

## Frequently asked questions

### General

#### 1. What is a Part VII transfer?

A Part VII transfer is a UK Court approved process which transfers insurance business from one insurer (or in this case multiple insurers, the Names) to another (in this case Speyford Limited ("Speyford") - please see question 8 below) under Part VII of the Financial Services and Markets Act 2000 (UK) ("FSMA"). This process not only transfers the insurance and reinsurance policies underwritten by the transferring insurer or insurers but also transfers the assets, such as outwards reinsurance contracts protecting the insurance business, to the replacement insurer. No Part VII transfer may take place without UK Court approval.

Policyholder protection is paramount and, as part of the process, notification of policyholders and reinsurers is required (please see question 30 below).

Under FSMA, an expert (the "Independent Expert") must also be appointed to report to the Court on the impact of the Part VII transfer on policyholders and other key stakeholders, with particular reference to their security before and after the Part VII transfer.

The UK regulator of financial services companies, the Financial Services Authority (the "FSA") is involved at all stages of the Part VII transfer process. The FSA's regulatory objectives include maintaining market confidence and securing an appropriate degree of protection for consumers. In the context of insurance business transfers the FSA is concerned that policyholders affected by the transfer receive sufficient information about the proposed transfer and that their interests are protected. The FSA will also produce a report to the Court setting out its views on the Part VII transfer. It also has the right to be heard at the Court hearing for the approval of the Part VII transfer.

#### 2. What is an Independent Expert?

The Independent Expert is not an advisor to anyone involved in the Part VII transfer but a person independent of the parties involved whom the FSA considers has the necessary skills to assess the effect of the transfer. The FSA must approve the appointment of the Independent Expert.

In this case, the Independent Expert is Mr Allan Kaufman of Navigant Consulting (Europe) Limited, who is an actuary trained in both the UK and the US. He is a Fellow of the Casualty Actuarial Society (US) and an Honorary Fellow of the Institute of Actuaries (UK).

##### a. What does the Independent Expert do?

The Independent Expert reviews the terms of the proposed Part VII transfer and the actuarial models prepared in respect of the transferring business to determine the likely effects on the policyholders of the insurers involved and other key stakeholders.

The Independent Expert prepares a report, in a form approved by the FSA, for the Court setting out his conclusion regarding the effects of the Part VII transfer on the policyholders and other key stakeholders.

**b. Who does the Independent Expert have a duty to?**

The Independent Expert's primary and overriding duty is to the Court.

**c. Who pays the Independent Expert?**

The Independent Expert is paid by one or more of the parties involved in the transfer. In this case, the Independent Expert is paid by Equitas Limited ("Equitas").

**3. What is the nature of the Court proceeding, and where and when will it take place?**

Prior to the Court hearing, the Court will have received copies of the scheme document implementing the transfer proposals, the Independent Expert's report, the FSA report and any witness statements which have been filed.

At the Court hearing, Counsel for the applicants, in this case Equitas and Speyford, will explain to the Court the proposals for the Part VII transfer, the notifications made and any responses received from policyholders and other interested parties. The Court will then hear from any person who claims to be adversely affected and will consider the views of both the Independent Expert and of the FSA before reaching a conclusion as to whether it is appropriate to approve the transfer.

The Court has a wide discretion as to whether it considers it appropriate to approve the Part VII transfer and is concerned with whether anyone will be adversely affected if the transfer is implemented. However, it does not follow that any transfer which leaves someone adversely affected must be rejected; it is a question of the materiality of any prejudice and whether the transfer as a whole is fair as between the interests of the different classes of persons affected. In coming to its conclusion, the Court will rely heavily on the views of the Independent Expert and those of the FSA.

The Court hearing is intended to commence on 24 June 2009 at the Royal Courts of Justice, Strand, London, WC2A 2LL. It is possible that this date may change. Policyholders and others wishing to attend the hearing (please see question 5 below) should check on the Equitas website which will be updated should the hearing date change.

**4. Does the UK Court decision bind a non-UK policyholder?**

If the Court approves the Part VII transfer, its decision will bind all policyholders as a matter of UK law and will automatically be recognised under the law throughout the European Economic Area ("EEA"), which comprises the member states of the European Union plus Iceland, Norway and Liechtenstein (subject to certain rights of the relevant EEA regulator to object).

Part VII transfers of non-life business are a relatively new development in English law. There is therefore little experience on which to form a conclusion as to whether the courts of overseas jurisdictions would recognise the Part VII transfer in the event that a claim is brought against a Name in their jurisdiction after the transfer takes effect. Equitas is therefore giving careful consideration, with its legal advisors, to the extent to which it is possible and reasonably practicable to take steps in other major relevant overseas jurisdictions to obtain recognition of the UK Court Order. Regardless of whether an overseas jurisdiction recognises the transfer, a policyholder will benefit from the increased reinsurance that will be provided to Equitas if the Part VII transfer is approved before the end of 2009.

