FCA and the Court that it is unnecessary to notify directly all policyholders, or certain constituencies of policyholder, where notice of

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an IBT is to be published in significantly more newspapers than required by the Regulations.

Policyholder database cleansing exercises can be expensive and time-consuming. We have successfully advised on strategies to help mitigate the need to undertake comprehensive cleansing exercises (see the paragraph immediately above by way of example). We recommend that insurers consider at an early stage the extent to which a policyholder database cleansing exercise is required. Ideally, any such exercise will have completed before the first Court hearing.

10. Early and regular engagement with PRA and FCA

SUP 18 makes clear that the PRA and FCA expect early notification of a proposal to undertake an IBT. We generally encourage clients that we are advising on IBTs to engage with both regulators at an early stage in the process and to agree the frequency and format of contact going forwards. We consider that it is

helpful to keep the lines of communication open, particularly if the IBT has a particularly challenging timetable and/or raises issues that are likely to be closely scrutinised by one or both of the regulators.

Useful sources of information

- Part VII of, and Schedule 12 to, the Act;
- The Financial Services and Markets Act 2000 (Control of Business Transfers) (Requirements on Applicants) Regulations (SI 2001/3625);
- The Financial Services and Markets Act 2000 (Meaning of "Policy" and "Policyholder") Order (SI 2001/2361);
- Chapter 18 of the Supervision Manual ([see here](#)) contains further information and regulatory guidance about IBTs; and
- Annex to the Memorandum of Understanding (MoU) between the FCA and PRA under sections 3D and 3E of the Financial Services and Markets Act 2000 ([see here](#)).

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