

**APN 108: ROLE OF THE INDEPENDENT ACTUARY IN THE TRANSFER, FUNDAMENTAL TRANSACTION, OR CHANGE OF INSTITUTIONAL FORM OF THE LIFE INSURANCE BUSINESS OF A LICENSED INSURER.**

**Classification**

This Advisory Practice Note (APN) provides guidance for Actuaries performing the role of Independent Actuary.

**Abstract**

This APN outlines the factors that should be considered in accepting an appointment as an Independent Actuary. It also provides guidance on the investigations the actuary might conduct and recommended contents of the resulting report.

**Purpose**

The purpose of this APN is to advise an actuary appointed by the Prudential Authority to assess a transaction under section 50 of the Insurance Act. The APN describes the professional responsibilities such an appointment entails.

The term Independent Actuary is used to refer to an actuary acting in this capacity throughout this APN. Prudential Standard GOI6 also refers to this role as the "Independent Expert".

**Legislation or Authority**

The Insurance Act, 2017 under section 50.

Prudential Standard GOI6.

**Application**

An actuary appointed by the Prudential Authority under section 50(5)(b) of the Insurance Act, 2017, to assess the transfer, fundamental transaction or change and express a view on the desirability or otherwise thereof.

**Author**

Life Assurance Committee of the Actuarial Society of South Africa.

**Status**

Version 1	Effective from January 2004
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## Definitions

<i>Act</i>	Insurance Act (18 of 2017), including relevant amendments, Prudential Standards, regulations, Prudential Authority directives and guidance notes.
<i>ALM</i>	Asset-Liability Management
<i>Head of Actuarial Function</i>	An Actuary appointed by an Insurer in terms of the Act as the head of the actuarial Control Function.
<i>Independent Actuary</i>	An Actuary appointed by the Prudential Authority under section 50(5)(b) of the Act, to assess the transfer, transaction or change and express a view on the desirability or otherwise thereof.
<i>ORSA</i>	Own Risk and Solvency Assessment required in terms of the Act.
<i>Reasonable Benefit Expectations</i>	The reasonable expectations of policyholders regarding future premiums, charges and benefits, based on the Insurer's marketing literature, communications to the policyholder and initial sales representations. For life insurance business, please also refer to the section on policyholder reasonable expectations in SAP 104.
<i>Prudential Authority</i>	The authority established in terms of the Financial Sector Regulation Act (9 of 2017).
<i>Scheme</i>	Any transfer, fundamental transaction or change of institutional form as contemplated in section 50 of the Act

## Sections

- 1 Introduction
- 2 Factors influencing acceptance of an appointment as Independent Actuary
- 3 The extent of the Independent Actuary's involvement
- 4 Guidance on the content and likely use of the Independent Actuary's report

## **1 Introduction**

- 1.1 Section 50 of the Act contemplates a transfer, fundamental transaction or change of institutional form, and the appointment in terms of section 50(5)(b) of the Act require the person appointed to assess the transfer, transaction or change and express a view on the desirability or otherwise thereof.
- 1.2 The parties to the transaction may consider whether or not to appoint an Independent Actuary independent of the requirements of the Act, or the Prudential Authority may decide to appoint an Independent Actuary.
- 1.3 The Independent Actuary should ascertain whether a report may also be required by the courts or regulator in any foreign jurisdiction where the transacting insurer writes any business. If branch business has been written in a foreign jurisdiction and such business is impacted by the proposed scheme, the Act, and the host country's legislation will be applicable. If the business has been written through a foreign subsidiary, a report may be required in terms of the host country's legislation but not in terms of the Act.
- 1.4 The Independent Actuary shall at all times, during and after his/her appointment, observe complete confidentiality in relation to the intellectual property of the insurers concerned, except insofar as the actuary's specific responsibilities in terms of the brief by the Prudential Authority may require otherwise, or where disclosure is required by law.
- 1.5 The Independent Actuary must comply with the provisions of the Act.