## **5. Who will participate in the Court proceedings?**

The transferring and replacement insurers will attend the Court proceeding, in this case Equitas on behalf of the Names, and Speyford as the replacement insurer. The Independent Expert will also attend in case the Court has any questions specifically for him. In addition, the FSA and any person who believes he is adversely affected by the Part VII transfer are entitled to be heard in Court.

If you would like to make written representations and/or appear at the Court hearing, either in person or by Counsel, you are requested to provide written representations or written notice of your intention to appear at Court and details of your concerns as soon as possible, and preferably by no later than 9 June 2009. These should be sent to PricewaterhouseCoopers LLP, Plumtree Court, London, EC4A 4HT, United Kingdom for the attention of Deirdre Won or via email to [info@equitas.co.uk](mailto:info@equitas.co.uk).

## **6. Why is Equitas proposing the Part VII transfer?**

Since its creation in 1996, Equitas has been focused on achieving two goals: payment of valid claims of Names' policyholders, and the achievement of true finality for Names. In March 2007, having greatly reduced the risk associated with future claims, Equitas was able to purchase US\$5.7 billion of additional reinsurance cover, over and above Equitas' 31 March 2006 carried reserves, from National Indemnity Company, a member of the Berkshire Hathaway Group of companies. An aspect of this transaction is that National Indemnity Company is committed to selling up to an additional US\$1.3 billion of reinsurance cover to Equitas for up to £40m if the transfer is approved on or before 31 December 2009. Equitas is proposing the transfer because, if it is approved, Equitas will have achieved its objective of obtaining true finality for Names under English law (and the laws of the EEA states) through a transfer of their liabilities to a replacement insurer, while at the same time significantly increasing the security for policyholders by virtue of the additional reinsurance cover.

## **7. Does Equitas have the right to do this?**

Yes. Equitas Reinsurance Limited was given absolute and irrevocable authority to manage the 1992 and prior years' non-life business on behalf of the Names as part of Lloyd's Reconstruction and Renewal in 1996 ("R&R"). This authority was delegated to Equitas. On 24 September 2008, Lloyd's exercised its statutory power under FSMA to certify that Equitas has the authority to act on behalf of the Names for the purposes of this Part VII transfer pursuant to The Financial Services and Markets Act 2000 (Control of Transfers of Business Done at Lloyd's) (Amendment) Order 2008 (UK).

## **8. To which company is the Names' business being transferred?**

The Names' business is to be transferred to a newly formed company currently called Speyford Limited that is to be authorised as an insurer by the FSA before the Part VII transfer takes effect. It is presently intended that the name of this company will be changed at or shortly after the time it receives FSA authorisation, to "Equitas Insurance Limited" ("EIL"). EIL's main asset for the payment of claims will be the same reinsurance that now funds claims paid by Equitas on behalf of the Names.

EIL will be reinsured in the same way that the Names are currently reinsured by Equitas Reinsurance Limited and Equitas.

## **9. Who will own Speyford Limited/Equitas Insurance Limited?**

Speyford/EIL is owned by Equitas Holdings Limited and it is therefore part of the Equitas group (please see group structure diagram at Appendix 1). It is intended that this structure will remain in place after the Part VII transfer takes effect and therefore the company will remain a member of the Equitas group after it is renamed.

## **10. What will happen to the Equitas Group?**

It is intended that the Equitas structure will remain in place following the Part VII transfer.

## **11. Who is the reinsurance with?**

### **a. Existing reinsurance:**

The existing reinsurance provided to Names by Equitas Reinsurance Limited will be transferred, as a matter of English law (and throughout the EEA), from the Names to Speyford/EIL. Equitas Reinsurance Limited will continue to be reinsured by Equitas and Equitas will continue to be reinsured by National Indemnity Company, but with the benefit of the additional reinsurance cover.

The existing syndicate reinsurances covering the 1992 and prior years' non-life business of the Names were irrevocably assigned to Equitas at R&R. Any remaining interest the Names may have in these reinsurances will be transferred to EIL under the Part VII transfer.

### **b. Additional reinsurance:**

The additional reinsurance cover of US\$ 1.3 billion will be purchased from National Indemnity Company by Equitas for a premium of £40 million.

## **12. Isn't Equitas worried about taking even more exposure to National Indemnity Company?**

Equitas' option under the agreement with National Indemnity Company allows it to purchase the additional reinsurance at a price and in an amount not readily available elsewhere. The additional reinsurance provides a significantly increased margin of security for policyholders.

