

Circular

Brussels, 17th March 2021

Reference: NBB_2021_006

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Circular on the procedure to be followed in the case of transfers of portfolios of insurance or reinsurance contracts and in the case of mergers or divisions

Scope

- Insurance and reinsurance companies governed by Belgian law that are subject to the Law of 13 March 2016 on the legal status and supervision of insurance or reinsurance companies (including the insurance companies referred to in Articles 275, 276 and 294 of the Law of 13 March 2016)
- Authorised branches in Belgium of insurance companies of which the registered office is established in a third country (a country that is not a party to the European Economic Area (EEA) Agreement).

Summary/Objectives

This Circular aims to specify the procedure to be followed by insurance and reinsurance companies wishing to transfer or receive a portfolio of insurance or reinsurance contracts and, in particular, the dossier to be transmitted to the Bank in such cases. It also specifies the information to be submitted to the Bank in the case of mergers or divisions (including for mergers and divisions that do not involve a transfer of a portfolio of insurance contracts).

Legal references

Law of 13 March 2016 on the legal status and supervision of insurance or reinsurance companies, Articles 102 to 106 as well as Articles 275, § 5, 276, 299, § 2 and 587, 5°, which make the provisions of Articles 102 to 106 applicable to the companies referred to in these Articles.

Definitions

- The Solvency II Directive: Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of insurance and reinsurance;
- The Law: the Law of 13 March 2016 on the legal status and supervision of insurance or reinsurance companies.

Unless otherwise specified in this Circular, the terms used in it have the same meaning as in the legislation and regulations referred to in the Circular.

Structure

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Dear Madam,
Dear Sir,

1. Introduction

Under Article 102, first paragraph, 3° of the Law, the Bank's prior authorisation is required for transfers of all or part of the activities, including the full or partial transfer of a portfolio, as a result of which the rights and obligations arising from the insurance or reinsurance policy are transferred.

A portfolio transfer can also occur in the context of a merger or division of companies. Pursuant to Article 102, first paragraph, 2° of the Law, a merger involving an insurance or reinsurance company and a division of an insurance or reinsurance company are also subject to the prior authorisation of the Bank. In the case of mergers or divisions, the information to be provided by the companies concerned is generally more extensive than for a simple portfolio transfer.

The prior authorisation of the Bank referred to in Article 102, first paragraph, 2° of the Law is also required where the merger involving an insurance company concerns an activity other than insurance or reinsurance business¹. This applies, for example, to a merger between an insurance company and an insurance intermediary or a mortgage loan company.

The processing of the authorisation request by the Bank involves reviewing the consequences of the proposed transfer for the situations of both the transferring / absorbed / divided company and the transferee / absorbing / receiving company, insofar as these companies fall within its field of competence.

In certain case, a prior opinion or agreement from another supervisory authority is required, e.g. if the transferee / absorbing / receiving company is governed by the law of another EEA Member State.

Through this Circular, the Bank specifies the procedure to be followed and, in particular, the content of the dossier to be submitted to it for the authorisation of the aforementioned transactions.

2. Notification by the transferring / absorbed / divided company

a) Scope

This Section concerns the case where the transferring / absorbed / divided company is:

- an insurance or a reinsurance company governed by Belgian law, including the branch of such a company situated on the territory of another Member State or of a third country
- the Belgian branch of an insurance or reinsurance company governed by the law of a third country.

b) Prior notification and dossier

The transferring / absorbed / divided company must notify the Bank in advance of its intention to transfer a portfolio of insurance or reinsurance contracts or to enter into a merger or division (Articles 102, first paragraph, 2° and 3°, 275, § 5, 276, 299, § 2 and 587, 5° of the Law).

¹ However, exceptionally, for small restructuring operations within a group where there is no portfolio transfer and which have no impact on the solvency of the insurance or reinsurance company, a specific treatment may be agreed with the Bank (limitation of the content of the file to be sent to the Bank to take account of the marginal nature of the operation).

For this purpose, it uses the form in **Annex 1**, which contains the minimum information that the company must provide to the Bank in support of its notification. The completed form must be sent to the Bank in one copy, by post and electronically, and must be submitted in one of the official languages of Belgium (Dutch, French or German, depending on the company's place of business), with an English translation if:

- the transferee / absorbing / receiving company is governed by the law of a Member State
- the transfer involves risks covered or commitments made in another Member State through a branch or under the freedom to provide services.

