



## Society of Actuaries in Ireland

### Actuarial Standard of Practice INS-2

### Transfer of an Insurance Portfolio – Role of the Independent Actuary

#### Classification

Mandatory

**MEMBERS ARE REMINDED THAT THEY MUST ALWAYS COMPLY WITH THE CODE OF PROFESSIONAL CONDUCT AND THAT ACTUARIAL STANDARDS OF PRACTICE IMPOSE ADDITIONAL REQUIREMENTS UNDER SPECIFIC CIRCUMSTANCES.**

#### Legislation or Authority

For portfolio transfers which are governed by Irish law, the applicable legislation is: Section 13 of the Assurance Companies Act 1909, Section 36 of the Insurance Act 1989 and Regulation 41 of the European Union (Insurance and Reinsurance) Regulations 2015.

For portfolio transfers which are not governed by Irish law, *members* should make themselves aware of the legislative or regulatory rules that apply to such portfolio transfers.

#### Application

- a) Any *member* invited to act as the “Independent Actuary” in a Section 13 transfer of business under the Assurance Companies Act 1909 - whether that be a mandatory appointment for life insurance business or a voluntary appointment in the case of non-life insurance business, or
- b) Any *member* performing an equivalent role in respect of a portfolio transfer which is subject to the governing laws of a legal jurisdiction outside of Ireland.

For the purpose of this *ASP*, Independent Actuary will refer to any *member* performing either of the above roles.

Version	Effective from
1.0	01.12.2022

## Definitions

Words in italics in this Actuarial Standard of Practice shall be construed in accordance with the following definitions:

**Approving Authority:** The authority which, in the jurisdiction in which the *scheme* is taking place, has the legal or regulatory power to sanction the *scheme*. In Ireland, this is the Irish High Court, but, in other jurisdictions this may be a local *Regulator* or local court.

**ASP:** Actuarial Standard of Practice issued by the Society of Actuaries in Ireland.

**Court:** The Irish High Court.

**Head of Actuarial Function:** For entities based in Ireland, the actuary approved by the Central Bank of Ireland to act in the Pre-Approval Controlled Function of Head of Actuarial Function (PCF 48). *Members* may be asked to provide *Reports* on transfers outside of Ireland; in such circumstances, this reference is taken to refer to an equivalent role i.e. a senior actuary who oversees the assessment of policyholder liabilities and/or capital requirements and, if applicable, opines on the reasonableness of the results of these assessments.

**Member:** A member of the Society of Actuaries in Ireland.

**Professional Judgement:** The judgement of the *member*, based on actuarial training and experience.

**Regulator:** The Central Bank of Ireland or, for portfolio transfers which are subject to the governing laws of a legal jurisdiction outside of Ireland, the insurance industry supervisory authority in that jurisdiction. In certain circumstances, such as where a portfolio is transferring from one legal jurisdiction to another, more than one Regulator may be involved. Hence, “*Regulator*” can be interpreted as referring to all supervisory authorities which are impacted by the transfer in question.

**Report:** The Report provided by the Independent Actuary, outlining the Independent Actuary’s opinion on the transfer and the basis for that opinion.

**Scheme:** The application to transfer insurance business of one company to another by way of a portfolio transfer, with this application made to the authority which is responsible for approving the scheme (i.e. the *Approving Authority*).

**Society:** The Society of Actuaries in Ireland.

In addition:

Where the context requires, the following verbs are to be understood to convey the actions or reactions indicated:

**Must:** means that the indicated action is mandatory and failure to follow the indicated action will constitute a departure from this *ASP*.

**Should:** is used to indicate that *members* must comply with a particular requirement or prohibition, unless the circumstances are such that the requirement or prohibition is inappropriate or disproportionate and non-compliance is consistent with the standards of behaviour, integrity, competence and *professional judgement* which other *members* or the public might reasonably expect of a *member*.

**May:** means that the indicated action is not required, nor even necessarily expected, but in certain circumstances is an appropriate activity, possibly among other alternatives. Note that “might” is not used as a synonym for “may”, but rather with its normal meaning.