National Indemnity Company continues to be one of the few insurance companies in the world to have a AAA insurer financial strength rating from Standard & Poor's, indicating that the prospect of its insolvency is remote<sup>1</sup>. If the rating of National Indemnity Company by Standard & Poor's falls below AA- prior to the Part VII transfer, the reinsurance contract it has with Equitas requires it to provide security for the remaining reinsurance and run-off obligations. This arrangement will provide significant protection for Names and policyholders. However, if National Indemnity Company were to become insolvent shortly following such a rating downgrade, it is possible that it would not be able to provide such security.

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<sup>1</sup> On 8 April 2009, Moody's Investors Service downgraded the "Insurer Financial Strength" rating of National Indemnity Company from the highest to the second highest available rating. The Independent Expert intends to issue a supplement report before the Court hearing to assess the impact, if any, of this downgrade on the scheme.

**13. Will the current economic crisis mean the Part VII transfer might not go ahead?**

Equitas sees no reason why the global economic downturn should affect the Part VII transfer. The terms on which Equitas will be able to purchase the additional reinsurance cover from National Indemnity Company are set. Moreover if the Part VII transfer is completed before the end of this year those terms will have become even more favourable because of the weakening of Sterling relative to the US dollar since the terms were agreed, although of course that can change.

**14. Will the administration of the run-off change?**

The run-off of the 1992 and prior year non-life business of the Lloyd's Names that is to be transferred to EIL will continue to be managed by Resolute Management Services Limited ("RMSL"), as it has been since 30 March 2007 (before when it was managed by Equitas). There is no intention that the manner in which the run-off is managed will materially change as a result of the Part VII transfer.

**15. Will Equitas Insurance Limited be FSA regulated or regulated by an overseas regulator?**

EIL will be regulated by the FSA in the UK.

**16. Have the regulators in other countries been consulted?**

Yes. In accordance with FSMA, regulators in the EEA have been consulted.

In addition, the New York Insurance Department and the regulators in other jurisdictions in which trust funds covering 1992 and earlier years' Lloyd's business are maintained, namely Australia and Canada, are being consulted.

**17. Are there plans to propose a Scheme of Arrangement once the Part VII transfer is complete?**

No.

**18. What happens if the Part VII transfer is not approved or it is approved but it is not ultimately recognised in relevant overseas jurisdictions?**

If the Part VII transfer is not approved by the UK Court, for whatever reason, Equitas will retain the US\$5.7 billion reinsurance cover obtained previously from National Indemnity Company and RMSL will continue to manage the run-off as it does now.

If the Part VII transfer is approved by the UK Court, but some jurisdictions do not recognise the Part VII transfer, Names will, subject to the limit of the reinsurance cover, still have the current protection from National Indemnity Company and will also be indemnified by EIL in respect of any claims brought against them in that jurisdiction. Policyholders will benefit from the extra reinsurance cover from National Indemnity Company.

## **Policyholders**

### **19. How will this Part VII transfer affect policyholders?**

As a matter of English law (and the laws of the EEA states) your insurer will become Equitas Insurance Limited, a UK (re)insurance company authorised by the FSA. You will no longer be (re)insured by the Names.

The main effect of the Part VII Transfer for you will be that after the transfer you will have no further claims, as a matter of English law (and the law of all EEA States), against the Names who underwrote your policies at Lloyd's. Instead you will have claims against EIL, an FSA-authorised insurance company. The liabilities of EIL will be covered by the existing assets available to Equitas (in particular the National Indemnity Company reinsurance) but with substantial additional security in the form of the extra US\$1.3 billion of reinsurance coverage from National Indemnity Company.

In effect the potential benefit of unlimited several liability provided by the Names is exchanged for the additional reinsurance provided by National Indemnity Company. The benefit of unlimited several liability is of value only in the event that the assets available via Equitas prove insufficient to pay all claims. The additional reinsurance significantly reduces the already small risk of such insufficiency. Furthermore, the practical value of unlimited liability is limited by both legal and practical considerations as explained in the report of the Independent Expert referred to above.

All existing Trust Funds and support arrangements will remain in place.

Notice of claims must be given in the same way as before the Part VII transfer i.e. as required by the policy (for example, to your broker or designated agent for service). The transfer will not cause any material change to the claims agreement process (as far as policyholders are concerned) or claims payment process. In particular, you will still be required to provide evidence that you held a policy that constituted 1992 and prior years non-life business at Lloyd's and establish in the same way as now the subscribing syndicates.

The Independent Expert has concluded that the transfer does not materially disadvantage policyholders or other stakeholders.

No action is required by policyholders.

### **20. What will happen to my policy?**

Other than the change in insurer, there will be no change to your policy.

### **21. How will the Part VII transfer affect the security of my policy?**

As set out above, the Part VII transfer will not adversely affect the security of your policy i.e. EIL will have all the reinsurance and funds that are currently available to Equitas, as well as an additional \$1.3 billion of reinsurance cover from National Indemnity Company.

