

GUERNSEY FINANCIAL SERVICES COMMISSION

GUIDANCE NOTE ON TRANSFERS OF LONG TERM INSURANCE BUSINESS

Introduction

Transfers of long term insurance business between companies are governed by sections 44 to 48 of the Insurance Business (Bailiwick of Guernsey) Law, 2002, as amended (“the Law”). This requires that a scheme of transfer, sanctioned by the Royal Court, is required if either of the bodies involved is a Guernsey licensed insurer or if any policy being transferred is written under Guernsey law or if any policy being transferred has been issued to a person resident in the Bailiwick. This guidance note details the role of the Guernsey Financial Services Commission (the “Commission”) in this process.

Waiver of certain communication requirements

Under Section 45 (3) (b) of the Law, there is a requirement for a statement to be sent to each of the long term policyholders and every member of the companies’ concerned, unless the Commission has given its consent for a waiver of this requirement. The statement must include the terms of the scheme and a summary of the report by the independent actuary.

Waivers of the requirements of this section are requested to avoid the need to send copies of the required documentation to policyholders who are not impacted by the scheme of transfer. Normally these are policyholders resident in the UK whose policies are being transferred by a separate UK scheme or existing policyholders of a substantial transferee company who could not be materially impacted by a relatively small number of policies being transferred to that company. Waivers of the requirements are also requested in respect of policyholders where the company may not have an up to date contact address.

In order to consider a request to partially waive the requirements of Section 45 3 (b), the Commission will require as a minimum the following information:

- Background information giving details of the reasons for the proposed transfer.
- A copy of the draft scheme or schemes of transfer.
- Details of the waiver being requested.
- Details of the number of policyholders that are impacted by the Guernsey scheme of transfer and an estimate of the number of policyholders for whom a waiver of the requirements are requested.
- Details of the notification, including a summary of the independent actuary’s report that will be issued to policyholders in respect of the transfer of business.

- If applicable, details of the number of policyholders where up to date addresses are not available and a waiver of the requirements is being requested.
- A copy of the draft report by the independent actuary.
- The proposed timetable for the transfer including the dates that policyholders will be circulated, the dates of the Royal Court hearing and the effective date of the transfer.

Amendment to notice period for service of documents on the Commission

Under Section 45 (3) (c) of the Law, the Commission can agree to a reduction in the minimum 42 day period required between the date of service of the application, the independent actuary's report and the policyholders statement on the Commission and the date of the Royal Court hearing. In addition under Section 45 (3) (d) of the Law, the Commission can agree to a reduction in the minimum 42 day period required between the date of publication of the required notice in La Gazette Officielle and the date of the Royal Court hearing. In each case this is subject to a minimum of 21 days.

The 42 day period is required because many Guernsey licensed companies have policyholders resident outside the Bailiwick or the United Kingdom and an adequate period is required to allow for postal delays. The Commission will require justification before agreeing to a shorter notice period.

Entitlement to be heard at Royal Court application hearing

Under Section 45 (4) (a) of the Law, the Commission is entitled to be heard at an application hearing in the Royal Court. In practice the Commission would only exercise this entitlement if it had a reason to object to the proposed scheme of transfer or the adequacy of the policyholder communication process that had been followed.

In practice the Commission will be provided with drafts of the application and other documents required to be submitted to it under Section 45 (3) (c) of the Law and will raise any concerns with the applicants prior to receipt of the final versions. Provided it is satisfied, it will then provide a letter to the applicants confirming that it has no objection to the proposed scheme and does not intend to be present at the Court hearing.

Certification by the Commission

Under section 46 (b) (i) of the Law, the Commission will provide confirmation to the Court that a transferee company which is licensed by the Commission will possess the required margin of solvency taking account of the proposed transfer.

Under section 46 (b) (ii) of the Law, the Commission will provide confirmation to the Court that, in the case of a transferee company that is not licensed by the Commission, the supervisory authority in the country concerned has been notified of the proposed scheme by the Commission

and has either consented or has not refused consent within three months of being notified. In practice, the timescales concerned normally mean that positive consent is required. The Commission will liaise with the relevant authorities, which in practice is normally the UK Financial Services Authority, and provide confirmation of this consent in a letter to the applicants.

Deposit of Royal Court Order with the Commission

Where a scheme of transfer is sanctioned by an order of the Royal Court, a copy of the order must be deposited with the Commission within 10 days of the date of the order, unless the Commission has agreed to a longer period.