## **1 Introduction**

- 1.1 Under section 13 of the Assurance Companies Act 1909, any *scheme* which provides for the whole or part of the business carried on in the Republic of Ireland, by an insurance company subject to the requirements of the Act, to be transferred to another body requires the prior sanction of the *Court*. The *Court* will consider the *scheme* on the basis of a petition by one of the parties, and, in practice, the petition must be accompanied by a *Report* on the terms of the *scheme* by an Independent Actuary.
- 1.2 *Members* of the *Society* may also be requested to act as an Independent Actuary for *schemes* which are subject to the governing laws of a legal jurisdiction outside of Ireland, such as where the entities are not based in Ireland or where the Assurance Companies Act 1909 does not apply. In such circumstances, approval for the *scheme* to proceed may be required from the *Regulator*, from a local court or from both.
- 1.3 The purpose of this *ASP* is to advise a *member*, invited to act as the Independent Actuary in such a transfer, of the professional responsibilities such an appointment entails.

## **2 Factors influencing acceptance of an appointment as Independent Actuary**

- 2.1 Before accepting an appointment as the Independent Actuary in any particular case, an actuary must consider whether they have relevant practical knowledge and experience. Such experience would necessarily include familiarity with the role and responsibilities of a *Head of Actuarial Function* and with the types of business transacted by the companies concerned. In the case of an Independent Actuary asked to act in another jurisdiction, they should be satisfied that they have, or can acquire, sufficient knowledge of local legislation/regulation to accept the appointment. An actuary must also disclose to all the parties any direct or indirect interest the actuary may have or

- have had in any of them. Clearly, an actuary cannot act if such interest would, in the opinion of any party or its legal advisers, be likely to prejudice an actuary's status in the eyes of the *Approving Authority*. In case of doubt, the situation should be discussed with the *Regulator* before the appointment is accepted.
- 2.2 Where the *Regulator* does not have formal approval to sanction a *scheme* of transfer (for example, where the *Court* is the *Approving Authority*, as in Ireland), the *Regulator* may be made a notice party to the petition and, if so, will be entitled to be heard by the *Court* when the petition is being considered. It is therefore advisable for the Independent Actuary to ensure that the *Regulator* has been advised (by those petitioning the *scheme*) of their appointment and has not raised any objections to this appointment.
- 2.3 In practice, a *Report* on the terms of the *scheme* by an Independent Actuary will be required. The appointment of the Independent Actuary is made by one or both of the parties to the *scheme*. The purpose of the appointment is to secure an independent opinion for the authority which is responsible for approving the *scheme* on the likely effects of the *scheme* on the policyholders of the companies concerned. It would, therefore, be improper for the Independent Actuary to take instructions from any of the parties on what should be included in or excluded from the *Report*; or to be denied access by any of the parties to persons the Independent Actuary may wish to interview, or to information, reports and documents which the Independent Actuary may reasonably consider material to the formulation of an opinion on the likely effects of the *scheme* on the policyholders of the companies concerned. An actuary should ensure that this is understood by the parties concerned before accepting an appointment.
- 2.4 If, for any reason other than the abandonment of the *scheme*, the Independent Actuary's appointment is revoked or the Independent Actuary resigns prior to that individual's *Report* being submitted to the party which has appointed him or her or being circulated (whether in summary or otherwise) to policyholders, that individual should consider whether the circumstances are such that that individual should make them known to the directors of the parties to the *scheme* and the *Regulator*. Any actuary offered an appointment as an Independent Actuary should enquire if the appointment has previously been accepted and subsequently vacated by another actuary; if so, an actuary should take all reasonable steps to establish the circumstances in which the revocation of the previous actuary's appointment or the resignation of the previous actuary took place.

### **3 The extent of the Independent Actuary's involvement**

- 3.1 As the *Approving Authority* is unlikely to sanction the *scheme* if the Independent Actuary indicates serious dissatisfaction with its terms, it is in the interest of all the parties that, once an actuary has been appointed, the Independent Actuary is informed of the draft terms and provisions of the proposed *scheme* at the various stages of its development. The Independent Actuary should therefore actively seek such information and be prepared to indicate with impartiality any terms or provisions which by their inclusion in or omission from the *scheme* as drafted, as the case may be, would be likely to cause the Independent Actuary to express reservations about the *scheme* in the *Report*.

