



## Prudential Standard GPS 410

# Transfer and Amalgamation of Insurance Business for General Insurers

### Objectives and key requirements of this Prudential Standard

This Prudential Standard deals with the transfer or amalgamation of insurance business of a general insurer.

Insurers transferring or amalgamating insurance business in accordance with the Act are subject to procedural requirements set out in the Act and this Standard. These requirements are designed to ensure that affected policyholders, and other interested members of the public, are informed about any such transfer or amalgamation, are given accurate information about it, and are provided with the opportunity to obtain more detailed particulars if they wish to do so.

The key requirements of the Act and this Prudential Standard are:

- An insurer cannot make an application to the Court for confirmation of a scheme of transfer or amalgamation unless, amongst other things, the insurer provides to APRA a copy of the scheme, and any actuarial reports on which it is the scheme is based and to APRA together with a copy of the proposed business transfer agreement.
- After approval by APRA and P prior to making an application to the Court, the insurer must:
  - and with APRA's approval, the insurer must also publish a notice of intention to make the application and a copy of a summary of the scheme (the approved summary) in n the Government Gazette and relevant newspapers a manner that results in the documents not being accessible to the public and reasonably prominent; and.
- An application to the Court for confirmation of a scheme cannot be made unless, amongst other things, a summary of the scheme, approved by APRA

~~(the approved summary), has been provide~~give a copy of the approved summary given to every affected policyholder. ~~A copy of the scheme must also be available for public inspection in a manner that is accessible to the public and reasonably prominent.~~

- An insurer to which insurance business is transferred or amalgamated must give APRA a range of documents after the Courts has~~ve~~ approved the scheme, including a statement of the nature and terms of the transfer or amalgamation, and the Court order confirming the scheme.

Details on these requirements are contained below.

### Prudential Standard

1. This Prudential Standard, made under section 32 of the *Insurance Act 1973* (the Act), applies to all general insurers authorised under the Act.
2. A transfer or amalgamation of insurance business can occur only under a scheme confirmed by the Federal Court (unless it is undertaken in response to a direction from the Australian Prudential Regulation Authority (APRA)<sup>1</sup>). This Prudential Standard sets out specific requirements in relation to documentation, notification, public inspection and an application to the Court.
3. In addition, any transfer or amalgamation of insurance business is subject to the provisions of the *Insurance Acquisitions and Takeovers Act 1991* (IATA). The IATA requires compulsory notification of proposals involving the acquisition of any or all of the interests, rights or benefits of an insurer under contracts of insurance where that transfer amounts to 15% or more of the transferring insurer's premiums or outstanding claims liabilities.

### Documents to be Provided to APRA Prior to an Application Being Made to the Court<sup>2</sup>

4. An application to the Court for confirmation of a scheme cannot be made unless, amongst other things, an insurer provides a copy of the scheme and any actuarial reports on which the scheme is based to APRA.<sup>3</sup>
5. These documents must be provided to APRA before:
  - (a) the notice of intention to apply to the Court for confirmation of the scheme is published;<sup>4</sup> and
  - (b) the summary of the scheme (approved by APRA) has been given to each affected policyholder.<sup>5</sup>

<sup>1</sup> Refer subsections 17(1) and 17(2) of the Act.

<sup>2</sup> The matters in paragraphs 4 to 6 are specified for the purposes of paragraph 17C(2)(a) of the Act.

<sup>3</sup> Refer paragraph 17C(2)(a) of the Act.

<sup>4</sup> Under paragraph 17C(2)(b) of the Act.

<sup>5</sup> Under paragraph 17C(2)(c) of the Act.

6. In practice, the documents will need to be given to APRA before APRA can approve the summary of the scheme, and it is expected that ~~companies~~insurers will discuss their intentions with APRA at the earliest opportunity (including arrangements for the provision of actuarial advice on which the scheme is to be based).

