

Compliance Checklist for section 146-5 transfers

This compliance checklist applies to a proposed transfer under section 146-5 of the *Private Health Insurance Act 2007* (the **Act**) where the proposal involves the transfer of all or some of the insurer's policies to the fund or funds of another insurer

Obligation	Reference	Y/N
The parties to the arrangement must be registered as insurers under the Act.	s.146-5(1) of the Act; clause 1 recital A of the Deed	
The insurance policies referred to in the arrangement must transfer all the policies of the transferring fund (s.146-5(1)(b)(i) or transfer all of the policies that belong to one or more policy groups of the fund (s.146-5(1)(b)(ii)).	s.146-5(1)(b) of the Act; clause 1 recital B of the Deed	
Application for PHIAC approval of the arrangement must be made jointly by the transferee and transferor.	s.146-5(2)(a) of the Act; clause 1 recital F of the Deed	
Application for approval of the arrangement must be on the approved form.	s.146-5(2)(a) of the Act; clause 1 recital F of the Deed	
The transferee must within 28 days of the arrangement taking effect notify PHIAC of the arrangement.	s.146-5(6) of the Act;	
The arrangement for the transfer must be in writing, signed and dated.	Rule 11(2) of the Rules; clause 1 recital F of the Deed	
The arrangement must identify the transferring fund or funds.	Rule 11(3)(a) of the Rules; clause 1 recital B of the Deed	
The arrangement must identify the receiving funds or funds.	Rule 11(3)(b) of the Rules; clause 1 recital C of the Deed	
The arrangement must specify the transfer date or a means of determining that date (which	Rule 11(3)(c) of the Rules; clause 3.1 of the Deed	

Obligation	Reference	Y/N
must be after the date of PHIAC's approval).		
The parties must submit with the application a copy of the arrangement.	Rule 12(1)(a) of the Rules	
The parties must submit with the application a copy of a business plan for each receiving fund for the first 36 months of operation from the transfer date which addresses the matters in Rule 12(1)(b)(i)-(vii).	Rule 12(1)(b) of the Rules	
The parties must submit with the application a certification by the transferee of compliance for each receiving fund, confirming that the governing body of the insurer has considered the arrangement and that it meets and will meet the requirements of the Act, Regulations and Rules.	Rule 12(1)(c) of the Rules	
The parties must submit with the application a report of the transferee's appointed actuary for each receiving fund which provides the opinion of the actuary on the matters set out in rule 12(1)(d)(i)-(iv).	Rule 12(1)(d) of the Rules	
The parties must submit with the application a certification by the transferor of compliance for each receiving fund, confirming that the governing body of the insurer has considered the arrangement and that it meets and will meet the requirements of the Act, Regulations and Rules.	Rule 12(1)(e) of the Rules	
The parties must submit with	Rule 12(1)(f) of the Rules	

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the application a report of the transferor's appointed actuary for each receiving fund which provides the opinion of the actuary on the matters set out in Rule 12(1)(f)(i)-(iii).		
Either party must submit with the application a copy of any statement issued to policy holders of the insurers informing them of the change to the company structure as issued in accordance with subsection 93-20(2) of the Act.	Rule 12(1)(g) of the Rules	
The transferor must submit, as applicable, with the application a copy of any statement issued to policy holders identifying the health benefit fund to which their policy will be referable in accordance with subsection 93-20(4) of the Act.	Rule 12(1)(h) of the Rules	
Either party must submit with the application a summary of any submissions from a policy holder received in response to the statements.	Rule 12(1)(i) of the Rules	
Transfers involving transfers of all policies		
If the arrangement is for the transfer of all the insurer's policies, the arrangement must state this.	Rule 11(3)(d)(i) of the Rules; clause 1 recital B of the Deed	
The net asset position of the fund immediately after the arrangement takes effect must not be greater than zero	s.146-5(3)(c) of the Act	
Transfers not involving transfer of all policies		
If the arrangement is not to transfer all the insurer's policies, the arrangement must	Rule 11(3)(d)(ii) of the Rules	