- 3.2 The amount of investigative work that the Independent Actuary will need to do will depend on the circumstances of the case. The Independent Actuary should proactively engage with senior management of the companies involved. It is reasonable for the Independent Actuary to expect both the transferor and transferee companies to provide such valuations of the assets and liabilities as the Independent Actuary may require. There may be internal actuarial reports prepared for one or more of the parties, visibility of which would assist the Independent Actuary in appraising the terms of the *scheme*. The Independent Actuary must, however, form an independent judgment on the quality of the information supplied, the reasonableness of the work of other actuaries, and, therefore, the extent of any investigative or verification work the Independent Actuary needs to do.
- 3.3 The Independent Actuary might be asked to attend a meeting with the policyholders organised by the management of one or more of the companies. If so, the Independent Actuary should consider carefully whether to do so would give the impression that the Independent Actuary was not completely independent. If the Independent Actuary should decide to attend the meeting, the Independent Actuary's position should be properly explained, and nothing that the Independent Actuary does or says at the meeting should undermine the perception of independence.
- 3.4 Special considerations may also be called for where the transfer forms part of a chain of events including restructure, reinsurance or changes in ownership, and the Independent Actuary should seek explanations regarding corporate plans to the extent necessary for the whole picture to be clear.
- 3.5 If the *Head of Actuarial Function* of any affected company has held that position only for a relatively short period of time, it might be appropriate for the Independent Actuary to seek information from the previous *Head of Actuarial Function*.
- 3.6 The exact documentation that the Independent Actuary will consider will vary with the nature of the *scheme* and the business being transferred, and the Independent Actuary should exercise *professional judgement* in determining what information is required. However, documents the Independent Actuary may wish to examine in relation to each of the companies involved in the transfer include:
- (i) details on the transfer itself, to include information such as the rationale for the transfer, the impacted policyholders, the structure and terms of the transfer and the timetable of anticipated activities;
  - (ii) the constitution or similar documents related to the legal establishment of the company and, if the company is currently trading, its latest annual reports, auditor reports and supervisory returns (including, potentially, information that is both qualitative and quantitative, such as (for Solvency II regulated companies) the quantitative reporting templates, the Solvency and Financial Condition Report and the Regular Supervisory Report);
  - (iii) the latest actuarial reports (and, if applicable, formal actuarial opinions) produced by the *Head of Actuarial Function*;

- (iv) reports prepared to support the risk management of the firm, such as the latest Own Risk and Solvency Assessment (for Solvency II regulated firms) (as well as any similar ad-hoc reports that have been prepared to assess the impact of the transfer);
- (v) any external reviews prepared on the reserves and capital position of the companies involved such as audit reports or formal actuarial peer review reports;
- (vi) details on planned capital management activities, such as dividend payments;
- (vii) reports detailing embedded value or other forward-looking profitability metrics;
- (viii) product brochures issued by the company in recent years;
- (ix) policyholder correspondence which may have shaped policyholders' reasonable expectations;
- (x) any reports, actuarial or otherwise, dealing specifically with policyholders' reasonable expectations, treating customers fairly or compliance with the Consumer Protection Code;
- (xi) the methodology and assumptions used to produce illustrations of projected future benefits;
- (xii) sample quotations and policy documents which state or illustrate how policies will participate in profits, qualify for discretionary benefits, or be subject to future variations in charges, as well as information on how these benefits or charges have been determined in recent years;
- (xiii) any reports dealing with the investment policy of the company;
- (xiv) any relevant correspondence between the company and the *Regulator*;
- (xv) details on the administrative arrangements pre- and post-transfer, to include arrangements with third-party administrators, planned changes to administrative systems and any implications for policyholder data protection;
- (xvi) details of active and historic complaints for the transferring business;
- (xvii) details on the overall communication approach and the information being provided to policyholders to explain the effects of the *scheme* and any subsequent complaints or issues raised including the manner in which these have been dealt with;

- (xviii) Details on the system of governance in place, including details on the risk appetite statement and risk registers;
- (xix) current and historic risk reporting, noting risk events and risk issues;
- (xx) winding-up provisions, if applicable;
- (xxi) details on the policyholder protection schemes in place in each country and the impact, if any, of the transfer on the applicability of such schemes;
- (xxii) details of any existing or planned reinsurance treaties that are impacted by the transfer, including confirmation from reinsurers on the transferability of cover (if applicable);
- (xxiii) details on any warranties in place in relation to previous transfers;
- (xxiv) details on any shareholder commitments regarding capital support;
- (xxv) details on the future business plans for the entities involved in the transfer;
- (xxvi) detail on any relevant tax implications of the *scheme* for the companies involved or the impacted policyholders;
- (xxvii) any other relevant documents associated with the transfer.

3.7 In addition, the Independent Actuary should document if appropriate and if known any operational plans of any company that is a party to the *scheme*, which, at the effective date, will have policyholders who fail to be considered in the Independent Actuary's *Report*.