### Notification Requirements<sup>6</sup>

7. An application to the Court for confirmation of a scheme cannot be made unless, amongst other things, a notice of intention to make the application has been published by the insurer.
8. Before publishing a notice of intention an insurer must first secure APRA's approval of the summary of the scheme.<sup>7</sup>
9. The insurer must publish the notice of intention in a form approved by APRA and in a manner that results in the documents being accessible to the public and reasonably prominent in accordance with paragraph 16.<sup>8</sup>
10. ~~in the Government Gazette; and (b) in one or more newspapers, approved by APRA, circulating in each State and Territory in which an affected policyholder resides.~~ The notice of intention must, at a minimum state how an affected policyholder may obtain a copy of the scheme and any actuarial reports relating to the scheme, including providing access to the documents from the insurer's website, for the duration of the period specified in paragraph 16.<sup>8</sup>
  - ~~(a) state the places, dates and times that an affected policyholder may obtain a copy of the scheme and any associated documentation; and~~
  - ~~(b) give the address of each place at which a copy of the scheme and any associated documentation may be obtained.~~
11. ~~The notice must be published before the scheme is released for public inspection under paragraph 16. A copy of the scheme must be published released to the public at the same time as the notice of intention in paragraph 9 is published under paragraph 16.~~

### Approved Summary<sup>8</sup>

12. An application to the Court for confirmation of a scheme cannot be made unless, amongst other things, a summary of the scheme, approved by APRA (the approved summary), has been given to every affected policyholder.

<sup>6</sup> The matters in paragraphs 7 to 11 are specified for the purposes of paragraph 17C(2)(b) of the Act.

<sup>7</sup> The requirement for an approved summary is contained in paragraph 17C(2)(c) of the Act.

<sup>8</sup> Paragraphs 12 to 15 specify matters for the purposes of paragraph 17(2)(c) of the Act.

13. ~~The approved summary need not be a stand-alone document and the required information may be included in a document, sent directly to the policyholder, that contains other information in relation to the transfer, provided that the required information is prominently featured so that it is obvious to the policyholder. Where a scheme summary is accompanied by a letter from the insurer including other information relating to the scheme, the accompanying letter must highlight that the APRA approved summary sets out essential information in relation to the sScheme and should be read carefully by affected policyholders.~~
14. The format and content of the approved summary will depend on the circumstances of the transfer, however, the insurer should, at a minimum, advise affected policyholders:
  - (a) that the insurer proposes to transfer the policyholder's policy or policies to another insurer, on or after a specified date;
  - (b) of the full name and contact details of the other insurer;
  - (c) of the effect of the transfer (this explanation may be brief and may, for example, explain that from the date of the transfer all rights and liabilities under the policies will be transferred to the other insurer, so that premiums will have to be paid to, and claims will have to be lodged with, that insurer);
  - (d) of any action the policyholder will need to take before or as a result of the transfer (for example, any changes in arrangements relating to paying premiums or lodging claims);
  - (e) if the policyholder does not need to take any action before or as a result of the transfer - advise the policyholder accordingly;
  - (f) how the policyholder can obtain further information relating to the scheme;~~and inspect relevant documents as may be available for public inspection;~~
  - (g) that the policyholder has the right to attend the Federal Court and request to be heard by the Court- if they believe the scheme may have a detrimental impact on the interests of policyholders as a whole-on any adverse impact of the transfer on policyholder interests; and
  - (h) of any proposed changes to the terms and conditions of transferring policies.
15. The approved summary must be sent to affected policyholders before or at the same time the scheme is ~~released for public inspection~~made available for inspectionpublished -under paragraph 16.

