



# Financial Services and Markets Act 2000

## 2000 CHAPTER 8

### PART VII

#### CONTROL OF BUSINESS TRANSFERS

#### **104 Control of business transfers**

No insurance business transfer scheme or banking business transfer scheme is to have effect unless an order has been made in relation to it under section 111(1).

#### **105 Insurance business transfer schemes**

- (1) A scheme is an insurance business transfer scheme if it—
- (a) satisfies one of the conditions set out in subsection (2);
  - (b) results in the business transferred being carried on from an establishment of the transferee in an EEA State; and
  - (c) is not an excluded scheme.
- (2) The conditions are that—
- (a) the whole or part of the business carried on in one or more member States by a UK authorised person who has permission to effect or carry out contracts of insurance (“the authorised person concerned”) is to be transferred to another body (“the transferee”);
  - (b) the whole or part of the business, so far as it consists of reinsurance, carried on in the United Kingdom through an establishment there by an EEA firm qualifying for authorisation under Schedule 3 which has permission to effect or carry out contracts of insurance (“the authorised person concerned”) is to be transferred to another body (“the transferee”);
  - (c) the whole or part of the business carried on in the United Kingdom by an authorised person who is neither a UK authorised person nor an EEA firm but who has permission to effect or carry out contracts of insurance (“the authorised person concerned”) is to be transferred to another body (“the transferee”).

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- (3) A scheme is an excluded scheme for the purposes of this section if it falls within any of the following cases:

CASE 1

Where the authorised person concerned is a friendly society.

CASE 2

Where—

- (a) the authorised person concerned is a UK authorised person;
- (b) the business to be transferred under the scheme is business which consists of the effecting or carrying out of contracts of reinsurance in one or more EEA States other than the United Kingdom; and
- (c) the scheme has been approved by a court in an EEA State other than the United Kingdom or by the host state regulator.

CASE 3

Where—

- (a) the authorised person concerned is a UK authorised person;
- (b) the business to be transferred under the scheme is carried on in one or more countries or territories (none of which is an EEA State) and does not include policies of insurance (other than reinsurance) against risks arising in an EEA State; and
- (c) the scheme has been approved by a court in a country or territory other than an EEA State or by the authority responsible for the supervision of that business in a country or territory in which it is carried on.

CASE 4

Where the business to be transferred under the scheme is the whole of the business of the authorised person concerned and—

- (a) consists solely of the effecting or carrying out of contracts of reinsurance, or
- (b) all the policyholders are controllers of the firm or of firms within the same group as the firm which is the transferee,

and, in either case, all of the policyholders who will be affected by the transfer have consented to it.

- (4) The parties to a scheme which falls within Case 2, 3 or 4 may apply to the court for an order sanctioning the scheme as if it were an insurance business transfer scheme.
- (5) Subsection (6) applies if the scheme involves a compromise or arrangement falling within section 427A of the Companies Act 1985 (or Article 420A of the Companies (Northern Ireland) Order 1986).
- (6) Sections 425 to 427 of that Act (or Articles 418 to 420 of that Order) have effect as modified by section 427A of that Act (or Article 420A of that Order) in relation to that compromise or arrangement.
- (7) But subsection (6) does not affect the operation of this Part in relation to the scheme.
- (8) “UK authorised person” means a body which is an authorised person and which—
  - (a) is incorporated in the United Kingdom; or
  - (b) is an unincorporated association formed under the law of any part of the United Kingdom.
- (9) “Establishment” means, in relation to a person, his head office or a branch of his.

