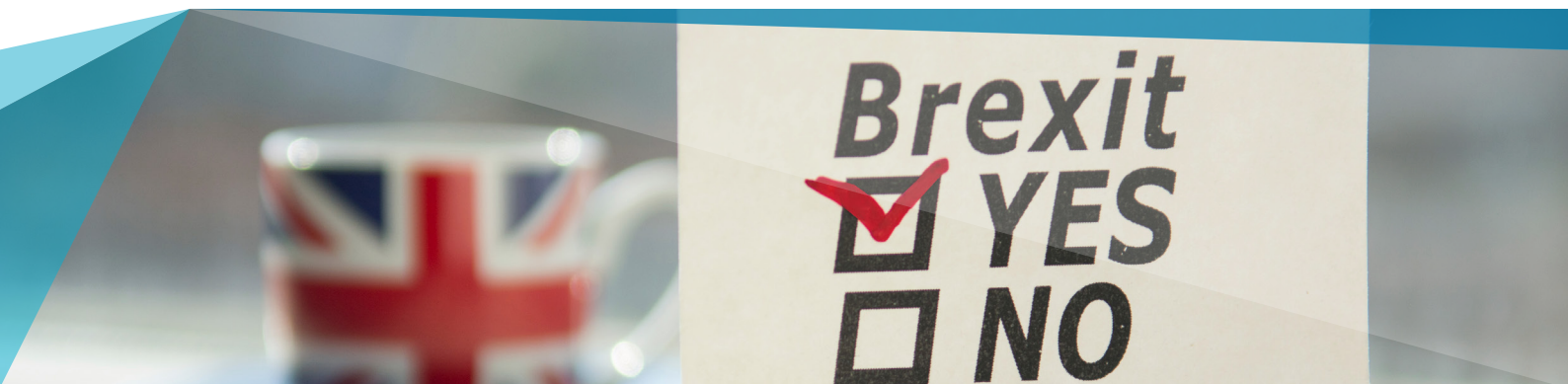


PREPARING FOR BREXIT: INSURANCE POLICY TRANSFERS ("PART 7 TRANSFERS")



Many UK insurers are preparing to transfer European risk to their EU-domiciled affiliates or subsidiaries (and vice versa). As this process requires insurers to contact policyholders, clients may wish to familiarise themselves with the transfer process.

If Brexit negotiations result in a "hard Brexit", UK insurers may not be permitted to pay claims on European Economic Area (EEA) risks and vice versa.

This has ramifications for UK policies which cover EEA risks in whole or in part. Some UK insurers are beginning to transfer the affected parts of these policies to EEA carriers so that they will be able to pay claims if they lose their passporting rights.

In the UK, subject to very limited exceptions, any transfer of existing insurance business is subject to a strict legal process known as a Part 7 Transfer. The insurer must seek court approval for the transfer scheme, and policyholders have the right to make representations to the Prudential Regulation Authority (PRA), Financial Conduct Authority (FCA), and/or the court if they believe that they will be adversely affected by the transfer. This note provides a brief introduction to the transfer process and how it may affect policyholders.

INITIAL PREPARATIONS

After an insurer decides to make a Part 7 Transfer, it will spend the first three to five months in close consultation with the PRA and FCA.

The insurer will first need to decide which insurance policies, or parts thereof, it intends to move to an EEA carrier. It will then prepare the transfer documents. The PRA and FCA will often have direct input into the drafts, and will need to be satisfied that the transfer will not be detrimental to policyholders' rights and security overall.

An independent expert, approved by the PRA, will then draw up an opinion comparing the likely effects on policyholders (including any existing policyholders of the EEA carrier) with and without the transfer.

After the first three to five months, the transfer documents and the expert report will be finalised and filed with the court.

NOTIFYING POLICYHOLDERS

The court will give directions for next steps in the transfer process. The insurer will, subject to rare exceptions, be required to notify all of its policyholders (whether their policies are being transferred or not) and other parties affected by the scheme. The insurer must also advertise the transfer in national newspapers. This is a fundamental protection for policyholders within the Part 7 process.

The policyholders will be sent or directed to a Policyholder Statement, containing (though exact contents may vary):

- A short letter introducing the transfer.
- A brochure summarising the scheme documents.
- The independent expert's report.
- Notice of the date of final court hearing.

Policyholders will usually have two to three months to raise any objections with the insurer or with the court before the final court hearing approving the scheme.

It is important to note that the documents the policyholders receive at this stage are subject to change. The regulators will hold further meetings with the insurer in the months before the court hearing, and the court can make any changes to the documents it sees fit.

The insurer may have to make a very significant number of notifications. In some cases the court will agree to limit notifications to policyholders whose policies are being transferred. The smaller the proportion of policyholders affected, the more likely the court is to agree to limits on the obligation to notify.

The court is also more likely to agree the insurer is not obliged to notify:

- Extremely remote/historic classes of policyholder (for example, decades-old employers liability policies).
- Untraceable policyholders, where documents have been lost.
- Policyholders whose policies were placed with a white label company.

If the scheme is approved at the final court hearing, it will become effective at the scheme effective date. Policyholders will be treated as if the relevant part of the policies had always been insured by the transferee (in this case, the EEA carrier).

OBJECTING TO A TRANSFER

Policyholders have the right to make representations and raise objections to a Part 7 Transfer. They must accordingly be given enough time and information to consider the scheme documents and the reasons behind the transfer.

While Brexit-related Part 7 Transfers are unlikely to be controversial, many will still involve splitting policies into UK and EEA risks. This may mean significantly amending the original policy documents.

These amendments must be specifically drawn to the attention of policyholders and regulators. Any objections to these amendments may cause delays. If the regulators still have material objections at the date of the final court hearing, the court is highly unlikely to approve the scheme. Insurers are likely to wish to complete their transfers well before any potential loss of passporting rights if there is a hard Brexit.

Separately, the PRA must gain the consent of regulators in affected EEA countries before the court hearing. Insurers will not need to make further applications (for example) in German or Swiss courts in order to bring into effect the Part 7 Transfer. However, there is no guarantee that the EEA regulators will work to the UK timetable, which may cause further delays.

Any person who believes that they would be adversely affected by the transfer may put their case directly to the court at the final court hearing.

Although the court will not reject the scheme merely because some policyholders are adversely affected, if the transfer as a whole does not treat different classes of policyholders fairly, the court will not allow the transfer without further reworking.

SPECIAL CASES

In rare cases, the policyholders' consent will be enough and the transfer will not be subject to the Part 7 process. This is of particular relevance to clients who retain captive insurers.

- Where the entire business of a captive insurer is to be transferred to an EU captive in the same group of companies, the captive insurer will only need the consent of its policyholders to bring into effect the transfer.
- Where a reinsurer is making a transfer and all of its policyholders (irrespective of whether their policies are transferred) are reinsureds, the Part 7 Transfer process is optional. Reinsurers will only need the consent of the affected policyholders and a certificate that they have the necessary margin of solvency. This option is not available to a reinsurer which writes any direct insurance business.

Please contact your Marsh client executive if you would like to discuss any issues related to this note, or email national.enquiries@marsh.com

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