



Institute  
and Faculty  
of Actuaries

# IFoA Life Conference

Welcome to Pinsent Masons

Legal Developments in Part VII Transfers

# With you today...



## **Hammad Akhtar**

Partner, Corporate Insurance

**T:** +44 20 7054 2719

**M:** +44 7901 517 365

**E:** hammad.akhtar@pinsentmasons.com



## **Peter McCusker**

Partner, Corporate Insurance

**T:** +44 20 7418 8213

**M:** +44 7741 803 146

**E:** peter.mccusker@pinsentmasons.com

### **Hammad's relevant experience includes advising:**

- **Aviva** on the intra-group Part VII transfer of the individual and group protection business of AIG Life Limited.
- **Aegon** on the Part VII transfer of its individual protection business to Royal London.
- **Assurant** on two Brexit Part VII transfers of general insurance business.
- **Phoenix** on various Part VII transfers of insurance business.
- **Royal London** on its consolidation of seven ring-fenced with-profits sub-funds as part of Royal London's successful four-year 'Legacy Simplification' project, successfully delivering capital and operational efficiencies through a series of Court-sanctioned scheme amendments and schemes of arrangement in the UK and Ireland.
- **Zurich** on the Part VII transfer of its workplace and pensions insurance business to LBG.
- **Royal London** on the £22bn Part VII transfer of Co-op's life insurance business.
- **Royal London** on its Brexit transfer of insurance business from the UK to Ireland and the subsequent reinsurance of certain of that business.

### **Peter's relevant experience includes advising:**

- **Aviva** on the intra-group Part VII transfer of the individual and group protection business of AIG Life Limited.
- **Canada Life** on the sale of its on-shore bonds business to Chesnara plc, and subsequent Part VII transfer.
- **Aegon** on the Part VII transfer of its individual protection business to Royal London.
- **Royal London** on its consolidation of seven ring-fenced with-profits sub-funds as part of Royal London's successful four-year 'Legacy Simplification' project, successfully delivering capital and operational efficiencies through a series of Court-sanctioned scheme amendments and schemes of arrangement in the UK and Ireland.
- **Royal London** on its Brexit reorganisation involving the Part VII transfer of its European business to a new regulated insurer in Ireland.
- **Royal London** on the £22bn Part VII transfer of Co-op's life insurance business.

# Agenda

1. Part VII Transfers: A brief overview & the current landscape
2. Part VII Transfers: Scheme Amendments
3. Recent Part VII Transfers
4. Preservation of tax treatment (and the legal basis of transfer)
5. Contract splitting and replication
6. Digitalisation of policyholder communications
7. Sanctions
8. Q&A



# Part VII Transfers: A brief overview



A “Scheme” under Part VII of the Financial Services and Markets Act 2000

Used to transfer insurance business or banking business

An asset transfer: a “lift and drop” of the relevant business from Transferor to Transferee

A Court process, with significant regulatory involvement and oversight

Does not require customer or counterparty consent, but any person who alleges that they would be “adversely affected” by the Scheme may object to it

# Part VII Transfers: A brief overview

- Transfer of all or part of an insurance business, including:
  - obligations that are owed to customers (i.e. insurance policy obligations); and
  - rights that are owed by customers (i.e. premium payment obligations).
- This can either be:
  - a “lift and drop” exercise to transfer everything unchanged; or
  - a selective process by which the whole or part of a business is transferred, carving out certain assets and liabilities.
- A Part VII transfer can have a wider purpose and effect, including to:
  - amend existing contracts to ensure the transfer is fully and effectively carried out (e.g. splitting shared services contracts or replicating distribution agreements); this is less straightforward if the proposal is to interfere with policyholder contracts – there must be a clear justification for the amendment; and/or
  - amend previous schemes to which existing business is subject.
- A Part VII transfer scheme is often a “living” document (in that it has provisions that continue to be relevant and apply after the proposed transfer has taken effect).