## **106 Banking business transfer schemes**

- (1) A scheme is a banking business transfer scheme if it—
  - (a) satisfies one of the conditions set out in subsection (2);
  - (b) is one under which the whole or part of the business to be transferred includes the accepting of deposits; and
  - (c) is not an excluded scheme.
- (2) The conditions are that—
  - (a) the whole or part of the business carried on by a UK authorised person who has permission to accept deposits (“the authorised person concerned”) is to be transferred to another body (“the transferee”);
  - (b) the whole or part of the business carried on in the United Kingdom by an authorised person who is not a UK authorised person but who has permission to accept deposits (“the authorised person concerned”) is to be transferred to another body which will carry it on in the United Kingdom (“the transferee”).
- (3) A scheme is an excluded scheme for the purposes of this section if—
  - (a) the authorised person concerned is a building society or a credit union; or
  - (b) the scheme is a compromise or arrangement to which section 427A(1) of the Companies Act 1985 or Article 420A of the Companies (Northern Ireland) Order 1986 (mergers and divisions of public companies) applies.
- (4) For the purposes of subsection (2)(a) it is immaterial whether or not the business to be transferred is carried on in the United Kingdom.
- (5) “UK authorised person” has the same meaning as in section 105.
- (6) “Building society” has the meaning given in the Building Societies Act 1986.
- (7) “Credit union” means a credit union within the meaning of—
  - (a) the Credit Unions Act 1979;
  - (b) the Credit Unions (Northern Ireland) Order 1985.

## **107 Application for order sanctioning transfer scheme**

- (1) An application may be made to the court for an order sanctioning an insurance business transfer scheme or a banking business transfer scheme.
- (2) An application may be made by—
  - (a) the authorised person concerned;
  - (b) the transferee; or
  - (c) both.
- (3) The application must be made—
  - (a) if the authorised person concerned and the transferee are registered or have their head offices in the same jurisdiction, to the court in that jurisdiction;
  - (b) if the authorised person concerned and the transferee are registered or have their head offices in different jurisdictions, to the court in either jurisdiction;
  - (c) if the transferee is not registered in the United Kingdom and does not have his head office there, to the court which has jurisdiction in relation to the authorised person concerned.

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- (4) “Court” means—
- (a) the High Court; or
  - (b) in Scotland, the Court of Session.

### **108 Requirements on applicants**

- (1) The Treasury may by regulations impose requirements on applicants under section 107.
- (2) The court may not determine an application under that section if the applicant has failed to comply with a prescribed requirement.
- (3) The regulations may, in particular, include provision—
  - (a) as to the persons to whom, and periods within which, notice of an application must be given;
  - (b) enabling the court to waive a requirement of the regulations in prescribed circumstances.

### **109 Scheme reports**

- (1) An application under section 107 in respect of an insurance business transfer scheme must be accompanied by a report on the terms of the scheme (“a scheme report”).
- (2) A scheme report may be made only by a person—
  - (a) appearing to the Authority to have the skills necessary to enable him to make a proper report; and
  - (b) nominated or approved for the purpose by the Authority.
- (3) A scheme report must be made in a form approved by the Authority.

### **110 Right to participate in proceedings**

On an application under section 107, the following are also entitled to be heard—

- (a) the Authority, and
- (b) any person (including an employee of the authorised person concerned or of the transferee) who alleges that he would be adversely affected by the carrying out of the scheme.

### **111 Sanction of the court for business transfer schemes**

- (1) This section sets out the conditions which must be satisfied before the court may make an order under this section sanctioning an insurance business transfer scheme or a banking business transfer scheme.
- (2) The court must be satisfied that—
  - (a) the appropriate certificates have been obtained (as to which see Parts I and II of Schedule 12);
  - (b) the transferee has the authorisation required (if any) to enable the business, or part, which is to be transferred to be carried on in the place to which it is to be transferred (or will have it before the scheme takes effect).

- (3) The court must consider that, in all the circumstances of the case, it is appropriate to sanction the scheme.

