



ARIAS•U.S. 2018 Fall Conference  
**November 7–9, 2018**  
New York Marriott at Brooklyn Bridge

# New Options for Legacy Run-off Business

Moderator: Jonathan F. Bank, Locke Lord LLP  
Panel: Marvin Mohn, Pro Global  
Robert Romano, Locke Lorde LLP  
David Scasbrook, Swiss Re  
Jim Wrynn, FTI Consulting





ARIAS•U.S. 2018 Fall Conference  
**November 7–9, 2018**  
New York Marriott at Brooklyn Bridge

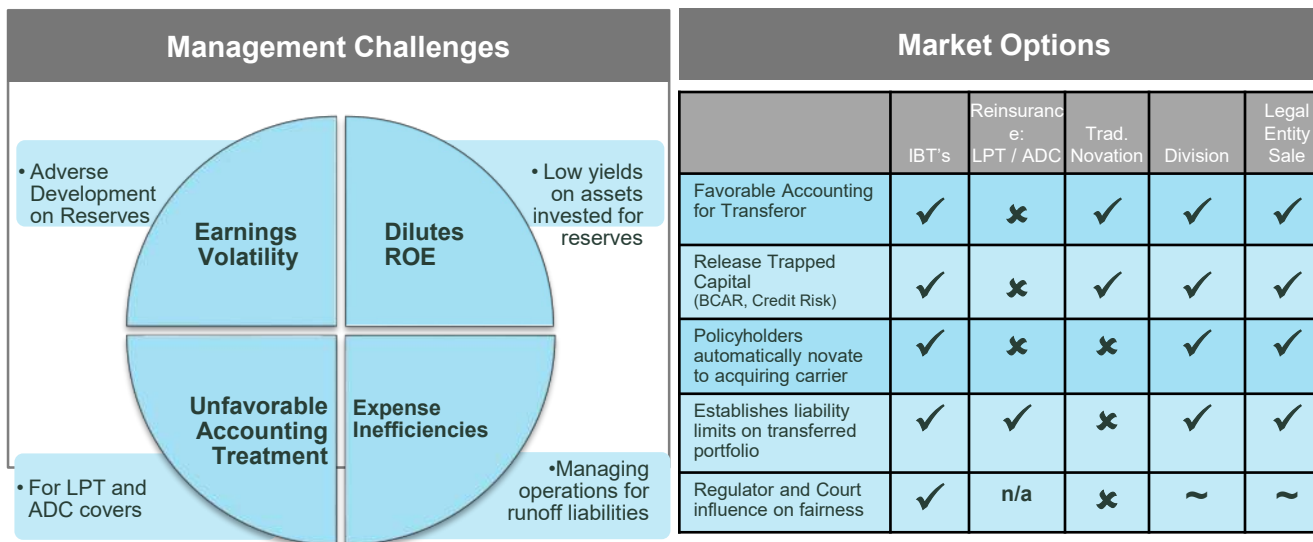
# UK Part VII Transfers

Marvin Mohn, Pro Global  
David Scasbrook, Swiss Re

# The Market need...

## Why is this coming soon to the US....

- Many (re)insurance companies are looking for efficient restructuring mechanisms for legacy business.
- While several run-off exit mechanisms exist in the US, many have limited application or are not practical.
- The challenges of closing business lines discourages innovation on new lines of cover.

