

Guidance Note: Transfers of Insurance Business under the Insurance Business (Jersey) Law 1996

10 January 2014

1 Introduction

- 1.1 This guidance is provided to assist permit holders understand the regulatory approval process in Jersey relating to a transfer scheme under the Insurance Business (Jersey) Law 1996 (the **Law**) and identify the documentation to be provided to the JFSC.
- 1.2 Where it is proposed to transfer the whole or part of the insurance business carried on in or from within Jersey by a permit holder (the **Transferor**) to another permit holder or insurerⁱ (the **Transferee**), the provisions of Article 27 and Schedule 2 to the Law will apply.
- 1.3 A copy of the Law is available via a link in the “Legislation” section of the JFSC’s website:
http://www.jerseyfsc.org/the_commission/legislation/index.asp
- 1.4 Category A permit holders should note that the provisions for transfer schemes under the Law apply in addition to legislative requirements in other jurisdictions where the permit holder carries on insurance business.
- 1.5 Paragraph 6 of Schedule 2 to the Law provides that the JFSC is entitled to be heard on any representation to the Court. For this reason, the JFSC requests copies of the proposed transfer scheme documentation in order to consider the interests of the policyholders of the Transferor and Transferee and whether there are any regulatory issues that should be raised before the Court hearing. Any issue not resolved to the JFSC’s satisfaction will be drawn to the Court’s attention.
- 1.6 Insurers proposing a novationⁱⁱ of insurance business need to consider whether the novation, or series of novations, represents a transfer of insurance business to be addressed in accordance with Article 27 and Schedule 2 to the Law. Where an insurer considers that a proposed novation may not be subject to the provisions of Article 27 of, and Schedule 2 to, the Law, the insurers are strongly recommended to seek appropriate legal advice. In any event, the governance records of the insurer will need to document the rationale for their decision.

2 Transfer Scheme Documentation

- 2.1 In order to consider a transfer scheme, paragraph 4(c) of Schedule 2 to the Law requires that certain documents are provided to the JFSC. The documents should include the following:
 - 2.1.1 representation to the Royal Court;
 - 2.1.2 Independent Actuary’s^{siii} report (for Category A permit holders this should include specific comment on the Jersey transfer scheme);

- 2.1.3 transfer scheme document for Jersey and, if relevant, transfer scheme documentation for the scheme in any other jurisdiction that relates to the Jersey scheme;
 - 2.1.4 Affidavits/witness statements, including relevant exhibits as appropriate;
 - 2.1.5 policyholder communication documents;
 - 2.1.6 legal notice to be published in the Jersey Gazette, in accordance with paragraph 4(a) of Schedule 2 to the Law; and
 - 2.1.7 for Category A permit holders, the name and contact details of the principal contact for the overseas regulator that is considering the associated overseas transfer scheme. The JFSC may consult with foreign regulators regarding any proposed derogations, the effects of the proposed transfer and any potential concerns regarding the proposed transfer scheme.
- 2.2 To facilitate the JFSC's consideration of the above documents these should be provided no later than 15 business days before the first hearing is scheduled in the Royal Court.
- 2.3 In the circumstances where all documents are not available, the JFSC requires at least 10 business days to consider any proposed derogations under paragraph 4(b) of Schedule 2 to the Law. If the documents associated with details of the proposed derogations are received later than this, the JFSC may be unable to advise the Court whether it has any objections to the proposed derogations.

3 First Hearing (Royal Court of Jersey) – Directions

- 3.1 Paragraph 4(b) of Schedule 2 to the Law requires a statement to be sent to each policyholder and every member of the Transferor and Transferee unless otherwise directed by the Court. This statement must set out the terms of the transfer scheme and include a summary of the Independent Actuary's report, in accordance with paragraph 3 of Schedule 2 to the Law.
- 3.2 It is the JFSC's experience that requests for dispensation from notification requirements established under paragraph 4(b) of Schedule 2 to the Law arise for various reasons. These might include a request to waive a requirement in respect of the content of the statement or to waive the requirement for statements to be sent to:
- 3.2.1 Policyholders of the Transferee, if they will not be materially impacted by the transfer of business; for example, where the number of transferring policies of the Transferor is small in relation to the number of policyholders of the Transferee;
 - 3.2.2 Policyholders for whom no current address is held or where the policyholder details are not held by either the Transferor or Transferee;
 - 3.2.3 Policyholders of Category A permit holders resident outside of Jersey who will receive details of the transfer scheme under that permit holder's home regulatory requirements; and
 - 3.2.4 Members of the Transferor and Transferee in circumstances where, for example, the members are companies within the same group and are aware of the scheme.
- 3.3 The JFSC requests that it is provided with full details of any proposed waivers of the notification requirements that are to be requested at the first hearing, together with the reasons for such requests.