## **112 Effect of order sanctioning business transfer scheme**

- (1) If the court makes an order under section 111(1), it may by that or any subsequent order make such provision (if any) as it thinks fit—
- (a) for the transfer to the transferee of the whole or any part of the undertaking concerned and of any property or liabilities of the authorised person concerned;
  - (b) for the allotment or appropriation by the transferee of any shares, debentures, policies or other similar interests in the transferee which under the scheme are to be allotted or appropriated to or for any other person;
  - (c) for the continuation by (or against) the transferee of any pending legal proceedings by (or against) the authorised person concerned;
  - (d) with respect to such incidental, consequential and supplementary matters as are, in its opinion, necessary to secure that the scheme is fully and effectively carried out.
- (2) An order under subsection (1)(a) may—
- (a) transfer property or liabilities whether or not the authorised person concerned otherwise has the capacity to effect the transfer in question;
  - (b) make provision in relation to property which was held by the authorised person concerned as trustee;
  - (c) make provision as to future or contingent rights or liabilities of the authorised person concerned, including provision as to the construction of instruments (including wills) under which such rights or liabilities may arise;
  - (d) make provision as to the consequences of the transfer in relation to any retirement benefits scheme (within the meaning of section 611 of the Income and Corporation Taxes Act 1988) operated by or on behalf of the authorised person concerned.
- (3) If an order under subsection (1) makes provision for the transfer of property or liabilities—
- (a) the property is transferred to and vests in, and
  - (b) the liabilities are transferred to and become liabilities of,
- the transferee as a result of the order.
- (4) But if any property or liability included in the order is governed by the law of any country or territory outside the United Kingdom, the order may require the authorised person concerned, if the transferee so requires, to take all necessary steps for securing that the transfer to the transferee of the property or liability is fully effective under the law of that country or territory.
- (5) Property transferred as the result of an order under subsection (1) may, if the court so directs, vest in the transferee free from any charge which is (as a result of the scheme) to cease to have effect.
- (6) An order under subsection (1) which makes provision for the transfer of property is to be treated as an instrument of transfer for the purposes of the provisions mentioned in subsection (7) and any other enactment requiring the delivery of an instrument of transfer for the registration of property.

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- (7) The provisions are—
- (a) section 183(1) of the Companies Act 1985;
  - (b) Article 193(1) and (2) of the Companies (Northern Ireland) Order 1986.
- (8) If the court makes an order under section 111(1) in relation to an insurance business transfer scheme, it may by that or any subsequent order make such provision (if any) as it thinks fit—
- (a) for dealing with the interests of any person who, within such time and in such manner as the court may direct, objects to the scheme;
  - (b) for the dissolution, without winding up, of the authorised person concerned;
  - (c) for the reduction, on such terms and subject to such conditions (if any) as it thinks fit, of the benefits payable under—
    - (i) any description of policy, or
    - (ii) policies generally,
 entered into by the authorised person concerned and transferred as a result of the scheme.
- (9) If, in the case of an insurance business transfer scheme, the authorised person concerned is not an EEA firm, it is immaterial for the purposes of subsection (1)(a), (c) or (d) or subsection (2), (3) or (4) that the law applicable to any of the contracts of insurance included in the transfer is the law of an EEA State other than the United Kingdom.
- (10) The transferee must, if an insurance or banking business transfer scheme is sanctioned by the court, deposit two office copies of the order made under subsection (1) with the Authority within 10 days of the making of the order.
- (11) But the Authority may extend that period.
- (12) “Property” includes property, rights and powers of any description.
- (13) “Liabilities” includes duties.
- (14) “Shares” and “debentures” have the same meaning as in—
- (a) the Companies Act 1985; or
  - (b) in Northern Ireland, the Companies (Northern Ireland) Order 1986.
- (15) “Charge” includes a mortgage (or, in Scotland, a security over property).

### **113 Appointment of actuary in relation to reduction of benefits**

- (1) This section applies if an order has been made under section 111(1).
- (2) The court making the order may, on the application of the Authority, appoint an independent actuary—
  - (a) to investigate the business transferred under the scheme; and
  - (b) to report to the Authority on any reduction in the benefits payable under policies entered into by the authorised person concerned that, in the opinion of the actuary, ought to be made.