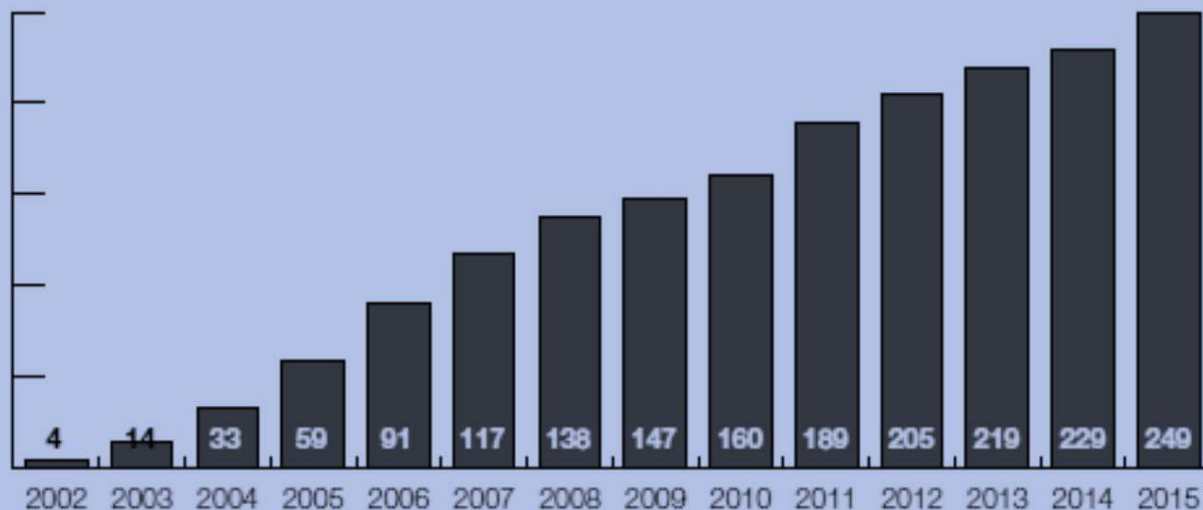


# Background to Part VII

- EU directives on business transfers
- UK history on business transfers predating EU directives
- Contrast between Part VII transfers and schemes of arrangement
  - Schemes allow any corporate reorganization with creditor agreement
  - Schemes have broader application than business transfers, including corporate mergers, sales of public companies, corporate divisions, and the equivalent of Chapter 11 bankruptcy reorganizations
  - Part VII transfers are limited to doing business transfers, albeit with more flexibility than is envisioned with US IBT statutes

# Accumulation of Part VII Deals

**Figure 2**  
**Total number of Part VII transfers accumulative**



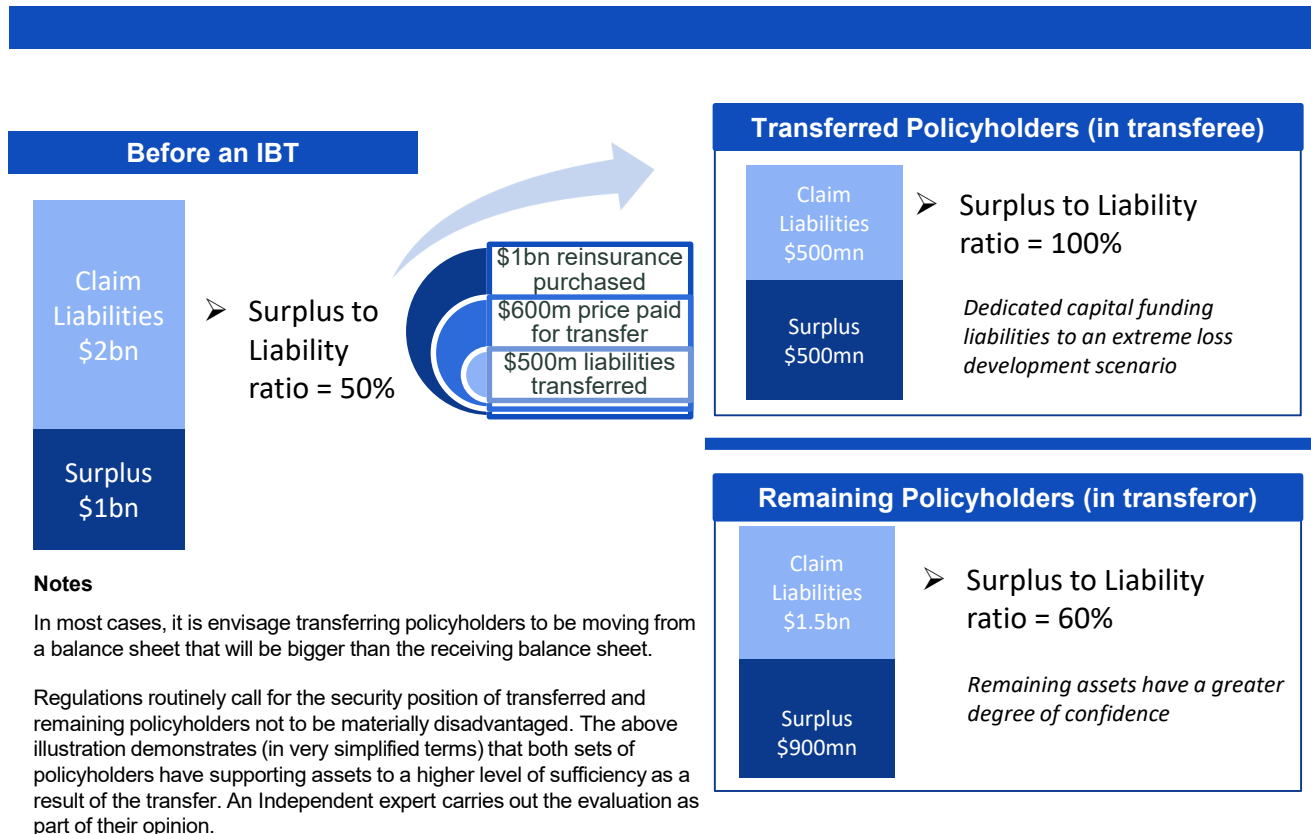
# Standards applicable to Part VII transfers

