

# THE SOFT MARKET – THE TOOLS FOR TOMORROW’S RUN-OFF

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# 1. Introduction

- The “tools” are broadly the same ... so
  - acquisitions / disposals / portfolio transfers
  - run-off management
  - commutations and schemes
- **BUT** - changes to the ways in which these tools are being used

## 2. Changing Market

- Transactional activity has tailed off
- Finance is more difficult, opportunities are more scarce
- Firms still need to deal with run-off
- The drivers are changing

## 3. Capital Concerns

- Firms are focusing on capital
- Exiting / restructuring business as a capital management tool
- Solvency II is now clearly on the agenda
- ARC lobbying on basis that capital treatment disproportionate and reporting and data requirements inappropriate, but no guarantee of change

## 4. Possible Activity

- Portfolio transfers to combine / consolidate / separate / dispose of businesses
- Group reorganisations
- Cross border mergers
- Run-off management – short and long term
- Schemes and commutations

## 5. Portfolio Transfers

- Extremely flexible and certain
- Extensively used in connection with run-off businesses
- In the UK at least, both the business and associated assets can be transferred, including outwards reinsurance
- Have moved on – changes in how used and increased scope and frequency of use

## 6. 2008 Changes

- Changes for Equitas Scheme
- Greater certainty around transfer of outwards reinsurance
- Court can override express restrictions on transfer
- Reinsurers must be notified but derogations can be granted
- **BUT** ... still need to be aware of issues on cross border transfers

## 7. Increasing Use Cross Border

- Often intra group
- Aviva and Zurich
- Zurich – Italy / Spain / Portugal and Germany – to branches of Irish Company
- Aviva – Irish Holding Company with European branch network

## 8. VAT

- Swiss Re case
  - a transfer of insurance / reinsurance contracts is not an “insurance or reinsurance” transaction
  - did not consider Transfer of a Going Concern (“TOGC”)
- Qualifying TOGCs should be unaffected
- Intra VAT group should be okay
- But cross border transfers need careful consideration

## 9. Cross Border Mergers?

- Merger Directive (Directive 2005 / 56 / EC)
- “True” merger – transferor ceases to exist
- Intra-group reorganisations
- No need for counterparty consent
- May be easier to recognise than portfolio transfer in some jurisdictions
- Possible use in conjunction with portfolio transfer

## 10. Run-off Management

- In house / outsource
- Increased availability of resource?
- Some firms reluctant to dispose of run-off responsibilities
- Some firms want to see how the market develops

# 11. Schemes and Commutations

- Certainty and finality benefits of Schemes
- But there are those who don't agree
- Possibility of further challenges
- Use of commutations