## **2 Factors Influencing Acceptance of an Appointment as Independent Actuary**

- 2.1 Before accepting an appointment as the Independent Actuary in any particular case, an actuary must:
  - 2.1.1 Consider whether he/she has relevant practical knowledge and experience. Such experience would necessarily include, but not be limited to, familiarity with the role and responsibilities of a Head of Actuarial Function and with the types of life insurance business transacted by the insurers concerned.
  - 2.1.2 In the case of a proposed scheme involving a composite insurer, writing both life insurance and non-life insurance business, the Independent Actuary will need to understand the relevance of the non-life insurance business to the security of the life insurance policyholders, and he/she may need to seek independent specialist advice on this.
  - 2.1.3 Disclose to all the parties any direct or indirect interest he/she may have or have had in either insurer. Clearly, an actuary should not act if such interest would, in the reasonable opinion of any party, be likely to prejudice his/her status as being independent. In case of doubt, the situation should be discussed with the Prudential Authority or the President or President-elect of the Actuarial Society of South Africa before the appointment is accepted.
- 2.2 The Independent Actuary should ensure that appropriate safeguards are in place to protect independence where he/she, or the firm by which he/she is employed, has done other work for any party related to the proposed scheme in the past. The extent of appropriate safeguards may depend on, amongst other things, how recent and significant the prior work was.

- 2.3 If appointed by the Prudential Authority, the Independent Actuary should request a brief from the Prudential Authority, which should include the terms and reference of the appointment and details about the proposed scheme. In this case:
- 2.3.1 The Independent Actuary's primary accountabilities are to the Prudential Authority, as the purpose of the appointment is to assess and express a view on the desirability of the proposed scheme to the Prudential Authority. This view may cover factors such as the impact on financial soundness and the likely effects of the proposed scheme on the interests of the policyholders of the insurer(s) affected.
  - 2.3.2 The Independent Actuary must address at least the specific issues contained within the brief. The Independent Actuary is not, however, constrained to address only these issues if, in the course of his/her investigation, he/she concludes that there are other issues which are of relevance to the proposed scheme or to the interests of policyholders affected by it.
  - 2.3.3 Other than in terms of the brief agreed with the Prudential Authority, the Independent Actuary should not take instructions from any of the parties on what should be included in, or excluded from, the report; or to be denied access by any of the parties to persons the Independent Actuary may wish to interview, or to information, reports and documents which the Independent Actuary may reasonably consider material to the formulation of an opinion on the likely effects of the proposed scheme on the policyholders of the insurers concerned.
  - 2.3.4 If the Prudential Authority terminates the appointment prior to the completion of the agreed duties, then the Independent Actuary should request the Prudential Authority to provide reasons.
- 2.4 If appointed by one or more of the parties to the proposed scheme (and not the Prudential Authority), the Independent Actuary should request a brief from the appointing parties, which should include the terms of reference of the appointment and details about the proposed scheme. In this case:
- 2.4.1 The Independent Actuary must ensure that his/her primary accountabilities and responsibilities are clearly stated in the brief. The brief may cover factors such as the impact on financial soundness and the likely effects of the proposed scheme on the interests of the policyholders of the insurer(s) affected.
  - 2.4.2 The Independent Actuary must address at least the specific issues contained within the brief. The Independent Actuary is not, however, constrained to address only these issues if, in the course of his/her investigation, he/she concludes that there are other issues which are of relevance to the proposed scheme or to the interests of policyholders affected by it.
  - 2.4.3 The Independent Actuary should establish whether there are any matters pertaining to the proposed scheme that the Prudential Authority wishes to draw to his/her attention.
  - 2.4.4 The brief should include provisions that the Independent Actuary should not be denied access by any of the parties to persons the Independent Actuary may wish to interview, or to information, reports and documents which the Independent Actuary may reasonably consider material to the formulation

of an opinion on the likely effects of the proposed scheme on the life insurance policyholders of the insurers concerned. An actuary should ensure that this is understood by the parties concerned before accepting an appointment.

