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The impact of Brexit on Part VII transfers

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Agenda

- Overview of Part VII transfers
- Why has Brexit increased the number of Part VII transfers
- Brexit - key issues
- Q&A



Overview of Part VII transfers

The legal transfer of some or all of the policies from one company to another

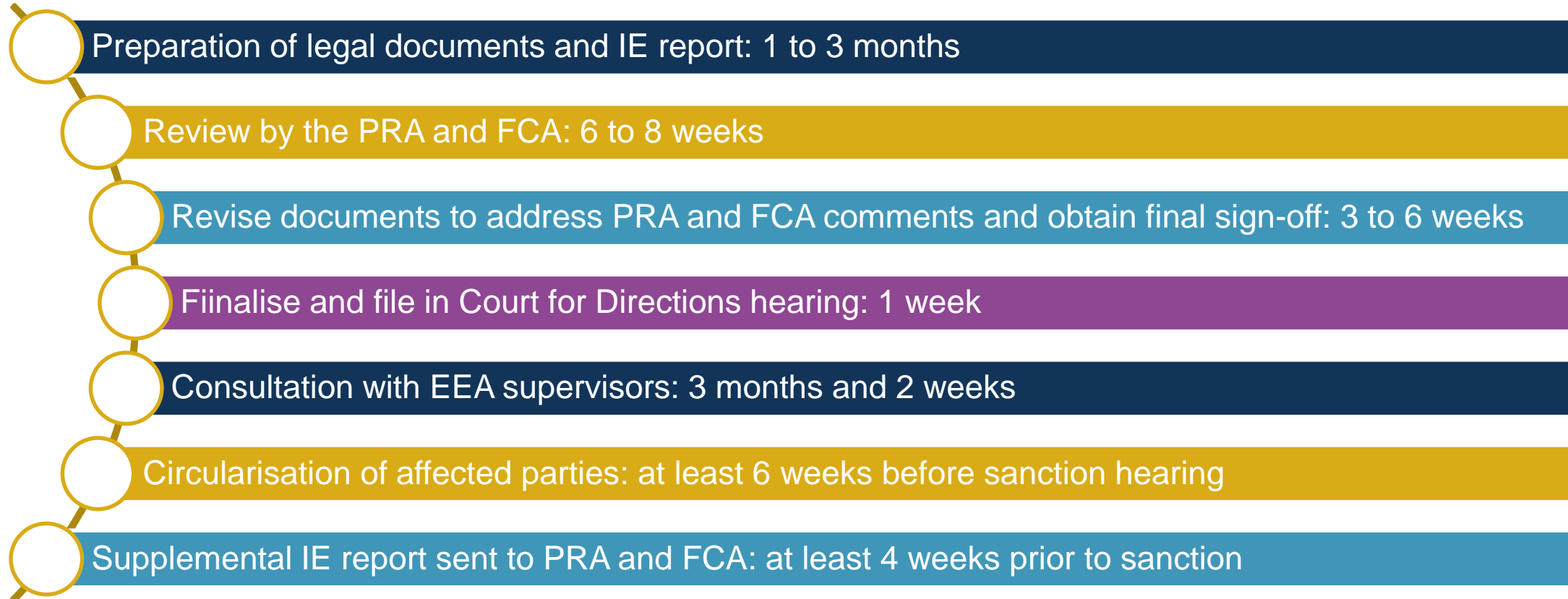
Governed by Part VII of the Financial Services and Markets Act 2000 (FSMA), supplemented by SUP 18 of the FSA handbook

Key
requirements

- Approved and sanctioned by the High Court
- Independent Expert
- Does not require policyholder approval
- There are policyholder notification requirements
- Affected parties are permitted to object



Part VII timetable



Role of the PRA/FCA

- Approval of the Independent Expert proposed by the transferor and transferee
- Opine on any waivers from the requirement to notify policyholders
- Review Scheme documents against PRA/FCA principles
 - Key concern for the FCA will be the fair treatment of policyholders
 - Key concern for the PRA will be solvency
- Review and challenge of the Independent Expert's reports
 - Heavily involved in discussions throughout the process
 - Gain comfort on the conclusions
- Submit a report to the Court



Uses of Part VII transfers

- Intra-group transfer – combining or separating businesses
- Transfer to a third party
- Restructuring insurance funds
- Achieving finality on a book of run-off business
- Shutting down an insurer
- Exiting non-core books of business
- Brexit



Role of the Independent Expert

- Requires approval from the PRA, in consultation with the FCA
- Independent Expert must opine on whether any group of policyholders will be materially adversely affected
 - Policyholders remaining in the transferor
 - Policyholders transferring to the transferee
 - Policyholders pre-existing in the transferee
- Three reports are produced
 - Main report
 - Summary report
 - Supplementary report



Financial considerations

- Reserves
- Capital requirements and solvency position
- Implications under insolvency
- Compensation schemes
- Liquidity position
- Protection – guarantees, reinsurance
- Investment strategy
- Implication of the transfer on ongoing expenses
- Pension arrangements
- Tax implications



Non-financial considerations

- Claims handling
- Policy servicing
- Impact of changes in regulatory jurisdiction
- Complaints
- Governance and management framework
- Policyholder notifications
- Reinsurer notifications



Why has Brexit increased the number of Part VII transfers?

