

TRANSFER OF BUSINESS INCLUDING DEPOSIT TAKING

Report by an independent auditor – Standard Information

Introduction

The *Transfer of Business Including Deposit-Taking Regulations 2013*¹ (“the Regulations”) provide a power for the High Court to sanction a transfer of business including deposit-taking from a Class 1 licenceholder to another person². The business to be transferred must include deposit-taking, but may also include other activities.

An application to the High Court³ must be accompanied by a report (the “auditor’s report”), signed by an independent auditor, which details the terms of the transfer scheme and its likely effect on the customers of the transferor and transferee concerned. “Independent auditor” is defined in the Regulations. Requirements in the Regulations must be satisfied before the High Court may determine an application to transfer such business.

Work of the independent auditor

1. The independent auditor should consider the Regulations and Schedule 1A to the Financial Services Act 2008.
2. The independent auditor should examine the relevant transfer scheme and any reports and financial information prepared for or on behalf of the Board(s) or management of the transferor and transferee, including documents and information specified in the Regulations.
3. The independent auditor must produce an auditor’s report containing his opinion on the terms of the relevant transfer scheme and its likely effect on the customers of the transferor and transferee concerned.

¹ SD 413/2013 - <http://www.tynwald.org.im/links/tls/SD/2013/2013-SD-0413.pdf>

² Enabling power is in Schedule 1A of Financial Services Act 2008, as inserted by the Financial Services (Miscellaneous Amendments) Act 2013.

³ An application is made under regulation 4(1) of the Regulations and must include information specified in regulation 4(2) and the Schedule to the Regulations.

Report of the independent auditor

In particular, the auditor's report must include an opinion on –

- Whether the disclosures made in the relevant transfer scheme adequately and accurately cover the likely effect on the customers of the transferor and transferee;
- Any information required by the Schedule to the Regulations; “Information to be included in an application”; and
- Any other information that is required by regulation 4(2)(c)⁴.

Financial Information - If the information required by regulation 4(2)(c) includes Financial Information, an opinion as to whether –

- in all material respects, the Financial Information includes information that has been completely and accurately extracted from the original financial information of [transferor] and [transferee] and has been prepared in accordance with current instructions issued by the Financial Services Authority. The report must specify what information was examined;
 - the Financial Information demonstrates that capital adequacy ratios (where relevant) are in excess of the Financial Financial Services Authority's minimum requirements for any Class 1 licenceholder. The forecast ratios and minimums must be specified in the auditor's report;
 - the Financial Information demonstrates that the liquidity position (where relevant) is in excess of the limits set by the Financial Services Authority. Liquidity data must be specified in the auditor's report; and
 - any selected assumptions made by the Board or management, relating to adjustments for existing changes to the [transferee's] financial position and applied by management in the Financial Information, have been correctly applied.
- Whether, based on the work undertaken on the documents examined (including any Report, Financial Information, and the transfer scheme), anything has come to the auditor's attention that could indicate a materially adverse effect on the [transferor] or [transferee]'s financial position, or that could indicate that the [transferor] or [transferee]

⁴ The Financial Services Authority may require additional information, for example a report (“Report”), or financial information (“Financial Information”) to show the financial position, capital adequacy and liquidity of the transferor and transferee at specified dates, and of the transferee as if the transfer had taken place.

would/ would not have the ability to meet its liabilities following the transfer of business pursuant to the transfer scheme; and

- Whether, based on the facts outlined in the transfer scheme and any Report, the proposed transfer of business in accordance with the transfer scheme would/ would not appear to disadvantage the customers or creditors of the [transferor] as a whole.

Transferors, transferees and independent auditors should also note the Additional Information in the appendix to this document.

Appendix

Additional Information

General matters that may be considered by the Authority in respect of an application

- Reasons for the transfer
- Customer communication policy and key dates

Ownership and legal form

- Explanation of subsidiary, branch, parent bank as applicable, including responsible regulators (and how the structure is changing)
- Clarity on ownership including jurisdiction of owners / parent bank
- 'Situs' of deposit and loan (confirmation that it will remain IOM 'situs' where relevant and whether interest paid on deposits will be IOM sourced income for customers)
- Clarity on use of brands (where relevant)

Depositor protection

- Statements about the depositor compensation scheme that applies to the deposits before the transfer and any depositor compensation scheme that may apply following the transfer
- Clarity on any situation where a depositor who is covered with separate banks which are coming together will now only be covered once (and the policy that will be applied in such circumstances)
- Statements about any guarantees that are being removed or provided (taking into account the FSC's guidance on that matter)

Systems and data (deposits, and loans where relevant)

- Explanation of where customer data is held and any changes that will arise from the transfer (including who the data controller will be and if accounts are being moved onto a different system)
- Information about account numbers / sort codes, and whether any changes will be required (for example to direct debits, standing orders)
- Loss of any functionalities arising from the transfer, plus a description of any new services that will be available
- Information about any changes that will be required to key services such as internet banking, telephone banking, contact details, branch services

Deposit terms and conditions

- Explanation of any changes to terms and conditions that may result from the transfer (by deposit product where necessary)
- Treatment of accrued interest (if accounts are being moved onto new systems)
- How interest will be paid (e.g. gross)
- The ceasing of any product types and how affected deposits will be treated
- The policy on breaking fixed term accounts (especially if a person does not wish their account to be moved to the new entity or system etc.)

Loans and advances

- Explanation of any changes to terms and conditions that may result from the transfer (by loan product where necessary)
- The ceasing of any product types and how these products will be treated (for example specialist mortgages such as offset mortgages)

Taxation implications

- Statement about what customers should do if there could be personal tax implications
- Accrued interest treatment for deposits (see above, especially if deferred interest was offered)
- Treatment of loans / mortgages for Isle of Man residents (for the purpose of tax relief on interest paid)