Obligation	Reference	Y/N
state which policy groups are to be transferred.		
For each receiving fund the arrangement must specify the assets, and the liabilities incurred for the purposes of the transferring fund which are to become assets and liabilities of the receiving fund.	Rule 11(3)(f) of the Rules; clause 8.2.3 of the Deed	
For all transfers		
The arrangement must provide for carrying out of the requirements under the general law for transfer of the assets and liabilities, including obtaining consents and novations, and execution and lodgement of documents.	Rule 11(3)(g) of the Rules; clause 8.2.3(a)-(i) of the Deed	
The arrangement must impose on the transferor, in relation to each asset that at law requires registration in order to be transferred under the arrangement and which will not have been transferred as at the transfer date, obligations to provide assistance reasonably required by the transferee.	Rule 11(3)(h)(i) of the Rules	
The arrangement must impose on the transferor, in relation to each asset that at law requires registration in order to be transferred under the arrangement and which will not have been transferred as at the transfer date, obligations to hold the asset on trust for the transferee on the terms set out in Schedule 1.	Rule 11(3)(h)(ii) and Schedule 1 of the Rules (Items 1(a)-(d) of Schedule 1 of the Rules set out terms that must be included); clause 12.1 of the Deed	
The arrangement must impose on the transferor in relation to each asset that cannot be	Rule 11(3)(i) and Schedule 1 of the Rules (Items 1(a)-(d) of Schedule 1 of the Rules set out terms that must be included);	

Obligation	Reference	Y/N
transferred under the general law, that the asset is held on trust for the transferee on the terms set out in Schedule 1	clause 12.1 of the Deed	
The arrangement must impose on the transferee, in relation to each liability the transfer of which will not be completed on the transfer date, obligations to take all such steps as the transferor reasonably requires to achieve the transfer under the general law.	Rule 11(3)(j)(i) of the Rules	
The arrangement must impose on the transferee, in relation to each liability the transfer of which will not be completed on the transfer date, obligations to indemnify the transferor against any claims made on or after the transfer date which are allegedly based on the liability. The obligation to indemnify is conditional on the transferor responding to the claim in a time reasonable to the transferee, including allowing the transferee to settle and/or defend the claim at its own expense.	Rule 11(3)(j)(ii) of the Rules; clause 14.1.2 of the Deed	
The arrangement must provide the transferee with access to business records as reasonably required for the transferee to act as insurer for the transferred policies.	Rule 11(3)(k) of the Rules; clause 6.1 and 8.2.3(i) of the Deed	
Each party must, prior to the transfer date, procure any amendment of its constitution and rules required for the arrangement to take place.	Rule 12(2) of the Rules;	
Each party must take all steps required under law that are	Rule 12(3) of the Rules	

Obligation	Reference	Y/N
required for the arrangement to take place.		
The transferor must give to the transferee possession of the physical assets of the transferring fund.	Item 2(a) of Schedule 1 of the Rules	
The transferor must give to the transferee certificates of title, registration certificates and other documents which evidence of ownership of the assets of the transferring fund.	Item 2(b) of Schedule 1; clause 8.2.3(b) of the Deed	
The transferor must give to the transferee executed assignments or novations of relevant contracts and the consent of relevant third parties to the assignment or novation.	Item 2(c) of Schedule 1 of the Rules; clause 8.2.3(c) of the Deed	
The transferor must give to the transferee executed assignments or novations of leases and evidence of the written consent of the landlord to the assignment or novation.	Item 2(d) of Schedule 1 of the Rules; clause 8.2.3(d) of the Deed	
The transferor must give to the transferee occupation of any leasehold premises which are assets of the receiving fund.	Item 2(e) of Schedule 1 of the Rules; clause 8.2.3(a) of the Deed	
The transferor must give to the transferee executed assignments or change of ownership forms to transfer intellectual property of the transferring fund.	Item 2(f) of Schedule 1 of the Rules; clause 8.2.3(e) of the Deed	
The transferor must give to the transferee an irrevocable notice of cancellation of signatories for each bank accounts containing fund assets.	Item 2(g) of Schedule 1 of the Rules; clause 8.2.3(f) of the Deed	

Obligation	Reference	Y/N
The transferor must give to the transferee a notice of consent to the appointment of the transferee's nominees as signatories for each bank account containing fund assets.	Item 2(g) of Schedule 1 of the Rules; clause 8.2.3(f) of the Deed	
The transferor must give to the transferee a written direction to each bank that holds fund assets to, on and from the transfer date, act in relation to the fund bank account only on the directions of the transferee.	Item 2(h) of Schedule 1 of the Rules; clause 8.2.3(g) of the Deed	
The transferor must give to the transferee all notices, executed registrable transfers, certificates and other instruments required to transfer of assets transfer the assets to the transferee.	Item 2(i) of Schedule 1 of the Rules; clause 8.2.3(h) of the Deed	
The transferor must give to the transferee all notices, executed registrable transfers, certificates and other instruments required to conduct the business of the fund.	Item 2(j) of Schedule 1 of the Rules; clause 8.2.3	

PHIAC
25 March 2008