- 2.4.5 If, for any reason other than the abandonment of the proposed scheme, the Independent Actuary's appointment is terminated prior to the completion of the agreed duties, he/she should consider whether the circumstances are such that he/she should make them known to the Prudential Authority. Examples of such a circumstance are where the Independent Actuary found evidence that the transaction is not in the best interest of some or all of the parties, or threaten the financial soundness of one of the entities in question.
- 2.5 If the Independent Actuary resigns the appointment prior to the completion of the agreed duties, then he/she must provide reasons for this decision.
- 2.6 Any actuary offered an appointment as an Independent Actuary should enquire if the appointment has previously been accepted and subsequently vacated by another actuary. If so, he/she should take all reasonable steps to establish the circumstances relating to the termination of the previous actuary's appointment.

### **3 The Extent of the Independent Actuary's Involvement**

- 3.1 Given that the Prudential Authority is unlikely to sanction the proposed scheme if the Independent Actuary indicates serious dissatisfaction with its terms, it is in the interest of all the parties that, once an actuary has been appointed to that role, he/she is informed of the draft terms and provisions of the proposed scheme at the various stages of its development. The Independent Actuary should therefore actively seek such information and be prepared to indicate with impartiality any terms or provisions which by their inclusion in or omission from the proposed scheme as drafted, as the case may be, would be likely to cause him/her to express reservations about the proposed scheme in the report.
- 3.2 The amount of investigative work that the Independent Actuary will need to do will depend on the circumstances of the case. The Independent Actuary should communicate with the Heads of Actuarial Function of all affected insurers, and consider their reports on the financial soundness of the proposed scheme.
  - 3.2.1 Depending on the nature of the proposed scheme, it may be reasonable for the Independent Actuary to expect the Head of Actuarial Function of the insurer(s) party to the proposed scheme to provide information supplementary to their report as the Independent Actuary may require. This may include, but is not restricted to, information relating to the valuations of the assets and liabilities, and to disclose information on matters such as how bonus rates have been determined in recent years in respect of any with-profit business.
  - 3.2.2 There may also be other actuarial reports to one or more of the parties to the proposed scheme, access to which would assist the Independent Actuary in appraising the terms of the proposed scheme. The Independent Actuary must, however, form an independent judgment on the quality of the information supplied, the reasonableness of the work of other actuaries, and, therefore, the extent of any investigative or verification work the Independent Actuary needs to do.

- 3.3 The Independent Actuary might be asked to attend a meeting with the policyholders organised by the management of one of the insurers. If so, the Independent Actuary should consider carefully whether to do so would give the impression that he/she is not independent. If the Independent Actuary decides to attend the meeting, his/her position should be properly explained, and nothing that the Independent Actuary does or says at the meeting should undermine the perception of independence.
- 3.4 In the case where the Independent Actuary has sought independent specialist advice, he/she should evaluate the advice provided for completeness and ensure he/she has understood the implications for his/her own views and reporting.
- 3.5 Special considerations may also be called for where the proposed scheme forms part of a chain of events including restructure, reinsurance or changes in ownership, and the Independent Actuary should seek explanations regarding corporate plans to the extent necessary to allow the formulation of an informed opinion.
- 3.6 If the Head of Actuarial Function of any affected insurer has held that position only for a relatively short period of time, it may be appropriate for the Independent Actuary to consult with the previous Head of Actuarial Function as well.
- 3.7 Other documents the Independent Actuary may wish to examine in relation to the insurers involved in the proposed scheme could include but are not limited to:
- 3.7.1 Its memorandum and articles of association and, if the insurer is currently trading, its latest annual financial statements and regulatory returns.
  - 3.7.2 The report submitted by the Head of Actuarial Function to the insurer's directors, covering the impact on financial soundness of the proposed scheme;
  - 3.7.3 The latest ORSA report, particularly in instances where one or more of the insurers involved requires an out-of-cycle ORSA;
  - 3.7.4 Policies for managing risk, in line with Prudential Standard GOI 3. In particular, the capital management, but also the ALM, credit risk, investment, underwriting and reinsurance policies;
  - 3.7.5 Any reports, actuarial or otherwise, dealing specifically with policyholders' reasonable expectations;
  - 3.7.6 The bases used for illustrations of possible future benefits;
  - 3.7.7 Sample quotations and policy documents which state or illustrate how policies will participate in profits, qualify for discretionary benefits, or be subject to future variations in charges;
  - 3.7.8 Any reports dealing with the composition of any portfolio of assets to be transferred, the appropriateness of such assets when compared to the liabilities, and the relevant investment policies of the insurers;
  - 3.7.9 Any reports evaluating alternative schemes;
  - 3.7.10 For proposed schemes involving a transfer of business, any reports detailing the ability of the transferee insurer to absorb the business transferred into their systems environment;