### **114 Rights of certain policyholders**

- (1) This section applies in relation to an insurance business transfer scheme if—

- (a) the authorised person concerned is an authorised person other than an EEA firm qualifying for authorisation under Schedule 3;
  - (b) the court has made an order under section 111 in relation to the scheme; and
  - (c) an EEA State other than the United Kingdom is, as regards any policy included in the transfer which evidences a contract of insurance, the State of the commitment or the EEA State in which the risk is situated (“the EEA State concerned”).
- (2) The court must direct that notice of the making of the order, or the execution of any instrument, giving effect to the transfer must be published by the transferee in the EEA State concerned.
- (3) A notice under subsection (2) must specify such period as the court may direct as the period during which the policyholder may exercise any right which he has to cancel the policy.
- (4) The order or instrument mentioned in subsection (2) does not bind the policyholder if—
  - (a) the notice required under that subsection is not published; or
  - (b) the policyholder cancels the policy during the period specified in the notice given under that subsection.
- (5) The law of the EEA State concerned governs—
  - (a) whether the policyholder has a right to cancel the policy; and
  - (b) the conditions, if any, subject to which any such right may be exercised.
- (6) Paragraph 6 of Schedule 12 applies for the purposes of this section as it applies for the purposes of that Schedule.

#### *Business transfers outside the United Kingdom*

### **115 Certificates for purposes of insurance business transfers overseas**

Part III of Schedule 12 makes provision about certificates which the Authority may issue in relation to insurance business transfers taking place outside the United Kingdom.

### **116 Effect of insurance business transfers authorised in other EEA States**

- (1) This section applies if, as a result of an authorised transfer, an EEA firm falling within paragraph 5(d) of Schedule 3 transfers to another body all its rights and obligations under any UK policies.
- (2) This section also applies if, as a result of an authorised transfer, a company authorised in an EEA State other than the United Kingdom under Article 27 of the first life insurance directive, or Article 23 of the first non-life insurance directive, transfers to another body all its rights and obligations under any UK policies.
- (3) If appropriate notice of the execution of an instrument giving effect to the transfer is published, the instrument has the effect in law—
  - (a) of transferring to the transferee all the transferor’s rights and obligations under the UK policies to which the instrument applies, and

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- (b) if the instrument so provides, of securing the continuation by or against the transferee of any legal proceedings by or against the transferor which relate to those rights and obligations.
- (4) No agreement or consent is required before subsection (3) has the effects mentioned.
- (5) “Authorised transfer” means—
- (a) in subsection (1), a transfer authorised in the home State of the EEA firm in accordance with—
    - (i) Article 11 of the third life directive; or
    - (ii) Article 12 of the third non-life directive; and
  - (b) in subsection (2), a transfer authorised in an EEA State other than the United Kingdom in accordance with—
    - (i) Article 31a of the first life directive; or
    - (ii) Article 28a of the first non-life directive.
- (6) “UK policy” means a policy evidencing a contract of insurance (other than a contract of reinsurance) to which the applicable law is the law of any part of the United Kingdom.
- (7) “Appropriate notice” means—
- (a) if the UK policy evidences a contract of insurance in relation to which an EEA State other than the United Kingdom is the State of the commitment, notice given in accordance with the law of that State;
  - (b) if the UK policy evidences a contract of insurance where the risk is situated in an EEA State other than the United Kingdom, notice given in accordance with the law of that EEA State;
  - (c) in any other case, notice given in accordance with the applicable law.
- (8) Paragraph 6 of Schedule 12 applies for the purposes of this section as it applies for the purposes of that Schedule.

### *Modifications*

#### **117 Power to modify this Part**

The Treasury may by regulations—

- (a) provide for prescribed provisions of this Part to have effect in relation to prescribed cases with such modifications as may be prescribed;
- (b) make such amendments to any provision of this Part as they consider appropriate for the more effective operation of that or any other provision of this Part.