- General standard is whether the transfer is fair to creditors, which generally means whether any group of creditors is materially prejudiced by the transfer.
- UK courts have evaluated “material prejudice” in terms of regulatory capital on the basis that no insurance company has a legal or regulatory obligation to maintain assets in the company greater than those required for regulatory purposes.
- Regulatory capital requirements are determined under current law based on the requirements of Solvency II



# Process points

- An independent expert – generally an actuary – must opine on whether the proposed transfer is materially prejudicial to policyholders.
- The independent expert must be approved by the PRA, which in practice ensures that the expert will follow the PRA regulatory guidance on transfers.
- Policyholders have a right to notice and object, but the court will generally reject the objections unless prejudice is demonstrated.
  - Notice requirements generally mean that where addresses of the creditors are known then actual notice must be provided supplemented by notice provided through brokers and by publication.
- The transfer does not require formal approval of the regulators (most importantly the PRA and but also the FCA), although in practice the court is unlikely to sanction a transfer where the regulator has reservations





# Other issues

- As numerous Part VII transfers have occurred, various other issues of potential prejudice have arisen. Many of them never appear in court because the parties to the transfer adjust the terms of the plan to eliminate the prejudice, or reach deals with objecting creditors.
- Examples of issues that arise include:
  - Potential loss of set off rights
  - Potential loss by ceding insurers of credit for reinsurance (often dealt with through collateral arrangements)
  - Differences between the reputation of the transferee v. that of the transferor – a point which generally is not sufficient to defeat the transfer (see *Re Copenhagen Reins. Co. (UK) Ltd.*, cited in the paper)
  - Differences between the administrative ease of dealing with the transferor and that of the transferee – again, a point that was rejected in *Re Copenhagen Reins. Co (UK) Ltd.* decision on the facts of that case. (On other facts there could be a different outcome.)
  - The jurisdiction of the court
- Most Part VII transfers contain indemnifications in case the transfer fails in whole in part

- Part VIIs / Insurance Business Transfers provide a means to address legacy market challenges with fair solutions that protect policyholder interests.



Transfers of target blocks of business (ie corporate restructuring / legacy relief)



Protect policyholder interests - subject to rigorous financial and regulatory scrutiny during the approval process



Transferred policyholders have dedicated capital with a high level of certainty



Policyholders remaining with the transferring company(ies) are exposed to less volatility



ARIAS•U.S. 2018 Fall Conference  
**November 7–9, 2018**  
New York Marriott at Brooklyn Bridge

# Insurance Business Transfer (IBT) Panel

UK Part VII Transfers Recognized in the USA?

By Robert A. Romano  
Locke Lord LLP

# UK Part VII Transfers

- What's a Part VII transfer?
- Recognition in the USA?
  - Ignore or involve US



# US Regulatory “Approvals”

- “Hostage” trusts
  - US surplus lines
  - Reinsurance – Accredited (trusteed) and Certified

# UK Court Comfort on US Law

- US opinions on UK transfers
- Issues of Recognition (Enforceability)
  - Full Faith & Credit Clause of US Constitution or Statute
  - Contract Clause of US Constitution
  - Bankruptcy Code
  - Comity

# Relevance to US IBT

## The Good

- UK cases show success in UK
- US regulatory acceptance of UK deals
- Valuable concept

# Relevance to US IBT

## The Bad

- “Admitted” business more regulated than surplus lines or reinsurance
- UK jurisdiction over UK insurer not in question
  - US IBT laws do not operate exclusively with domestic insurers





ARIAS•U.S. 2018 Fall Conference  
**November 7–9, 2018**  
New York Marriott at Brooklyn Bridge

# Insurance Business Transfer (IBT) Panel

US Regulatory Perspective  
By: James J. Wrynn

## Insurance Business Transfers

### UK

- Schemes of Arrangement
- Part VII Transfers

### EU

- Directive 2002/83/EC (the “Consolidated Life Directive”);
- Directive 92/49/EC (the “Third Non-Life Directive”);
- Directive 2005/68/EC (the “Reinsurance Directive”).