All existing Trust Funds and support arrangements will remain in place.

**22. What is the benefit of the Part VII transfer to policyholders?**

Policyholders will have increased security due to the additional \$1.3 billion reinsurance cover available for purchase from National Indemnity Company once the Part VII transfer is approved. Equitas intends to purchase all of this additional reinsurance should it be possible to do so i.e. if the Part VII transfer is approved on or before 31 December 2009. You may wish to review the report of the Independent Expert to see how the value of this additional reinsurance compares to the likely value of claims that might be recovered from individual Names were Equitas to become insolvent. The Independent Expert concludes that the transfer will not materially disadvantage any group of policyholders and decreases the already small risk of insufficiency of security to policyholders.

**23. How will I provide notice of claims?**

There will be no change from the current practice. Notice of claims must be made as required by the policy (for example, to your broker or designated agent for service).

**24. Who will pay my claims?**

RMSL will continue to manage the business and pay the claims as it has done since 30 March 2007 (see question 14).

**25. I am a policyholder who currently has access to an overseas Trust Fund. Will this continue?**

Yes, access to overseas Trust Funds should not be removed by the Part VII transfer.

**26. I hold a policy underwritten by Syndicates reinsured into Centrewrite / Lioncover – how does this affect me?**

The Part VII transfer will have no material impact on PCW or Warrilow policyholders as the economic effect of the unlimited support provided by Lloyd's in respect of Warrilow and PCW business will remain in place for the benefit of such policyholders.

No action is required by you.

**Cedants**

**27. How will this transfer affect me?**

As a matter of English law (and the laws of the EEA states) your reinsurer will become EIL, a UK (re)insurance company authorised by the FSA. You will no longer be reinsured by the Names.

The main effect of the Part VII transfer for you will be that after the transfer takes effect you will have no further claims, as a matter of UK law (and the law of all EEA States), against the Names who underwrote your policies at Lloyd's. Although the Names underwrote with unlimited several liability, you should be aware that the principle of unlimited liability is limited by both legal and practical considerations as explained in the report of the Independent Expert referred to above. Instead of your rights against Names you will have claims against an FSA authorised insurance company, (EIL). The liabilities of EIL will be covered by the existing assets available

to Equitas (in particular the National Indemnity Company reinsurance), but with the substantial additional security in the form of the extra US\$1.3 billion of reinsurance coverage from National Indemnity Company.

Notice of claims must be given in the same way as before the Part VII transfer i.e. as required by the policy (for example to your broker or designated agent for service).

The transfer will not cause any material change to the claims agreement process (as far as cedants are concerned) or claims payment process. In particular, you will still be required to provide evidence that you held a policy that constituted 1992 and prior years non-life business at Lloyd's and establish in the same way as now the subscribing syndicates.

Set-off rights that exist before the Part VII transfer will be preserved under the Part VII transfer.

The Independent Expert has concluded that the Part VII transfer does not materially disadvantage policyholders / cedants or other stakeholders.

**28. As a US cedant, will we be given recognition for the reinsurance policy we will then have with Equitas Insurance Limited?**

We expect that cedants should be able to continue to take credit for reinsurance provided to them whether or not the transfer is recognised in the US.

**Reinsurers**

**29. How will this Part VII transfer affect me?**

Notification of claims will be made in the same way as before the Part VII transfer. There will be no change to the claims agreement process.

Set-off rights that exist prior to the Part VII transfer will be preserved under the Part VII transfer.

No action is required by you.

**30. Why haven't I received a letter / formal notification of the Part VII transfer?**

Equitas has provided notice directly to many policyholders, cedants and reinsurers and has advertised worldwide in a number of publications in a manner approved by the FSA and in accordance with an order of the High Court made in November 2008. Equitas has also provided notice directly to many brokers and claims handlers of the transferring business. All information that was provided by direct notice to policyholders, cedants, reinsurers, brokers and claims handlers can be found on the Equitas website ([www.equitas.co.uk](http://www.equitas.co.uk)).

**31. Where can I find all the relevant documents?**

Copies of a statement setting out the main terms of the scheme document which gives effect to the Part VII transfer and a summary of the Independent Expert's report, the full Independent Expert's report and (when available) any supplemental Independent Expert's report can be found on the Equitas website ([www.equitas.co.uk](http://www.equitas.co.uk)).

**32. Who can I contact for further information?**

- a. Helpline: +44 (0) 20 7213 5125
- b. Email address: [info@equitas.co.uk](mailto:info@equitas.co.uk)

**Names:**

**Issues of particular interest to Names are addressed in the Chairman's letter dated 27 April 2009 to Names and the "Frequently Asked Questions" that accompanied it. The Chairman's letter and those Frequently Asked Questions are also available on this website.**

**APPENDIX 1**

**Equitas Group Structure**

