

Transfers of reinsurance business in Spain and Sweden

In this update, we continue our series of reports on the Reinsurance Directive and how it is operating in other European countries, with particular emphasis on the process for transferring portfolios of business. We are grateful to our European correspondents for their help in compiling this series.

Spain

The Reinsurance Directive was implemented in Spain on 9 December 2007 with the enactment of Law 13/2007 and the Royal Decree 1361/2007 ("the 2007 laws").

The 2007 laws provide for the transfer of reinsurance business by reinsurers (including those who write direct business) who are authorised in Spain or in other EEA states (if they are also domiciled in those EEA states) to:

- i) Spanish reinsurers (including those writing direct business), authorised in Spain; or
- ii) Reinsurers (including those writing direct business) domiciled and authorised in other EEA states; or
- iii) Reinsurers (including those writing direct business) domiciled and authorised outside the EEA, even if the reinsurer concerned has no Spanish branch.

The transferee is not required to carry on the transferred business from an establishment in the EEA. Further, reinsureds have the right to terminate their reinsurance policies with the transferor after notification of the transfer, provided notification is made to the transferor.

The Directorate General for Insurances and Pension Funds (the "DGIPF") is responsible for approving a transfer of reinsurance business. An application to the DGIPF must be supported with the following information:

- i) the corporate resolution approving the transfer;
- ii) the transfer agreement, incorporating full details of the transfer and signed by the transferor and transferee;
- iii) financial statements for the parties, signed off within the last 6 months;
- iv) details of the technical provisions for the transferred portfolio;
- v) details of the transferor's solvency margin (the regulator of the transferee is also required to certify that the transferee has the minimum solvency margin – although this is not expressly confirmed by the 2007 Laws in relation to foreign (re)insurers).

The transfer agreement must be notarised and registered with the Companies' Register. Reinsureds must also be given direct notice of the transfer (although if a reinsured cannot be found, it would seem to be acceptable for notification to be made by advertisement). Notice of the proposed transfer must also be published in two newspapers – a national newspaper and the newspaper with the widest circulation where the transferor has its registered address.

Reinsureds have one month to object to the transfer. If there is no objection, the transfer will be authorised within 3-6 months. However, the transfer will take longer if objections are made. The only ground on which a transfer is likely to be refused if there is any doubt over the transferee's solvency position post-transfer.

The 2007 Laws are silent on the issue of whether outwards retrocession contracts protecting the transferring business can be transferred. Outwards reinsurance would therefore either have to be commuted prior to the transfer, or novated on an individual basis. This could add considerably to the time and costs involved in the transfer, and it may be that it will not be possible to transfer all the outwards reinsurances.

There appears to be nothing in the 2007 Laws to prevent pure reinsurers who were in run-off as at 10 December 2007 (who fall outside the scope of the Reinsurance Directive) from transferring their business.

Our thanks go to Jorge Angell and Maria Victoria Valentin Gamazo of the firm L.C. Rodrigo Abogados for their advice.

Sweden

The Reinsurance Directive was implemented in Sweden by amending the Business Insurance Act 1982 and the 1998 Act on Foreign Insurers' and Occupational Pensions Institutes' Operations in Sweden ("the Acts"). The implementation became effective on 1 April 2008.

The Acts now regulate the transfer of both direct and reinsurance business. The Swedish Financial Supervisory Authority ("the Authority") is responsible for approving a transfer of reinsurance business.

The transfer process first requires approval from the shareholders of the transferor (in a general meeting). That approval must then be forwarded to the Swedish Companies Registration Office ("the Registration Office") within four months, for registration. After registration, the transferor and transferee have a further four months to apply to the Authority for permission to carry out the transfer. The Authority can require further information if it has concerns that policyholders' rights will be prejudiced by the transfer. Approval will only be given if:

- (i) the transfer can be carried out without prejudicing policyholders' rights;
- (ii) the transferee has sufficient capital (after the transfer);
- (iii) the authority in the country where the risk is situated or obligation is to be fulfilled has not objected to the transfer.

Policyholders are entitled to object to the transfer but have no right of veto. The Authority will, however, have regard to any objections received.

Following approval by the Authority, the transferee (or the transferor, where the transferee is a foreign insurer) notifies the Registration Office that the transfer has been approved. The transferee is required to provide direct notification (in a form to be decided by the Authority) to policyholders affected by the transfer. The Authority will publish notification of the transfer in the appropriate gazette.

There are no provisions in the Acts giving the Authority power to transfer outwards retrocession contracts protecting the business being transferred. Accordingly, the outward retrocessions would either have to be commuted prior to the transfer or novated across individually to the transferee, which would add considerably to the cost and timescale, and may not always be possible.

The Acts apply to both pure reinsurers and those reinsurers who also write direct business. The Authority has adopted the view that pure reinsurers in run-off are conducting insurance business and may therefore transfer their business.

Our thanks go to Rose-Marie Lundstrom of the firm Wistrand for her advice.

Further information

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