

Insurance business transfers in Guernsey

Service area / [Insurance Law](#)

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Insurers often wish to transfer portfolios of insurance contracts, either to another insurer in the same group in the course of a restructuring; or to a third party insurer (typically where the transferor wishes to exit a particular market).

In the UK, Part VII of the Financial Services and Markets Act 2000 ("**Part VII**") permits the transfer of insurance business subject to the sanction of the High Court. Transfers can be made to transferees located within the UK or in other EEA member states. Part VII imposes safeguards to protect the policyholders whose policies are to be transferred. Once the statutory requirements are met, the High Court has discretion to order the transfer. Importantly, the transferor does not need to first obtain the consent of the affected policyholders, since the High Court's order takes effect as a form of statutory novation.

However, commonly, UK (and other EEA) insurers find that they have underwritten policies in favour of residents of the Bailiwick of Guernsey. Guernsey is not a part of the UK or the EEA, and Part VII does not apply in Guernsey.

Consequently, these transferors must also consider the law in Guernsey before effecting a transfer.

Transfers of general insurance business

Insurers licenced in Guernsey by the Guernsey Financial Services Commission (the "**GFSC**") are required by the Insurance Business (Bailiwick of Guernsey) Law, 2002 (the "**Insurance Law**") to obtain the consent of the GFSC before effecting any portfolio transfer of general insurance business. Once the GFSC has consented, the transfer can proceed.

For other insurers, such as UK insurers pursuing transfers of general insurance business under Part VII, there is no requirement for GFSC consent to be obtained, and no other restrictions in Guernsey law apply.

However, the transferor in such a case must satisfy itself that the English court's order will be effective to transfer any policies issued to Guernsey-resident policyholders. To the extent that any policies are governed by Guernsey law rather than English law, individual policyholder consent may be required.

It is therefore important that the transferor's due diligence process is designed at the outset to ensure that any Guernsey-law governed contracts are identified at an early stage.

Transfers of long-term insurance business

Insurers licenced in Guernsey by the GFSC must also obtain GFSC consent before they can effect a portfolio transfer of long term insurance business.

In addition, portfolio transfers of long term insurance business are subject to statutory control in Guernsey, according to a process similar to that of Part VII.

In Guernsey "long term business" refers to a slightly different set of classes than those set out in the European insurance directives and used in the UK and other EEA states. The long term classes in Guernsey are: life and annuity; marriage and birth; linked long term; permanent health; capital redemption; pension fund management; and credit life assurance.

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Under the Insurance Law, any scheme for the transfer of all or any of the long term business of one insurer to another, wherever the transferor and transferee are incorporated, must be sanctioned by the Royal Court where:

- the transferor or the transferee (or both of them) are licensed by the GFSC; or
- any policy included in the transfer is written under Guernsey law; or
- any policy included in the transfer was issued to a person resident in the Bailiwick of Guernsey.

Failing to obtain the sanction of the Royal Court where it is required is a criminal offence.

Note in the case of (ii) and (iii) above that the only requirement is for a “scheme” for the transfer of any policy written under Guernsey law or issued to a Bailiwick resident. There is no de minimis number of policies below which the requirement for the court’s sanction does not apply.

This means that life assurers pursuing Part VII transfers often also need to obtain the sanction of the Guernsey court. This is because, where a large portfolio is being transferred, it is common to find that a number of policies have been issued to Guernsey residents.

It is important to ensure that the transferor’s due diligence is designed to identify any Guernsey-resident policyholders at the earliest possible stage.

Obtaining court approval

The transferor or transferee may apply to the Royal Court for an order sanctioning the scheme. In practice, the transferor usually makes the application. The application must be accompanied by a Guernsey scheme document and a report on the terms of the scheme prepared by an independent actuary. Where the application is made alongside an application to the High Court in England under Part VII, the independent expert’s report prepared for the purposes of the Part VII application can be used provided that it deals expressly with the position of the Guernsey policyholders.

A notice of the application must be published in Guernsey, Alderney and Sark.

The Insurance Law requires a circular to be sent to each long term policyholder of the transferor and transferee to inform them of the application. Strict compliance with this publicity requirement is often impracticable, since current addresses are often missing, and so the GFSC has power to grant waivers in appropriate cases. It is common to request a waiver permitting the circular to be sent only to those policyholders of the transferor resident in Guernsey whose policies will be transferred, and for whom the transferor has an address.

The consent of the GFSC to the scheme is required. In considering the scheme the GFSC will place weight on the conclusions reached by the independent actuary. Where a parallel application under Part VII is being made, the GFSC will require evidence of the approval of the UK Prudential Regulation Authority (the “PRA”) to the scheme, and may speak to the PRA to discuss the scheme.

The court may not make an order until 42 days have elapsed following the publication of the notice.

The court will consider the application at a sanction hearing. The applicant will make submissions through its advocate. Any objectors to the scheme will be heard. The GFSC also has a right to appear.

The court may not make an order sanctioning the scheme unless it is satisfied that the transferee is licensed to accept the business to be transferred; and the GFSC has certified that it has notified the transferor’s regulator of the scheme, and that regulator has consented, or has not refused its consent within three months.

Notice of the court’s order approving the scheme must be published in Guernsey, Alderney and Sark.

The court’s power is not limited to ordering the transfer of insurance contracts. It can also make ancillary orders, including for the transfer of other assets and liabilities of the transferor, or for the dissolution, without winding up, of the transferor.

Carey Olsen’s involvement

Carey Olsen is consistently ranked by the legal directories as a top tier firm for insurance work. Several members of the firm’s corporate insurance team have previously worked in specialist insurance teams of international firms and have extensive experience of advising insurance groups in connection with restructurings and portfolio transfers.

The firm regularly advises insurers on long term business transfers and has recently obtained the sanction of the Guernsey court to Part VII transfers effected by Aviva, the Phoenix group and Prudential.

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