Moreover, Article 103 of the Law provides that the Bank determines the content of the dossier on the transaction on a case-by-case basis, depending on the specific characteristics of the transaction and of the company or companies involved. The transferring / absorbed / divided company may therefore be asked to complete the information submitted through the aforementioned form, particularly, at the Bank's request, by way of a special report from the accredited statutory auditor as provided for in Article 334 of the Law.

3. Information on the transferee / absorbing / receiving company

a) Scope

This Section concerns the case where the transferee / absorbing / receiving company² is:

- an insurance or a reinsurance company governed by Belgian law or the branch of such a company established in another Member State or in a third country
- the Belgian branch of an insurance or reinsurance company governed by the law of a third country.

b) Information to be provided

Taking into account the objectives of the supervision of portfolio transfers, the Bank will base its decision on the information that enables it to assess whether the proposed transfer does not have a negative impact on the financial situation or on the organisation of the transferee / absorbing / receiving company. For this purpose, the Bank must be provided with the information in **Annex 2** of this Circular.

The information on the transferee / absorbing / receiving company should be submitted by that company, unless the transferring / absorbed / divided company takes on this formality.

The completed form must be sent to the Bank in one copy, by post and electronically, and must be submitted in one of the official languages of Belgium (Dutch, French or German, depending on the company's place of business).

Moreover, Article 103 of the Law provides that the Bank determines the content of the required dossier on a case-by-case basis, depending on the specific characteristics of the transaction and of the company or companies involved. The transferee / absorbing / receiving company may therefore be asked to complete the information submitted through the aforementioned form, particularly, at the Bank's request, by way of a special report from the accredited statutory auditor as provided for in Article 334 of the Law.

4. Review by the Bank

The Bank will consider the dossier to be complete once it has received the information to be mentioned on the forms referred to in Sections 2 and 3 and included in Annexes 1 and 2, as well as the information requested from the transferring / absorbed / divided company or the transferee / absorbing / receiving company pursuant to Article 103 of the Law.

In this respect, companies' attention is drawn to the time limits laid down in Article 102 et seq. of the Law, particularly in an international context. Companies are therefore recommended to agree on the arrangements for the transaction and to ensure that the information to be provided is available as soon as

² As regards divisions, this Section applies only if the company concerned (i.e. the company resulting from the division) is an insurance or reinsurance company.

the notification has been submitted. They are also advised to contact the Bank as soon as possible and, ideally, before the notification has been submitted.

As soon as the Bank possesses a complete dossier, it will send the information relevant to the transaction concerned:

1. to the FSMA
2. to Fedris³ if the transfer, merger or division involves a portfolio of occupational accidents insurance contracts
3. to the supervisory authorities of the Member State or third country of the transferee / absorbing / receiving company
4. to the supervisory authorities of the Member States in which the insurance contracts involved in the transfer / merger / division were concluded through a branch or under the freedom to provide services.

Pursuant to Article 102, second paragraph of the Law, the Bank may oppose the implementation of the proposal within three months after receipt of the complete dossier for reasons relating to the capacity of the transferring / absorbed / divided company or the transferee / absorbing / receiving company⁴ to meet the provisions of the Law or of the implementing measures of the Directive, or relating to the sound and prudent management of the company, or if the decision is likely to affect the stability of the financial system⁵.

However, this three-month time limit is suspended, where appropriate, to allow for the fulfilment of the conditions laid down in Article 104, § 1 of the Law, i.e. reception of the solvency certificate and/or of the agreement of the authorities consulted. With regard to the latter point, the Law (transposing, on this aspect, Article 39(5), second subparagraph of the Solvency II Directive) provides for a presumption of agreement of the authorities consulted in the situation provided for in Article 104, § 1, 2° if the authority of the Member State consulted does not respond within three months of its consultation. This three-month period may itself also be suspended by the consulted authority concerned. In that case, the suspension of the time limit for the Bank's decision will also be extended.

The Bank's decision will be communicated to the companies concerned as well as, where appropriate, to the foreign supervisory authorities consulted and to the FSMA.

