Clifford Chance

BRIEFING

Insurance portfolio transfer
ACPR rules and tips

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Average yearly number of portfolio transfers approved by the ACPR over the last five years

ACPR annual reports (2021-2025)

In the context of M&A transactions or corporate reorganisations[1] in the insurance sector, the transfers of all or part of portfolios of insurance contracts are customary and must carefully be considered for deal certainty and completion purposes.

Where the portfolio transfer has a French nexus ("**Portfolio Transfer**"), it involves the French Prudential Supervision and Resolution Authority (*Autorité de contrôle prudentiel et de résolution* – "**ACPR**"), triggering either an ACPR Approval Procedure or an ACPR Consultation Procedure.

ACPR APPROVAL PROCEDURE

A Portfolio Transfer triggers an ACPR Approval Procedure where:

- the transferor is a French entity authorized under the French *Code des assurances*[2]; and
- the risks covered under the insurance contracts are located in the EEA.

Timing

Based on our experience, obtaining the ACPR approval typically takes around four months from submission of a complete application file. Applications must be filed with the ACPR before 31 August of each year to account for the ACPR's review timeframe and the publication deadlines at the *Journal Officiel*.

The overall duration of the transaction depends on more than the ACPR review period alone. It is also affected by:

[1] This briefing does not cover the "forced" transfer of an insurance portfolio that the ACPR may impose on an insurer as a *mesure de police administrative* (Article L. 612-33 14° of the French *Code monétaire et financier* or Article L. 311-30 4° of the French *Code des assurances*).

[2] French insurers, EEA branches of French insurers, French branches of Swiss insurers, French branches of third-country insurers. For mutual insurers and provident institutions, reference is made respectively to the French *Code de la mutualité* and French *Code de la sécurité sociale*, as applicable.

- the time needed to complete due diligence, negotiate the terms of the transfer documentation (including the price) and prepare the application file – including, notably, a transfer balance sheet – which requires significant financial and accounting input; and
- whether the transfer involves non-French elements (e.g., non-French risks or commitments or a non-French transferee), which may increase preparation time.

"The French Code des assurances provides for a special procedure, departing from the common law of contracts, enabling insurers to transfer all or part of their portfolio of contracts covering risks or commitments situated within the territory of a Member State of the EEA, subject, where applicable, to authorisation from the ACPR"

ACPR website – Transfer of portfolio

Steps

The ACPR Approval Procedure involves the following steps:

1. Pre-filing engagement: inception meeting with the ACPR to present the contemplated transaction and its particular features. Filing of a draft application is recommended.
2. Formal application: filing of the formal application on the ACPR Portal, incorporating any comments arising from preliminary exchanges. The application must comply with ACPR Instruction No 2025-I-17, it being noted that official correspondence with the ACPR should be in French while working documents can be provided in English to the ACPR.
3. ACPR review: the ACPR reviews the application. During the review, the following steps are implemented:

   (a) Publication at the *Journal Officiel*: a notice briefly describing the project is published at the *Journal Officiel*, giving creditors whose claims arise from the transferred portfolio a two-month period to submit observations;

   (b) Consultation of the relevant supervisory authority(ies): the ACPR must obtain:

      (i) if the transferee is not a French entity, a certificate of solvency from its supervisory authority;

      (ii) prior approval of the supervisory authority of the state where the transferor's branch is located (where relevant);

      (iii) prior approval of the supervisory authority of the state where the risks or commitments transferred are located (where relevant).

      If the consulted supervisory authority(ies) remain(s) silent at the expiry of a three-month period, approval shall be deemed to have been given.

4. ACPR approval: if the transfer is not detrimental to the interests of insureds, policyholders, members, participating members, beneficiaries, and creditors, the ACPR approves the transfer and its decision is published at the *Journal Officiel*, which entails two consequences:

   (a) the transfer is enforceable towards insureds, policyholders, members, participating members, beneficiaries, and creditors; and

   (b) insureds can terminate their contract within one month from the date of such publication.

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Average yearly number of the licences declared lapsed by the ACPR over the last five years as a result of portfolio transfers

ACPR annual reports (2021-2025)

Key considerations

The parties to the Portfolio Transfer should in particular take into account the following considerations:

1. the transferee must hold the relevant insurance licence(s) corresponding to the transferred insurance portfolio;
2. the transferee must hold the relevant passporting rights in the EEA country(ies) where the risks or commitments transferred are located;
3. only insurance contracts (together with the associated rights and obligations) are transferred through this procedure, excluding therefore, where applicable, related distribution or reinsurance agreements;
4. where the transferor transfers its entire portfolio of contracts belonging to one or more specific insurance (sub)class(es), the ACPR will automatically declare the corresponding licence(s) lapsed (*caduque*), and such lapse will be published in the *Journal Officiel*; and
5. for accounting and tax purposes, the effective date of the Portfolio Transfer is usually set retroactively to 1 January of year N, based on the last certified accounts as at 31 December of year N-1.

ACPR CONSULTATION PROCEDURE

Pursuant to the French *Code des assurances*, a Portfolio Transfer triggers an ACPR Consultation Procedure where:

- the transferor is not a French authorized entity; and
- the risks or commitments of the portfolio at stake are located in France.

An ACPR Consultation Procedure is therefore triggered in the context of a portfolio transfer that is supervised and ruled on by another EEA supervisory authority.

Timing

The ACPR has a three-month period to respond to the request of the relevant supervisory authority. The overall timetable of a Portfolio Transfer involving an ACPR Consultation Procedure however depends on the law governing such transaction.

Steps

The ACPR Consultation Procedure involves the following steps:

1. Publication at the *Journal Officiel*: a notice briefly describing the project is published at the *Journal Officiel*, giving creditors whose claims arise from the transferred portfolio a two-month period to submit observations[3];
2. ACPR decision: the ACPR issues a decision whereby it informs the relevant supervisory authority of whether it opposes the contemplated transaction or not. The decision must be issued after the expiry of the

[3] This step is not required where the portfolio does not include risks or commitments located in France.

above two-month observation period, and no later than three months following the request from the relevant supervisory authority; and

3. <u>Publication at the *Journal Officiel*</u>: the ACPR publishes a notice at the *Journal Officiel* to inform of the completion of the transaction, once approved by the relevant supervisory authority. Policyholders have a one-month period from the date of said publication during which they can terminate their contract.

Where the transferee is a French authorized entity subject to Solvency II, the ACPR must issue a certificate of solvency stating that the transferee covers the Solvency Capital Requirement, taking account of the Portfolio Transfer.

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