- 3.4 The JFSC wishes to be advised of the number of policyholders with a current address in Jersey that will be included within the proposed transfer scheme.
- 3.5 Provided that the JFSC is satisfied with a requested waiver of full notification requirements, it will provide a letter to the Transferor and Transferee, or their legal advisers, to confirm that it has no objections to proposed derogations under paragraph 4(b) of Schedule 2 to the Law. The JFSC's consideration of a requested waiver will include:
- 3.5.1 Whether the policyholder notification provides: (1) sufficient information regarding the proposed transfer scheme to allow policyholders to form their own view as to whether they are likely to be adversely affected by the scheme; and (2) advice of the right of any person who considers that they would be adversely affected by the transfer scheme to be heard by the Royal Court;
 - 3.5.2 The reasons for excluding certain policyholders from being sent notification of the proposed transfer scheme and whether such policyholders will be disadvantaged by not receiving notification; and
 - 3.5.3 Whether the transfer scheme treats Jersey policyholders and members in the same way as those in other jurisdictions. It will assist the JFSC's considerations in this respect if the Independent Actuary's report includes confirmation that the report's conclusions apply equally to policyholders in Jersey and in other jurisdictions.

4 Second Hearing (Royal Court of Jersey) – Scheme Sanction

- 4.1 Paragraph 4(c) of Schedule 2 to the Law requires that a copy of the following documentation be served on the JFSC not less than 21 days before the date of the second hearing:
- 4.1.1 representation to the Court;
 - 4.1.2 Independent Actuary's report; and
 - 4.1.3 any statement sent out under paragraph 4(b) of Schedule 2 to the Law.
- 4.2 The JFSC will, upon request, issue a letter confirming that it has been served the documents in accordance with legal requirements.
- 4.3 The JFSC requires details of any objection relating to the Jersey scheme before the affidavits are sworn and filed.
- 4.4 As highlighted in paragraph 1.5 of this guidance note, paragraph 6 of Schedule 2 to the Law provides that the JFSC is entitled to be heard on any representation to the Court to sanction a transfer scheme.
- 4.5 Provided that the JFSC is ultimately satisfied with the draft scheme and related documentation, it will provide a letter to the Transferor and Transferee, or their legal advisers, to confirm that it has no objections to it. The JFSC will also advise whether it will provide a representative at the second hearing to assist the Court, if necessary. In reviewing a transfer scheme, the JFSC's consideration may include:
- 4.5.1 the purpose of the scheme;
 - 4.5.2 whether the security of policyholders' benefits or the reasonable benefit expectations of policyholders are likely to be affected by the scheme;
 - 4.5.3 the opinion of the independent actuary;

- 4.5.4 the comments of a foreign regulator; and
 - 4.5.5 the comments and possible objections of policyholders.
- 4.6 Where a scheme is sanctioned by an Order of the Court, in accordance with paragraph 11 of Schedule 2 to the Law, two copies of the Order must be deposited with the JFSC within 10 days of the date of the Order, unless a longer period has been agreed with the JFSC.

ⁱ Pursuant to paragraph 7 of Schedule 2 to the Law, the Royal Court shall not make an order sanctioning a scheme unless it is satisfied that the transferee company is, or immediately after the making of the order will be, authorised to carry on the insurance business to be transferred under the scheme.

ⁱⁱ A novation includes any agreement between a policyholder and two insurers whereby an insurance policy with one insurer is replaced by an insurance policy with another insurer.

ⁱⁱⁱ In respect of the appointment of an Independent Actuary and the scope of the Actuary's report, the JFSC will have regard to the guidance issued by the Prudential Regulation Authority and / or the Financial Conduct Authority in the United Kingdom.