# Part VII Transfers: The current landscape

## Post-Brexit

- Prior to Brexit, a Part VII transfer could be used to transfer business carried on in the UK to a transferee established in the European Economic Area.
- Part VII transfers are now **limited to transfers of insurance business carried on in the UK to a transferee established in the UK or Gibraltar**.
- There is no longer a requirement to notify EEA regulators of a proposed transfer; prior to Brexit, the Part VII timeline was required to accommodate a three-month consultation period for these purposes – this is no longer necessary.

## Prudential Assurance Company Limited and Rothesay Life plc

- The Pru/Rothesay decision injected some drama into the Part VII regime when Snowden J exercised his discretion under section 111(3) of FSMA to refuse an application for the High Court to sanction a scheme providing for the transfer of some 370,000 annuity policies. The decision was overturned in the Court of Appeal.
- In the Court of Appeal decision, the Court provided clarity on the definition of ‘**material adverse effect**’ and noted that an adverse effect will only be material if it is:
  - **a possibility that cannot sensibly be ignored** having regard to the nature and gravity of the feared harm in the particular case;
  - a consequence of the transfer scheme;
  - material in the sense that there is the prospect of **real or significant, as opposed to fanciful or insignificant**, risk to the position of the stakeholder concerned.
- The Court of Appeal decision also noted that:
  - the Court should consider whether there would be material adverse effects in the event that the scheme is not sanctioned;
  - the Court may exercise its discretion to sanction the scheme even if the Court finds that the proposed scheme will have a material adverse effect on some group or groups of policyholders – the Court must consider whether the proposed scheme as a whole is fair; and
  - absent a defect in the independent expert’s report, **the Court will always accord full weight to the opinions of the independent expert**, the PRA and the FCA.

... and the shifting winds of Regulatory focus

# Part VII Transfers: Scheme amendments

## Why might a scheme require amendment?

### Things to consider

- Is the approval of the Court required?
  - Court's jurisdiction under section 112(1)(d) of FSMA: "...[the Court] may by that [sanction order] or any subsequent order make such provision (if any) as it thinks fit - ... (d) with respect to such incidental, consequential and supplementary matters as are, in its opinion, necessary to secure that the scheme is fully and effectively carried out."
- Does the Scheme contain an amendment/modification provision?
- Does the Court order sanctioning the Scheme contain a 'liberty to apply' provision?
- In either case, what do the provisions prescribe, and does the proposed amendment fall within the scope of it?
- Amendment/modification provisions vary, and may include:
  - 3i's test;
  - no material adverse effect threshold;
  - independent actuary/internal actuary certification or approval;
  - internal governance approvals; and/or
  - notification of relevant regulators.

# Recent Part VII Transfers

## 2024 Transfers

- Transfer of Scottish Equitable's individual protection business to Royal London
- Transfer of part of Pinnacle Insurance's non-pet business to ElFlow
- Transfer of Met Life Europe D.A.C's UK retirement and investments business to MetLife UK
- Transfer of FM Insurance Company's insurance and reinsurance business to FM Insurance Europe S.A. (UK branch)

## 2025 Transfers (to date)

- Transfer of Canada Life's on-shore individual protection business to Countrywide Assurance plc
- Transfer of part of Scottish Widows' long-term insurance business to Rothesay Life plc
- Transfer of certain long-term business from Phoenix Life Limited to abrdn Life and Pensions Limited

*We understand at least three further Part VII Transfers will proceed to Sanction Hearing in 2025*



# Preservation of tax treatment (and the legal basis of transfer)

- Pinsent Masons advised Scottish Equitable plc (Aegon) on the transfer of its individual protection business to Royal London, which was sanctioned by the High Court in 2024.
- Within the transferring policies were a small number of policies which benefited from tax relief on life insurance policy premiums – these were known as **LPTR Policies**.
- The Scheme proposed to transfer the LPTR Policies to Royal London, however the pension scheme under which the LPTR Policies were held was to remain with Aegon.
- The point of law upon which the matter hinged was whether the LPTR Policies were to be considered to continue uninterrupted following the transfer.
- We requested, and the High Court granted, a Sanction Hearing Order which included provision that, notwithstanding the transfer, the **LPTR Policies would continue to be treated as having been issued on the date originally issued and that rights under each LPTR Policy should continue uninterrupted.**
- In doing so, Leech J stated:  
*“I am satisfied that the effect of the transfer will not be to novate the LPTR Policies but to continue them ... It is clear from [Section 112(3) of FSMA] that the **intention of the legislature was not to novate each policy by discharging the existing policy and creating another but, indeed, to transfer existing rights and liabilities** from the transferor to the transferee”*

