

GN15(ROD): TRANSFER OF LONG-TERM BUSINESS OF AN AUTHORISED INSURANCE COMPANY - ROLE OF THE INDEPENDENT ACTUARY

Classification

Recommended Practice

Legislation or Authority

Assurance Companies Act 1909. Section 13.

Application

Actuaries invited to act as the independent actuary in a Section 13 transfer under the Assurance Companies Act 1909.

| Version | Effective from |
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1. INTRODUCTION

- 1.1 Under Section 13 of the Assurance Companies Act 1909, any scheme which provides for the whole or part of the long-term business carried on in the Republic of Ireland by an insurance company 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 The purpose of this Guidance Note is to advise a member invited to act as the independent actuary in a Section 13 transfer of the statutory and professional responsibilities such an appointment entails.

2. FACTORS INFLUENCING ACCEPTANCE OF AN APPOINTMENT AS INDEPENDENT ACTUARY

- 2.1 Before accepting appointment as the independent actuary in any particular case, a member must consider whether he has relevant practical knowledge and
- 2.2 experience. Such experience would necessarily include familiarity with the role and responsibilities of an Appointed Actuary and with the types of long-term business transacted by the companies concerned. He must also disclose to all the parties any direct or indirect interest he may have or have had in any of them. Clearly he cannot act if such interest would in the opinion of any party or its legal advisers be likely to prejudice his status in the eyes of the court.
- 2.2 The Act does not prescribe who should appoint the independent actuary; in practice he is appointed by one of the parties to the scheme - usually the party that will be petitioning the court. The appointing party contracts to remunerate him and he in turn is responsible to it for producing his report in due time. However, the purpose of the appointment is to secure an independent opinion for the court. It would therefore be improper for him to take instructions from any of the parties on what should be included in or excluded from his report; or to be denied access by any of the parties to persons he may wish to interview, or information, reports and documents which he may reasonably consider material to the formulation of his opinion on the effects of the scheme.

He should ensure that this is understood by the parties concerned before accepting the appointment.

- 2.3 If, for any reason other than the abandoning of the scheme, the actuary's appointment is revoked or he resigns prior to his report being submitted to the party which has appointed him or being circulated (whether in summary or otherwise) to long-term policyholders, he should consider whether the circumstances are such that he should make them known to the Department of Enterprise, Trade and Employment. 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, he should take all reasonable steps to satisfy himself as to the propriety of the circumstances in which the revocation or resignation of the previous actuary's appointment took place.

3 THE EXTENT OF THE INDEPENDENT ACTUARY'S INVOLVEMENT

- 3.1 Given that the court is unlikely to sanction the scheme if the independent actuary indicates serious dissatisfaction with its terms, it is in the interests of all the parties that once he has been appointed he is informed of the draft terms and provisions of the proposed scheme at the various stages of its development. He 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 him to express reservations about the scheme in his report.
- 3.2 The Minister for Enterprise and Employment will invariably be made a notice party to the petition and, as such, will be entitled to be heard by the court when the petition is being considered. It is therefore advisable for the independent actuary to contact the Insurance Division of that Department at an early stage, with the knowledge of the petitioner, to establish whether there are any matters pertaining to the scheme which they wish to draw to his attention. He should maintain this line of communication until the scheme is presented to the court.
- 3.3 The amount of investigative work that the independent actuary will need to do will depend on the circumstances of the case. It is reasonable for him to expect the Appointed Actuary of the transferor company to provide him with such valuations of the assets and liabilities as he may require, and to disclose to him information on such matters as how bonus rates have been determined in recent years in respect of any with-profit business. If the transferee company already has a long-term business fund of its own, similar information from the Appointed Actuary of that company may be necessary. It has become customary in cases of any complexity for the petition to be accompanied by a report from any Appointed Actuary concerned, although this is not a legal requirement. There may also be private actuarial reports to one or more of the parties, production of which would assist the independent actuary in appraising the scheme. He must, however, form his own judgement on the quality of the information supplied to him, the reasonableness of the work of other actuaries, and therefore the extent of any investigative or verification work he himself needs to do.
- 3.4 Other documents the independent actuary will normally wish to examine in relation to each of the companies involved in the transfer will include its memorandum and articles of association and, if the company is currently trading, its latest annual report and accounts and Department of Enterprise, Trade and Employment returns; the latest report submitted by its Appointed Actuary to the directors in accordance with paragraphs 8.1 to 8.5 of GNI(ROI); and 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. In addition, he should ask about the operational plans of any company which, after the effective date, will have policyholders who fail to be considered in his report.

4. THE REPORT

- 4.1 The independent actuary's report on the terms of the scheme is required by Section 13(3), 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". The actuary should therefore bear in mind in preparing his report that policyholders and 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 whether or not to make representations to the court about the likely effect of the scheme.
- 4.2 Application may be made to the court by the petitioner to the effect that only a summary of the independent actuary's report need be sent to policyholders and 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 his full report.
- 4.3 The actuary needs to consider and report as appropriate on the effect of the scheme on (a) all transferring policyholders, (b) any long-term policyholders of the transferor company whose policies will remain with the company, and (c) any long-term policyholders of the transferee company. 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 court, 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 he is concerned.
- 4.4 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 he should, where appropriate, cover in it;
- 4.4.1 The name of the party which has appointed him.
- 4.4.2 A statement of his professional qualifications.
- 4.4.3 Whether or not he has a direct or indirect interest in any of the parties which might be thought to influence his independence; if so, the interest should be disclosed.
- 4.4.4 A disclaimer to the effect that by virtue of Section 13 of the Act his report is limited to a comparison of the likely effects on the policyholders of the relevant companies if the scheme of transfer being presented to the court is or is not implemented; it is not concerned with possible alternative schemes.
- 4.4.5 The purpose of the scheme.
- 4.4.6 A summary of the terms of the scheme in so far as they are relevant to the contents of his report.
- 4.4.7 What documents and reports he has considered in relation to each of the companies involved in the transfer.
- 4.4.8 The cost and tax consequences of the scheme, in so far as these will affect policyholders' funds.
- 4.4.9 The effect of the scheme on the security of policyholders' contractual benefits.

- 4.4.10 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 the compensation being offered to those policyholders as a group (which might take the form of an injection of funds or an allocation of shares) 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.
- 4.4.11 The effect of the scheme on the approach used to determine the amounts on non-guaranteed benefits, such as reversionary and terminal bonuses and surrender values, and the levels of discretionary charges under unit-linked policies and the like; 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.
- 4.4.12 The likely effects of the scheme on matters such as investment management, new business strategy, administration, expense levels and valuation bases, 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.
- 4.4.13 In the case of any mutual company involved in the scheme, the effect of the scheme on the proprietary rights of the 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 their expectations as policyholders (for example, conversion to a closed fund). He 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, he should pay particular attention to any differences in treatment between policyholders with voting rights and those without. It will assist him if he can ensure that the issues involved are adequately explained in the directors' circular to policyholders.
- 4.4.14 Which matters, if any, he has not taken into account or evaluated in his report that might nevertheless be relevant to policyholders' consideration of the scheme.
- 4.4.15 His overall assessment of the effect of the scheme on the reasonable expectations of policyholders; whether any conditions should be imposed by the court on its approval of the scheme; whether he is satisfied that for each of the companies concerned the scheme is equitable to all classes and generations of its policyholders; and whether for each such company the scheme places obligations on the directors, or provides for future certification by its Appointed Actuary, sufficient in his opinion for the protection of those expectations.
- 4.5 Where the independent actuary expresses an opinion in his report, he should outline his reasons for it.