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# Études et Dossiers

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# Insurance Portfolio Transfers

Nigel Montgomery

## Part VII of the Financial Services and Markets Act 2000 (“FSMA”)

### **A powerful tool for transferring insurance business**

- Compulsory procedure for the transfer of almost any insurance business in the UK
- Applies to life and non-life insurance business
- Applies to direct and reinsurance business
- Includes members of Lloyd’s
- Outwards reinsurance also transfers
- Transfer receives the protection of a Court Order
- Transfers of direct insurance to/from EEA States expressly recognised
- No policyholder consent required

## The UK run-off market: a large industry

### Life Business

- Total policyholder liabilities of UK life assurers in run-off estimated at £135 billion
- £11.5 billion of capital tied up in UK life run-off business
- £1.1 billion: life run-off administration costs in 2004

### Non-Life Business

- Total liabilities of UK non-life run-off market estimated at £38.4 billion (23% of whole non-life market)
- Net assets or shareholders' funds of UK non-life companies in run-off total £4 billion

Figures courtesy of September 2005 Life and Non-Life Surveys prepared by KPMG Corporate Recovery Insurance Solutions, London, as commissioned by the Association of Run-Off Companies Ltd.



## Procedural Outline

### Phase 1: (Once commercial terms resolved)

- FSA involvement from the outset
- Engage independent expert
- Data gathering: ascertain number of transferring policyholders and contact details, if known
- Preparation of Transfer document
- Notices
- Independent Expert's report



## Procedural Outline

### Phase 2 – Notification and Consultation

- **Notice to policyholders:**

- Individual letters
- Advertising
- Exemption from providing notice

- **FSA liaison with EEA regulators**

- Consultation with other EEA Regulators where risk is situated in another EEA State



## Procedural Outline

### Phase 3: Scheme Sanction

- Court sanctions transfer
- Transfer takes place on designated “Effective Date”
- Outwards reinsurance also transfers
- Transferee thereafter treated as original insurer



## Jurisdictional Issues

### UK Nexus for Transferor:

- Transferor must be a:
  - UK authorised company
  - EEA firm with UK branch
  - Treaty firm with UK branch

### No UK nexus for Transferee:

- Transferee must be in an EEA State

### EU reciprocity

- Within the European Union, reciprocity treaties apply (single market directives)



## EEA States

- Austria
- Belgium
- Cyprus
- Czech Republic
- Denmark
- Estonia
- Finland
- France
- Germany
- Greece
- Hungary
- Iceland
- Ireland
- Italy
- Latvia
- Liechtenstein
- Lithuania
- Luxembourg
- Malta
- Netherlands
- Norway
- Poland
- Portugal
- Slovakia
- Slovenia
- Sweden
- Spain
- United Kingdom



## Conclusion

- An effective procedure to transfer assets and liabilities without having to obtain individual consents
- Recognition in the United States recently achieved (Riverstone Insurance (UK) Limited: section 304 protection granted by New York bankruptcy court. Will new Chapter 15 apply?)
- Enormous potential for use in run-off restructuring and restructuring generally

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