The problem

- UK insurers writing business in the EEA on a Freedom of Services basis
- UK insurers with branches in the EEA set up on a Freedom of Establishment basis
- EEA insurers writing business in the UK on a Freedom of Services basis
- EEA insurers with UK branches set up on Freedom of Establishment basis

The solution

- UK insurers:
 - transferring EEA business to pre-existing EEA entity
 - establishing EEA entity and transferring EEA business into it
- EEA insurers:
 - transferring UK business into pre-existing UK entity
 - establishing UK entity and transferring business into it



Non-life Brexit Part VII transfers listed in the Gazette

Entity	New country	Sanction Hearing
HCC/Tokio Marine	Luxembourg	November 2018
RSA	Luxembourg	November 2018
AIG	Luxembourg	December 2018
CNA	Luxembourg	December 2018
Hiscox	Luxembourg	December 2018
Sompo	Luxembourg	December 2018
Fidelis	Ireland	December 2018
Admiral	Spain	December 2018
QBE	Belgium	December 2018
Aviva	Ireland	January 2019



Brexit - Key issues

- Determining scope of transferring portfolio
- Access to compensation schemes
- Access to complaints bodies
- Servicing business following reinsurance back to the UK
- Security under wind-up
- Capital considerations
- Timing concerns



Determining scope of transferring portfolio

EU portfolios

The problem

- Portfolios which are no longer written
- Portfolios which are being closed
- How cost-effective is it to transfer?

The solution

- Retain portfolios?
- Transfer portfolios?

Insurance contracts with risks in multiple locations

The problem

- Where locations include both the UK and the EEA

The solution

- Split contracts?
- Transfer entire contract?
- Retain entire contract?



Access to compensation schemes

Pre-transfer

- Some or all policyholders may have access to the Financial Services Compensation Scheme (FSCS)
- There is a set of criteria for eligible claimants

Post-transfer

- Policyholders transferring will lose access to the FSCS

Key considerations:

- Current access to the FSCS
- Insurer is adequately capitalised
- Insurer has additional protection in place, eg parental guarantees
- Compensation schemes that will be available to policyholders post-transfer

The only way to retain access to the FSCS is to not transfer the policyholders. However, if you choose this option, you may not be able to service policies once the UK leaves the EU.



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Access to complaints bodies

Pre-transfer

- Complaints can be made to The Financial Ombudsman Service (FOS) in the UK
- Policyholders of a branch can also complain to a local Ombudsman, if available
- Eligible claimants for FOS include consumers, micro-enterprises, charities and trustees

Post-transfer

- Policyholders will not be able to make complaints to FOS, with the exception of policyholders of a UK branch
- Most EEA countries have local Ombudsman service

Key considerations:

- Number of complaints received in prior years
- Complaints services available in location of transferee and any of its branches
- Comparison of eligibility criteria to UK FOS



Servicing business following reinsurance back to the UK

Outsource claims handling to pre-Brexit service provider

- Staff have necessary experience and knowledge of the business
- Ensures continuity of approach and standards
- Claims handling experience of policyholder unchanged
- Drags EEA insurer onshore in the UK for regulatory purposes

Outsource claims handling to post-Brexit reinsurer

- Has authorisation in the UK to carry out insurance contracts
- Restriction on business: PRA Conditions Governing Business 9
- Cut-through clause in reinsurance



Security under wind-up

The problem

- Many insurers are transferring policyholders to another entity and reinsuring this business, in part or fully, back to the transferor
- As a result, policyholders were direct policyholders of the transferor pre-transfer and the transferee becomes an inwards reinsurance policyholder of the transferor post-transfer
- Under UK regulations, the reinsured entity will rank below any direct policyholders in the event of insolvency
- Therefore the transferring policyholders are in a worse position in the event of insolvency than was the case pre-transfer

The solution

- A provision can be made to ensure that the outcome under insolvency is the same as if the reinsured entity ranked equally to direct policyholders



Other issues

- Capital considerations
 - Model change process may be required
 - New model approval application with EU regulator
 - Additional documentation and model validation
- Timing concerns
 - Time required for application for entity or branch
 - Brexit has resulted in more Part VII transfers than usual and so it may take more time:
 - For regulators to review the reports
 - To get a Court date
 - Need to consider if there is now enough time to do a Part VII before Brexit
 - Transition period could be critical



Conclusions

- There are a number of key issues arising as a result of Brexit that require further consideration
 - Solutions to these issues are dependent on the final Brexit arrangements
- Brexit has resulted in an increase in the number of transfers; however some insurers are awaiting further information on passporting arrangements
 - We expect there to be another peak of Part VII transfers in 2019



Questions

Comments



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