- 3.7.11 Relevant and material correspondence with any regulatory authority, including the Prudential Authority by any related insurer;
  - 3.7.12 Reinsurance, sale or amalgamation agreements; and
  - 3.7.13 Proposed communication with affected policyholders.
- 3.8 In addition, the Independent Actuary should gather information on the operational plans of any insurer which, after the scheme is effected, will have policyholders who fall within the ambit of the Independent Actuary's report.
- 3.9 While not expected to provide a formal opinion, the Independent Actuary should consider whether experts with relevant knowledge and experience assessed the tax impact of the proposed scheme.

#### **4 Guidance on the content and likely use of the Independent Actuary's report**

- 4.1 The Independent Actuary, in discharging his/her responsibilities as agreed in the brief with the Prudential Authority or other party, will need to prepare a report.
- 4.2 Even though the Prudential Authority may commission the report, the full report may be made available for inspection by any person and therefore by any policyholder or shareholder. The Independent Actuary should therefore bear in mind in preparing the report that policyholders and shareholders may wish to rely on it when making decisions.
- 4.3 Similar considerations apply to any summary of the Independent Actuary's report that is to be sent to policyholders and shareholders of the insurers concerned. It is the Independent Actuary's responsibility to ensure that the contents of the summary are adequate, and that neither it nor any document that will accompany it gives a misleading impression of the findings in the full report. The summary need not contain background factual matter contained in the accompanying documents.
- 4.4 It follows from 4.2 that the Independent Actuary needs to consider and report as appropriate on the likely effects of the proposed scheme on any person who has an interest in the matter which may include, but is not limited to, policyholders of any affected insurer whether or not a particular policy will be transferred or not.
- 4.5 Whilst not directly concerned with the effect of the proposed scheme on those who become policyholders on or after the date when the proposed scheme will become effective, the Independent Actuary will need to consider whether the development plans of any of the affected insurers involved may adversely affect policyholders with whom he/she is concerned.
- 4.6 The Independent Actuary should state clearly whether or not reports covering alternative arrangements were considered and to what extent he/she evaluated the relative merits of these alternative arrangements.
- 4.7 The contents of the Independent Actuary's report will be influenced by the circumstances of each case. The following are, however, some of the matters which the Independent Actuary should, where appropriate, cover in it:
- 4.7.1 The name of the party that has appointed the Independent Actuary and a statement of who is bearing the costs of that appointment.
  - 4.7.2 A statement of the Independent Actuary's professional qualification.

- 4.7.3 Whether or not the Independent Actuary, and the firm they represent, has a direct or indirect interest in any of the parties that might be thought to influence the Independent Actuary's independence; if the Independent Actuary, or the firm they represent, has an interest, it should be disclosed.
- 4.7.4 The scope of the report.
- 4.7.5 The purpose of the proposed scheme.
- 4.7.6 A summary of the terms of the proposed scheme in so far as they are relevant to the contents of the Independent Actuary's report.
- 4.7.7 What information, documents and reports the Independent Actuary has considered in relation to each of the insurers involved in the proposed scheme and whether there was any additional information that was requested but not provided.
- 4.7.8 The likely effect on the current and future financial soundness of the affected insurers.
- 4.7.9 The cost and tax consequences of the proposed scheme, in so far as these may affect policyholders' benefits.
- 4.7.10 The effect of the proposed scheme on the security of policyholders' contractual benefits.
- 4.7.11 The effect of the proposed scheme on the nature and value of any rights of policyholders to participate in profits. In particular, if any such rights will be diluted by the proposed scheme, how any compensation being offered to those policyholders as a group (which might take the form of an injection of funds, an allocation of shares, or cash payments) compares with the value of that dilution, and whether the extent and method of its proposed division is equitable as between different classes and generations of policyholders.
- 4.7.12 The likely effect of the proposed scheme on the approach used to determine the amounts of non-guaranteed benefits such as reversionary and terminal bonuses, vested and non-vested bonuses and surrender values, and the levels of discretionary charges, for example under unit-linked policies; and what safeguards are provided by the proposed scheme against a subsequent change of approach that could act to the detriment of existing policyholders of either insurer and is not due to external circumstances beyond its control.
- 4.7.13 The likely effects of the proposed scheme on matters such as investment management, new business strategy, administration, expense levels and valuation bases, in so far as they may affect the ability of the insurers to meet throughout the lifetime of existing policies the reasonable expectations of the holders of those policies.
- 4.7.14 In the case of a mutual company involved in the proposed scheme, the effect of the proposed scheme on the proprietary rights of members of that insurer and, in particular, the significance of any loss or dilution of the rights of those members to secure or prevent further constitutional changes which could affect their expectations as policyholders (for example, losing the ability to change the board and therefore control over a board's decision to convert to a closed fund). The Independent Actuary should state

