

Transfers of long term insurance business in Guernsey

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The transfer of any long term insurance business in Guernsey is governed by sections 44 to 48 of The Insurance Business (Bailiwick of Guernsey) Law, 2002 (the “Law”) as amended, which states that any such transfer must be sanctioned by an order of the Royal Court.

There is no reported case law in Guernsey relating to the transfer of long term business (notwithstanding various such applications fairly regularly come before the Court), but there are a number of Jersey authorities which are relevant (given the similarities in the legislative frameworks between the jurisdictions), including the recent judgment handed down in In the matter of National Provident Life Assurance Limited [2015] JRC108.

Bearing in mind this recent decision of the Royal Court of Jersey, and also the amendments made to section 46 of the Law by the Insurance Business (Bailiwick of Guernsey) (Amendment) Ordinance, 2014 (the “2014 Ordinance”), which came into effect on 1 May 2015, this note seeks to revisit what matters an insurer contemplating an application to the Royal Court of Guernsey should take into account.

What constitutes long term business?

The Law sets out at Schedule 1 what constitutes ‘long term business’ for the purposes of the Law, namely (i) life and annuity, (ii) marriage and birth, (iii) linked long term, (iv) permanent health, (v) capital redemption, (vi) pension fund management and (vii) credit life assurance business.

Schedule 1 gives a relatively succinct description of each of these categories of long term business, which will in any event be familiar with industry bodies contemplating a transfer of business.

Which transfers require sanction by the Royal Court?

Section 44 of the Law states that a scheme under which all or any of the long term business of a ‘transferor’ is transferred to a ‘transferee’ must be sanctioned by the Royal Court in any of the following circumstances: (i) if either or both of the transferee and transferor is a licensed insurer under section 7 of the Law, or (ii) in respect of any policy comprised in that business written under Guernsey law, or (iii) in respect of any policy comprised in that business issued to a person resident in the Bailiwick of Guernsey.

What is the procedure with respect to an application?

Section 45 sets out the various procedural requirements that an applicant seeking the sanction of a scheme must satisfy, which section expressly states that an application may be made by either a transferor or a transferee.

Importantly, any such application must be accompanied by a report on the terms of the scheme by an independent actuary and a notice must be published in *La Gazette Officielle* on at least two occasions, stating (amongst other things) the date and time when the application is to be made.

It is worth stating at this point that, pursuant to section 101 of the Law, the requirement to publish in *La Gazette Officielle* also means that a copy of the document or information must be published in the Alderney Official Gazette and shall be sent or delivered to the Seneschal of Sark to be inserted in the Sark notice box. An applicant must be careful to liaise with the necessary persons at each of the Gazettes and the Seneschal’s office in good time, bearing in mind their differing requirements.

Other than where the Guernsey Financial Services Commission (the “Commission”) has given consent, a statement setting out the terms of the scheme and a summary of the actuary’s report must be sent to each of the long term policyholders of the transferor and the transferee (and also to every member, if either or both is a company).

Section 45 also sets out notification requirements regarding the Commission and also the requirement for making available copies of the application and the full report of the actuary for inspection by policyholders, including as to the necessary periods of time relating thereto.

When will the Royal Court sanction a scheme?

The Royal Court shall not make an order sanctioning a scheme unless it is satisfied that the transferee is (or will be) licensed either under the Law or in the country outside the Bailiwick of Guernsey where the transferee is to undertake its obligations under the policies transferred to it.

Pursuant to section 46, the Court will also (other than when all policies to be transferred are contracts of re-insurance) require to see that the Commission has certified that either a Guernsey-licensed transferee possesses the necessary capital resources or that the relevant authority supervising any foreign transferee has been notified of the scheme and has consented to it (or at

least has not refused consent within three months of being notified). In the case of a Guernsey transferee, the Commission has now (as contemplated in the 2014 Ordinance) issued the Insurance Business (Solvency) Rules, 2015, which will need to be considered.

The Court must also consider whether or not the scheme would adversely affect any policyholder, and in that regard will, as did the Royal Court of Jersey in In the matter of National Provident Life Assurance Limited, pay close attention to the report of the independent actuary, whether or not any policyholder has objected to the scheme, and whether the scheme has already been approved in any other jurisdiction.

In terms of the wider approach that the Royal Court might adopt when considering whether or not to sanction a scheme, it is likely that it would give close consideration to the decision of the Royal Court of Jersey in Norwich Union Life Insurance Society v Norwich Union Annuity Limited and Others 1997/81 [Jersey Unreported 25th April 1997] (reaffirmed in the recent decision in In the matter of National Provident Life Assurance Limited) in which the Court cited with approval the dicta of Hoffman J in Re London Life Association Limited (Chancery Division) (21st February 1989), whereby he set out the following principles:

“Although the statutory discretion is unfettered, it must be exercised according to principles which give due recognition to the commercial judgment entrusted by the company's constitution to its board. The court in my judgment is concerned in the first place with whether a policyholder, employee or other person would be "adversely affected" by the scheme in the sense that it appears likely to leave him worse off than if there had been no scheme. It does not however follow that any scheme which leaves someone adversely affected must be rejected. For example, as we shall see, one scheme which might have adopted in this case would have adversely affected many of London Life's employees because they would have become redundant. But such a scheme might nevertheless have been confirmed by the court. In the end the question is whether the scheme as a whole is fair as between the interests of the different classes of persons affected.”

If the Royal Court is satisfied of the fairness of the scheme and that all requirements have been satisfied it may then order the sanction of the scheme. Pursuant to section 47 of the Law it shall then direct that notice be published in *La Gazette Officielle* (and in any other relevant jurisdiction), which notice shall refer to the making of the order and shall specify the period during which any policyholder may exercise any right to cancel a policy.

Conclusions

It is often (if not invariably) the case that an application made in Guernsey for the transfer of long term business is made in conjunction with similar applications made simultaneously in one or more other jurisdictions, as was the case in National Provident Life Assurance Limited, in which the Royal Court of Jersey was mindful of the fact that the scheme in that case had already been approved by both the High Court in England and the Royal Court of Guernsey.

The content of the report of the independent actuary is understandably key to the success of any such application, being that it will be considered by the Court, the Commission and policyholders alike when contemplating the effects of the scheme. Beyond that, the success of any application is primarily reliant on careful co-ordination of the various notices that must be given and approvals that must be sought, often, as stated, in conjunction with similar actions being taken simultaneously in other jurisdictions.

The above note is intended to be generic commentary only on transfers of long term insurance business under Guernsey law. Please contact the authors to discuss specific scheme transfers.

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