## 4 The Report

- 4.1 For transfers subject to approval by the *Court*, the Independent Actuary's *Report* on the terms of the *scheme* is required by Section 13(3) of the Assurance Companies Act 1909, which provides that "a statement of the nature of the amalgamation or transfer, as the case may be, together with an abstract containing the material facts embodied in the agreement or deed under which the amalgamation or transfer is proposed to be effected, and copies of the actuarial or other reports upon which the agreement or deed is founded, including a *Report* by an independent actuary, shall, unless the *Court* otherwise directs, be transmitted to each policyholder of each company". Whilst these requirements may not apply to transfers taking place which are not subject to approval by the *Court*, some equivalent requirements may be in place. The Independent Actuary should therefore bear in mind in preparing the *Report* that policyholders and, in the case of any mutual companies involved in the *scheme*, members, may rely on it when considering how to cast their vote in any extraordinary general meeting called to approve the terms of the *scheme*, and any member of the public may rely on it when considering whether or not to make representations to the authority which is responsible for approving the *scheme* about the likely adverse effect of the *scheme* on them.
- 4.2 In some jurisdictions (as in Ireland), it may be the case that only a summary of the Independent Actuary's *Report* is required to be shared with policyholders, and in the case of any mutual companies involved in the *scheme*, members. It is the Independent Actuary's responsibility to ensure that the contents of any such summary are adequate given the context in which it is being circulated, and that neither it nor any document which will accompany it gives a misleading impression of the findings in the full *Report*. The summary need not contain background factual matter contained in the accompanying documents.
- 4.3 The requirements to contact policyholders impacted by the *scheme* typically sit with the transferring companies. As a result, the Independent Actuary does not typically have the responsibility to contact all policyholders. However, the Independent Actuary should review the overall communication approach and the information being provided to policyholders to explain the effects of the *scheme*.
- 4.4 The Independent Actuary needs to consider and report as appropriate on the likely effects of the *scheme* on (a) all transferring policyholders, (b) any policyholders of the transferor companies whose policies will remain with those companies, and (c) any policyholders of the transferee companies. Whilst not directly concerned with the effect of the *scheme* on those who become policyholders on or after the date when, subject to the approval of the *Approving Authority*, it will become effective, the Independent Actuary will need to consider whether the development plans of any of the companies involved may adversely affect policyholders with whom the Independent Actuary is concerned.



- 4.5 It is a responsibility of the directors and managers of the relevant insurance company to consider alternative arrangements in order that the company may fulfil its obligations to conduct its business with due regard to the interests of policyholders and potential policyholders. The term 'Independent Actuary' might be interpreted by members of the public to indicate that the actuary was advising on the relative merits of one *scheme* of transfer against other possible arrangements. The *Report* should, therefore, include a comparison of the likely effects on the policyholders of the relevant companies if the *scheme* of transfer being presented to the authority which is responsible for approving the *scheme* is or is not implemented.
- 4.6 The contents of the Independent Actuary's *Report* will be influenced by the circumstances of each case; the following are, however, some of the matters which the Independent Actuary should, where appropriate, cover in it:
- (i) The name of the party which has appointed the Independent Actuary and a statement of who is bearing the costs of that appointment.
  - (ii) A statement of the Independent Actuary's professional qualification.
  - (iii) Whether or not the Independent Actuary has a direct or indirect interest in any of the parties which might be thought to influence the Independent Actuary's independence; if the Independent Actuary has an interest, it should be disclosed.
  - (iv) The scope of the *Report* in accordance with paragraph 4.5 above.
  - (v) The purpose of the *scheme*.
  - (vi) A summary of the terms of the *scheme* insofar as they are relevant to the contents of the Independent Actuary's *Report*.
  - (vii) What documents and reports the Independent Actuary has considered in relation to each of the companies involved in the transfer and whether there was any additional information which was requested but not provided.
  - (viii) The cost and tax consequences of the *scheme*, in so far as these will affect policyholders' benefits.
  - (ix) The effect of the *scheme* on the security of policyholders' contractual benefits.
  - (x) The effect of the *scheme* on the nature and value of any rights of policyholders to participate in profits. In particular, if any such rights will be diluted by the *scheme*, how any compensation being offered to those policyholders as a group (which might take the form of an injection of

funds, an allocation of shares, or cash payments) compares with the value of that dilution, and whether the extent and method of its proposed division is equitable as between different classes and generations of policyholders.