**Publication of Scheme<sup>9</sup>**

16. A copy of the scheme must be accessible and prominently displayed on the each the insurer's website of each insurer who is to be bound by the scheme together with a copy of the acturiaactuarial reports on which the sScheme is based (scheme documents). The scheme documents must be accessible from the time the notice of intention in ~~paragraph~~ paragraph 9 is published up until the date of the scheme's ~~confirmation hearing as per paragraph 17.~~ open for public inspection from 9.00 a.m. until 5.00 p.m. every day (except weekends and public holidays), for a period of at least 15 days, at:

~~(a) — an office of the insurer; or~~

~~(a) — another location approved by APRA in writing,~~

~~in each State and Territory in which an affected policyholder resides.~~

**Application for Confirmation of Scheme<sup>10</sup>**

17. An application to the Court for confirmation of a scheme may be made no earlier than:

(a) the day after the day on which a copy of the scheme documents has been accessible-published on the insurer's websitwebsite for a period of at least 15 days; the period referred to in paragraph 16 ends; and

(b) unless the Court dispenses with the need for compliance with paragraph 17C(2)(c) of the Act<sup>11</sup> — 15 days after the approved summary of the scheme has been given to every affected policyholder under that paragraph,

whichever is the later.

**Documents to be Provided to APRA after the Court has Approved a Scheme<sup>12</sup>**

18. An insurer to which insurance business is transferred, or with whose insurance business any part of the business of another insurer is amalgamated, must give APRA the following documents:

~~(a) — a statement of the nature and terms of the transfer or amalgamation;~~

(a) a certified copy of each of the following documents:

(i) the scheme providing for the transfer or amalgamation;

<sup>9</sup> Paragraph 16 specifies matters for the purposes of subsections 17C(3) and 17E(2) of the Act.

<sup>10</sup> Paragraph 17 specifies matters for the purposes of subsection 17E(2) of the Act.

<sup>11</sup> The Court may do so under subsection 17C(5) of the Act.

<sup>12</sup> Paragraphs 18 to 20 specify matters for the purposes of section 17I of the Act.

~~(ii) an actuarial report, or other report, on which the scheme, and the agreement or deed, are founded;~~

~~(iii) the agreement or deed under which the transfer or amalgamation is effected;~~

~~(iv)~~(ii) the Court order confirming the scheme;

~~(v)~~(iii) a statement of the assets and liabilities of each insurer associated with the transfer or amalgamation, before and after the transfer or amalgamation;

(b) a statutory declaration by a Director:

(i) setting out, in relation to the transfer or amalgamation:

- each payment made; and
- a reasonable estimate of each payment to be made; and

(ii) stating that ~~he or she~~they reasonably believes that no other payment has been made, or will be made, by, or with the knowledge of, a party to the transfer or amalgamation.

19. The documents specified in paragraph 18 above must be lodged with APRA within 30 days after the transfer or amalgamation is completed.
20. An insurer may apply to APRA, in writing, before the end of the 30 day period, for an extension of the time in which to lodge the documents specified in paragraph 18. If APRA believes that the insurer cannot reasonably provide the documents within 30 days, APRA must, within 14 days of receiving an application for an extension, give a written extension of up to 30 days.<sup>13</sup>

## Attachment

### Transfer and Amalgamation of Insurance Business

#### (Part III, Division 3A of the Act)

Order	Task	Reference in Standard	Insurance Act section
1	Copy of scheme and any actuarial reports to APRA	Para 4-6	17C(2)(a)

<sup>13</sup> Refer section 17I(2) of the Act.

	(Note: at this point APRA can arrange for an independent actuarial review of the scheme under section 17D of the Act)		
2	Seek APRA's approval of: <ul style="list-style-type: none"> <li>– notice of intention</li> <li>– approved summary</li> </ul>	Para 7-11 Para 12-15	17C(2)(b) 17C(2)(c)
3	<ul style="list-style-type: none"> <li>– notice of intention published</li> <li>– approved summary to policyholders</li> </ul> (Note: these can be done simultaneously)	Para 7-11 Para 12-15	17C(2)(b) 17C(2)(c)
4	<u>Publish the <del>Make</del>-scheme available for inspection in a manner that results in a copy being accessible to the public and reasonably prominent for public inspection</u>	Para 16	17C(3), 17E(2)
5	Make application to Court	Para 17	17E
6	Court can confirm scheme	N/A	17F
7	If scheme confirmed, documents to be provided to APRA by the transferee	Para 18-20	17I