If the Bank authorises the transaction, an extract from the authorisation decision will be published by the Bank in the Belgian Official Gazette and on its website. Upon publication of the Bank's authorisation in the Belgian Official Gazette, the transfers of rights and obligations resulting from the transactions authorised by the Bank pursuant to Article 102, first paragraph, 2° and 3° of the Law will be enforceable against policyholders, insured persons, beneficiaries and third parties (Article 106 of the Law).

5. Miscellaneous provisions

a) Mergers and divisions

As indicated above, the documents expected in the event of a merger or division of insurance or reinsurance companies are specified in Annexes 1 and 2 of this Circular. However, the Bank draws the attention of the companies concerned to the following elements:

§1. Authorisation by the Belgian or European competition authorities

³ On 01/01/2017, the fund for occupational accidents and the fund for occupational diseases merged to become FEDRIS, the Federal Agency for Occupational Risks.

⁴ Insofar as these companies are subject to the Bank's supervision (in the case of divisions where there are 2 receiving companies, one being a regulated company and the other not, the Bank is only competent for the one that has the status of insurance or reinsurance company, what ever it is a new or an existing company).

⁵ For example, if the supervisory authorities of a transferee company located in another Member State cannot provide a solvency certificate, this constitutes grounds for refusal.

Under certain conditions, pursuant to the Code of Economic Law or to European Union law, a merger involving an insurance or reinsurance company will require, in addition to the Bank's authorisation, an authorisation from the Belgian or European competition authorities. As prudential supervision and competition supervision are two competences which are exercised in parallel, the absorbing insurance company should inform the Bank when it has obtained the authorisations required in light of the competition regulations. This element is included in point 4.10 of Annex 2.

§2. Report from the accredited statutory auditor

The Bank expects the absorbing or receiving company to submit a copy of the report from the accredited statutory auditor on the draft terms of merger or division in all cases where required by law. This element is reflected in point 4.9 of Annex 2.

§3. *Ipso jure* cancellation of authorisations

Where the insurance or reinsurance company being absorbed is wound up, such winding-up will entail the *ipso jure* cancellation of all its authorisations (Article 540 of the Law). However, a request for surrender should be submitted in two cases:

- in the case of a division, where the company being divided will continue to carry out certain activities due to the fact that the transfer concerns only part of its insurance or reinsurance business, it must provide the Bank, together with the dossier on the merger (Annex 1), with a request for surrender of the authorisations corresponding to the activities it will no longer carry out; and
- in the case of a merger, where the absorbing company will not continue some of the insurance or reinsurance activities of the company being absorbed, it must provide the Bank, together with the dossier on the merger (Annex 2), with a request for surrender of the authorisations corresponding to the activities it will no longer carry out.

b) Authorisations

The transferee company must possess the authorisations needed to perform the business to be transferred. Where appropriate, it is asked to comply with the legal and regulatory provisions on the subject as specified in particular in the circulars on authorisation requests.

c) Transfers to a company from a third country

Pursuant to Article 102, fourth paragraph of the Law, transfers of contracts covering risks or commitments situated in Belgium to an insurance company from a third country are only permitted if the transferee company is the Belgian branch of that insurance company and if it has received the proper authorisation.

d) Branch closures

If the transfer of the insurance business of a branch of a company governed by Belgian law established in another Member State involves the complete closure of that branch, the transferring company should, in the transfer agreement or in an ad hoc document, lay down the arrangements for the management of outstanding claims. This agreement will be transmitted to the authorities concerned of the host Member State. If this closure includes renouncing part of the authorisation, a plan for the settlement of the commitments should also be drawn up.

e) Companies referred to in Articles 275, 276 and 294 of the Law

With regard to the companies referred to in Articles 275, 276 and 294 of the Law, it should be noted that, although these companies are exempted from the application of certain provisions of the Law, Articles 102 to 106 regarding the transfer of portfolios are applicable to them. However, as these companies may not carry out cross-border activities, the provisions of Articles 102 to 106 of the Law relating to these activities do not apply to them.

6. Repeal

This Circular repeals and replaces Circular NBB_2018_08 on the procedure to be followed in the case of transfers of portfolios of insurance or reinsurance contracts from the date of its publication on the Bank's website.

A copy of this Circular will be forwarded to the accredited auditors of your company.

Yours faithfully,

Pierre WUNSCH

Annexes: 2