### US

- Vermont’s Legacy Insurance Management Act (LIMA - effective 2-19-18)
- Rhode Island Statute and Regulation for Voluntary Restructuring of Solvent Insurers(Regulation 68 - (2002 – 2018)
- Rhode Island Amended Regulation 68 (effective 8-18-15)
- Oklahoma Insurance Business Transfer (IBT) Act (effective 11-1-18)

## Issues re. Enforcement by Other States

- Full Faith and Credit Clause – Article IV, Section 1 of The U.S. Constitution requires States within the U.S. to respect “public acts, records and judicial proceedings of every other State”
- Contract Clause – Art I, Section 1, Clause 1, of the U.S. Constitution requiring that: “No state shall...pass any...laws impairing the obligation of contracts...”
- Due Process – “No state shall deprive any person of life, liberty or property without due process of law” (Art. XIV of the U.S. Constitution).

## Rhode Island Voluntary Restructuring of Solvent Insurers (RI Gen-Laws Sec: 27-14-5)

- Solvent Scheme of Arrangement – Commutation plan / commercial P&C run-off
- Notice / Hearing / Commissioners approval required
- Approval of
  1. 50% of each class of creditor
  2. Holder of 75% of claims value owed to each class of creditor
- Independent expert NOT required
- Court approval required
- In Re GTE Reinsurance Co., 2011 R.I. Super Lexis 62 (ruled the Restructuring Act neither violated the Contracts Clause nor the Due Process Clause of the R.I. in U.S. Constitution).



## Vermont Legacy Insurance Management Act (VT. Stat. Ann. Title 8, Sections 7111-7121)

- Transfer of
  1. Closed blocks of
  2. Non-admitted
  3. Commercial insurance or reinsurance policies
- Closed Block – fully expired at least 60 months
- Active premiums no longer paid
- Notice / Hearing / Commissioner approval required
- Policyholder(s) may “Opt-Out”
- Letter of no objections (or the equivalent) – from domiciling regulator of transferring insurers
- Independent expert NOT required
- Court approval NOT required

## Rhode Island Amended Regulation 68

- Business Transfers
  - Insurance – any line(s) other than life, workers compensation or personal lines
  - Reinsurance – any line(s) other than life
- Closed block – 60 months prior to filing transfer plan
- Notice / Hearing / Commissioner approval required
- Evidence of approval of transferring company's domiciliary regulator required
- Policyholder approval NOT required
- Independent expert required
- Court approval required

## Oklahoma Insurance Business Transfer Act (SB 1101)

- Business transfer – property and casualty, life, health and other suitable line per Commissioner
- Both active and closed blocks
- Notice / Hearing / Commissioner approval required
- Policyholder approval NOT required – cannot reject, but can comment / object
- Evidence of approval or non-objection of transferring insurer's domiciliary regulator
- Independent expert required
- Court approval required

## Division Statutes

- PA – The Pennsylvania Entity Transactions Law – H.B. 2234, passed 10/22/14, effective 7/1/15
  - Previous – PA – Corporate Division Statute – 15 Pa C.S. § 1951 et seq. (repealed effective 7/1/15)
    - February 7, 1996 – ACE USA domestic P&C run-off placed in Century Indemnity Insurance Company (a subsidiary of Brandywine Holdings)
    - Plan of Restructure and Division – separate active from inactive business in P&C portfolio
    - LaFarge Corp. v. Commonwealth of Pennsylvania Insurance Department, 557 Pa. 544, 735 A.2d 74 (1999)



## Division Statutes

- CT – An Act Authorizing Insurers to Divide – effective 10/1/17
  - Allows CT domestic insurance companies to:
    - Divide into two or more insurance companies
    - Create isolated blocks of business for sale to third-parties
    - Separate active from run-off blocks
- Arizona – Arizona Entity Restructuring Act (AERA), effective 1/1/15
  - May divide into multiple entities
    - Original entitle can be one of resulting entities, or
    - Original entity can dissolve leaving all new entities

## Other State Division Legislation

- Georgia – HB 754 – Would allow insurers domiciled in Georgia to divide into two or more insurers
  - Vetoeed by Governor Deal 5/8/18
- Illinois – Legislation to create a domestic stock company division article in the Illinois Insurance Code
  - SB 1737 – “amendatory” Vetoe by Gov. Rauner on 8/26/18
  - HB 5160 – Bill still in Committee
- Iowa – SF 2316 – Act relating to division of domestic stock insurers into two or more domestic stock insurers
  - Vetoeed by Gov. Reynolds 6/1/18
- Michigan – SB1029 – Domestic Stock Insurer Division Act
  - Bill still in Committee