

GN15(ROI): 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

1.0 25.04.1995

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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 an actuary 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 an appointment as the Independent Actuary in any particular case, an actuary must consider whether he or she has relevant practical knowledge and 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. 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 court. In case of doubt, the situation should be discussed with the Department of Enterprise, Trade and Employment and the Society before the appointment is accepted.

2.2 In practice, a report on the terms of the scheme by an Independent Actuary accompanies the petition to the court and the Independent Actuary’s prime responsibility is to the court. The Act does not prescribe who should appoint the Independent Actuary; in practice, the appointment is made by one of the parties to the scheme - usually the party that will be petitioning the court. The purpose of the appointment is to secure an independent opinion for the court on the likely effects of the scheme on the long-term 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 long-term policyholders of the companies concerned. An actuary should ensure that this is understood by the parties concerned before accepting an appointment.

- 2.3 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 being circulated (whether in summary or otherwise) to long-term policyholders, that individual should consider whether the circumstances are such that that individual 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, 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 Given that the court 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 Minister for Enterprise, Trade 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 it wishes to draw to the Independent Actuary's attention. The Independent Actuary 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. The Independent Actuary should communicate with the Appointed Actuaries of all affected companies. It is reasonable for the Independent Actuary to expect the Appointed Actuary of the transferor company to provide such valuations of the assets and liabilities as the Independent Actuary may require, and to disclose 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 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.
- 3.4 The Independent Actuary might be asked to attend a meeting with the policyholders organised by the management of one 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.

- 3.5 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.
- 3.6 If the Appointed Actuary 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 Appointed Actuary.
- 3.7 Other documents the Independent Actuary will normally wish to examine in relation to each of the companies involved in the transfer will include:
- (i) its memorandum and articles of association and, if the company is currently trading, its latest annual report and accounts and supervisory returns;
 - (ii) the latest report submitted by its Appointed Actuary to the directors in accordance with paragraphs 8.1 to 8.5 of GN1(ROI) together with any recent reports submitted in accordance with GN2(ROI);
 - (iii) product brochures issued by the company in recent years;
 - (iv) any reports, actuarial or otherwise, dealing specifically with PRE;
 - (v) the bases used for illustrations;
 - (vi) 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;
 - (vii) any reports dealing with investment policy of the long-term business fund;
 - (viii) any reports evaluating alternative schemes;
 - (ix) any other relevant documents associated with the transfer.
- 3.8 In addition, the Independent Actuary should ask about the operational plans of any company which, after the effective date, will have policyholders who fall to be considered in the Independent Actuary's 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 Independent Actuary should therefore bear in mind in preparing the 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 any member of the

public may rely on it when considering whether or not to make representations to the court about the likely adverse effect of the scheme on him or her.

- 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 the full report. The summary need not contain background factual matter contained in the accompanying documents.
- 4.3 The Independent Actuary needs to consider and report as appropriate on the likely effects of the scheme on (a) all transferring long-term policyholders, (b) any long-term policyholders of the transferor company whose policies will remain with that 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 the Independent Actuary is concerned.
- 4.4 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, although this is not specifically required by the legislation. The report should, therefore, include a comparison of the likely effects on the long-term policyholders of the relevant companies if the scheme of transfer being presented to the court is or is not implemented. In addition, the Independent Actuary should state clearly whether or not reports of alternative arrangements were considered.
- 4.5 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 4.4 above.
 - (v) The purpose of the scheme.
 - (vi) A summary of the terms of the scheme in so far 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 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' funds.
- (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, 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.
- (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 their expectations as policyholders (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 long-term policyholders; whether the Independent Actuary 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 relevant company the scheme places obligations on the directors, or provides for future certification by its Appointed Actuary, sufficient in the Independent Actuary's opinion for the protection of those expectations.

4.6 Where the Independent Actuary expresses an opinion in the report, the Independent Actuary should outline the reasons for it.