whether, and to what extent, members will receive compensation under the proposed scheme for any diminution in their proprietary rights, and comment on its appropriateness. Also, when commenting on the fairness of the proposed scheme, the Independent Actuary should pay particular attention to any differences in treatment between policyholders with voting rights and those without. It will assist the Independent Actuary if the issues involved are adequately explained in the directors' circular to policyholders.

- 4.7.15 Where a particular portfolio of assets will form part of a transfer, the effect of the transfer of such assets on the relevant investment policies of the transferee and transferor insurers and any impact that the transfer may have, positive or negative, on the ability of the relevant insurer to satisfy the reasonable benefit expectations of policyholders.
  - 4.7.16 Which matters, if any, the Independent Actuary has considered or evaluated in the report, that might be relevant to policyholders' consideration of the proposed scheme.
  - 4.7.17 The Independent Actuary's overall assessment of the likely effects of the proposed scheme on the reasonable benefit expectations of life insurance policyholders; whether the Independent Actuary is satisfied that for each of the insurers concerned the proposed scheme is equitable to all classes and generations of its policyholders; and whether for each relevant insurer the proposed scheme places obligations on the directors, or provides for future certification by its Head of Actuarial Function, sufficient in the Independent Actuary's opinion for the protection of those expectations.
- 4.8 Where the Independent Actuary expresses an opinion in the report, he/she should outline the reasons for it.
  - 4.9 Although there is no specified wording for the opinion, a satisfactory opinion could include the following components:
    - 4.9.1 With regard to the rights of policyholders, a statement that policyholders' rights will be unaffected or protected by the proposed scheme or will be cancelled in exchange for appropriate consideration;
    - 4.9.2 In the event of the sale of all or substantially all the assets or the reinsurance of policies, on an assumption basis, with regard to the security of policyholders' benefits, a statement that, based on the current and projected future financial conditions of the transacting insurers, the security of benefits for policies being ceded between insurers will remain satisfactory or be improved after implementation of the proposed scheme, and that the security of benefits with respect to those policies in either insurer that are not being moved will be unaffected or improved by the proposed scheme;
    - 4.9.3 In the event of an amalgamation of insurers, with regard to the security of policyholders' benefits, a statement that, based on the current financial condition of the transacting insurers and the pro forma projected financial condition of the amalgamated insurer, the security of benefits for all policies in the insurers will remain satisfactory or be improved after implementation of the proposed scheme;
    - 4.9.4 With regard to the interests of participating policyholders and policyholders with non-fully guaranteed policies and to the service that will be provided

to them, a statement that the amount(s) to be allocated to the appropriate participating account(s) is (are) calculated on an appropriate basis consistent with methods used by the ceding insurer, and that the reasonable benefit and service expectations of participating policyholders and policyholders with non-fully guaranteed policies are not diminished by the proposed scheme; and

- 4.9.5 With regard to the interests of non-participating policyholders with fully guaranteed policies and to the service that will be provided to them, a statement that the proposed scheme will preserve their benefit and service expectations.