- (xi) The likely effect of the *scheme* on the approach used to determine the amounts of non-guaranteed benefits such as reversionary (or similar bonus which is added periodically over the term of the contract) and terminal bonuses and surrender values, and the levels of discretionary charges, for example under unit-linked policies; and what safeguards are provided by the *scheme* against a subsequent change of approach that could act to the detriment of existing policyholders of either company and is not due to external circumstances beyond its control.
- (xii) The likely effects of the *scheme* on matters such as investment management, claims management, fund choice, administration and fund management platforms, use of third-party administrators and custodians, new business strategy, administration, expense levels and assumptions used in the calculation of technical provisions, in so far as they may affect the ability of the companies to meet throughout the lifetime of existing policies the reasonable expectations of the holders of those policies.
- (xiii) In the case of any mutual company involved in the *scheme*, the effect of the *scheme* on the proprietary rights of members of that company and, in particular, the significance of any loss or dilution of the rights of those members to secure or prevent further constitutional changes which could affect the reasonable expectations of policyholders concerning the security or level of their benefits or the level of service provided (for example, losing the ability to change the board and therefore control over a board's decision to convert to a closed fund). The Independent Actuary should state whether, and to what extent, members will receive compensation under the *scheme* for any diminution in their proprietary rights, and comment on its appropriateness. Also, when commenting on the fairness of the *scheme*, the Independent Actuary should pay particular attention to any differences in treatment between policyholders with voting rights and those without. It will assist the Independent Actuary if the issues involved are adequately explained in the directors' circular to policyholders.
- (xiv) Which matters, if any, the Independent Actuary has not taken into account or evaluated in the *Report* that might nevertheless be relevant to policyholders' consideration of the *scheme*.
- (xv) The Independent Actuary's overall assessment of the likely effects of the *scheme* on the reasonable expectations of policyholders concerning the security or level of their benefits or the level of service provided; whether the Independent Actuary is satisfied that for each of the companies concerned the *scheme* is equitable to all classes and cohorts of its policyholders; and whether for each relevant company the *scheme* places obligations on the directors sufficient in the Independent Actuary's opinion for the protection of those expectations.

- 4.7 Where the Independent Actuary expresses an opinion in the *Report*, the Independent Actuary should outline the reasons for it.
- 4.8 *Members* discharging the role of Independent Actuary should be mindful of the fact that they may also be asked by the transferring companies to prepare a supplementary report. Such a report, if required, is typically prepared close to the date of the final submissions to the *Approving Authority*. Such a report, if required, is intended to specify whether the Independent Actuary's view on the transfer remains unchanged given the emergence or resolution of any issues since the date of preparation of the original *Report*. The exact format and content of such a report will be influenced by the circumstances of each case but issues which may need to be considered include:
- (i) The latest financial condition of the entities involved and whether the financial impacts of the transfer are consistent with those outlined in the original *Report*.
  - (ii) Any policyholder or regulatory objections that have arisen and, if required, the Independent Actuary's view on such objections.
  - (iii) Any updates in relation to the communication approach adopted.
  - (iv) The outcome from any legal or commercial discussions, which had not been completed at the date of the original *Report*, between the transferring companies.
  - (v) Any assumptions which the Independent Actuary had to make in the original *Report* and whether they remain valid or are no longer necessary given the activities of the transferring companies.
  - (vi) The Independent Actuary's opinion in relation to the transfer and whether this has changed since the date of preparation of the original *Report*.

## EXPLANATORY NOTE

### ACTUARIAL STANDARD OF PRACTICE INS-2, VERSION 1.0

***This Explanatory Note does not form part of the ASP.***

ASP LA-6 will be superseded by this ASP INS-2. ASP LA-6 addressed the Independent Actuary's report produced in relation to the transfer of life insurance business under Section 13 of the Assurance Act 1909. Although such a report is not mandatory for transfers of non-life business it has become common practice for non-life portfolio transfers to prepare such a report when presenting the transfer to the Irish High Court. This new ASP therefore extends the scope of ASP LA-6 to now include Independent Actuary reports produced in respect of non-life business. Beyond the extension of scope, the changes from ASP LA-6 V2.3 are minimal and are set out below:

- Section 3.6 was extended to include reports in respect of treating customers fairly and the Consumer Protection Code
- Section 4.6:
  - Point (viii) replaced “policyholders’ funds” with “policyholders’ benefits” as this is more suitable given the inclusion of non-life
  - Point (xii) updated to include consideration of “claims management”
  - Point (xiii) updated “expectations as policyholders” to “reasonable expectations of policyholders concerning the security or level of their benefits or the level of service provided”
  - Point (xv) updated “reasonable expectations of policyholders” to “reasonable expectations of policyholders concerning the security or level of their benefits or the level of service provided” and changed “generations” to “cohorts”
- Updated to harmonise definitions across ASPs where appropriate.