# Contract splitting and replication

- In addition to the relevant transferring policies, a Part VII scheme will typically seek to transfer certain contracts. These typically include outwards reinsurance treaties, third party administration arrangements, and distribution agreements.
- **Complexity can arise where third-party agreements benefit the whole of the transferor's business** (i.e. including any retained or excluded business).
- This matter arose as part of Canada Life's recent transfer of its on-shore individual protection business to Countrywide Assurance plc.
- In order to ensure that: (i) Countrywide would receive the benefit of any future commission clawbacks; and (ii) Countrywide would be responsible for the payment of any future commissions, the **Part VII scheme was used to 'split' certain distribution agreements**.
- This approach originated from **Re Lloyds Bank plc [2018] EWHC 1034 (Ch)** and **Re AIG Europe Limited [2018] EWHC 2818 (Ch)**.
- The Court will consider the **communication of the proposed approach** to affected parties and will consider the **extent to which those parties object to the proposed transfer**.
- Practical consideration of the impact of contract splitting should be considered in detail – **novation or renegotiation of commercial and operational terms** may be preferred.

# Digitalisation of policyholder communications

- Part VII communications are typically undertaken by way of postal mail; however **electronic communications have formed part of communication exercises for some time** (including by way of email and text message).
- The FCA – through the guidance contained within FG22/1 – establishes postal mail as the default and states that the FCA is “*open, where appropriate, to the wider use of digital communication methods across the industry*”. It is clear that digital communication remains the exception that proves the rule.
- FG22/1 provides some guidance for firms in demonstrating that digital communications may be appropriate in the circumstances.
- **We have observed increasing numbers of Part VII transfers adopting a ‘digital-first’ approach to communications**; there are clear arguments in favour:
  - Policyholders are increasingly indicating a **preference for digital correspondence** (although policyholder demographics does play a part).
  - Policyholders are arguably more likely to **maintain the same email address throughout the life of the policy** than they are a physical postal address.
  - Email facilitates an **‘in the moment’ response**, allowing policyholders to ‘click to respond’ by telephone, email, or an online portal.
  - Firms are typically able to **determine, in real time, whether an email has been received and if it has been opened** – an impossibility for postal mail.
- We expect the trend to continue, particularly as new technology emerges (e.g. ‘ghost-pinging’ which allows firms to affordably test if an email address is valid).

# Sanctioned assets & policies

- **Sanctions continue to be an area of regulatory focus** during the Part VII process.
- The key issue remains the appropriate demonstration of **processes and controls to monitor and act** when sanctioned policyholders and assets are identified.
- **Where a policyholder or policy is sanctioned, the relevant policy may not be transferred** by way of the Part VII scheme unless a licence or dispensation is provided by the UK's Office of Financial Sanctions Implementation (OFSI) – this is unlikely to be forthcoming.
- In those circumstances, the **relevant policy may not be reinsured to the transferor** outside of the Part VII scheme without a licence or dispensation from OFSI.
- With certain insurance business, particularly involving **unit-linked investment funds** where premiums are invested in collective investment schemes, it is **important to clearly set out the legal basis on which any assets are held (e.g. pooled funds)**.



# Q&A





## **Hymans Robertson and Pinsent Masons networking breakfast**

Friday 7<sup>th</sup> November  
7:30 – 8:45 GMT  
Pinsent Masons





Institute  
and Faculty  
of Actuaries

# Thank you

For more information on the topics discussed today, please contact:

[Peter.McCusker@pinsentmasons.com](mailto:Peter.McCusker@pinsentmasons.com)

[Hammad.Akhtar@pinsentmasons.com](mailto:Hammad.Akhtar@pinsentmasons.com)