

**IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
COMPANIES COURT (ChD)**

IN THE MATTER OF MARKEL INTERNATIONAL INSURANCE COMPANY LIMITED

and

IN THE MATTER OF MARKEL INSURANCE SOCIETAS EUROPAEA

and

IN THE MATTER OF THE FINANCIAL SERVICES AND MARKETS ACT 2000

SCHEME

(pursuant to Part VII of the Financial Services and Markets Act 2000)

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Part A – Definitions and interpretation

1 Definitions and interpretation

1.1 In this Scheme, unless the subject or context requires otherwise, the following expressions bear the meanings respectively set opposite them:

Actuary means the person appointed by the relevant (re)insurer from time to time to perform the "actuarial function", as described in the Conditions Governing Business chapter of the PRA Rulebook

Applicable Privacy Laws means all applicable data protection laws, rules and regulations, including Directive 95/46/EC of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data, as amended or replaced from time to time (including by the General Data Protection Regulation), and any applicable national laws, rules and regulations implementing the foregoing

BaFin means the Federal Financial Supervisory Authority (*Bundesanstalt für Finanzdienstleistungsaufsicht*) or such other governmental, statutory or other authority or authorities as shall from time to time perform such prudential and supervisory and conduct functions in relation to General Business carried on in Germany as are at the date of this Scheme allocated to the BaFin under the German Insurance Supervisory Act (*Versicherungsaufsichtsgesetz*)

Board means, in relation to a company, the board of directors from time to time of that company

CA 2006 means the Companies Act 2006

Court means the High Court of Justice in England and Wales

Dutch Assets means any and all Transferred Assets relating to the Dutch branch of the Transferor and/or relating to the Dutch Policies

Dutch Liabilities means any and all Transferred Liabilities relating to the Dutch branch of the Transferor and/or relating to the Dutch Policies

Dutch Policies means any and all Policies written and/or assumed by or on behalf of the Transferor through its branch in the Netherlands

EEA means the European Economic Area [and EEA State means a state which is a contracting party to the agreement on the EEA signed at Oporto on 2 May 1992;](#)

Effective Date means the time and date on which this Scheme shall take effect in accordance with clause 11

Encumbrance means any mortgage, charge, pledge, security assignment, lien, option, restriction, right of first refusal, right of pre-emption, third party right or interest, any other encumbrance or security interest of any kind and any other type of preferential arrangement (including, without limitation, title transfer and retention agreements) having a similar effect

Excluded Assets means:

- (a) the corporate minute books and stock records of the Transferor; and any other books and records to the extent relating to any other Excluded Asset;
- (b) subject to clause 7.1(c), all property not used (in whole or in part) in the conduct of the operation of the Transferred Business;
- (c) the Retained Records;
- (d) all cash and other investments other than those held as reserves for the Transferred Business, save to the extent comprised in Transferred Assets;
- (e) any right to repayment of taxation or any available taxation credits;
- (f) ~~(a)~~ the rights, benefits and powers of the Transferor under or by virtue of the Excluded Policies; ~~and~~
- (g) ~~(b)~~ any property of the Transferor attributable to the Transferred Business (including any right or benefit of the Transferor under any Transferred Policy) which the Transferor and the Transferee agree prior to the Effective Date should not be transferred at all; and
- (h) all rights, benefits and powers under the Residual Policies Reinsurance Arrangement

Excluded Intellectual Property means the Intellectual Property that is owned by the Transferor and which, on the Effective Date, has no substantial application to the Transferred Business

Excluded Liabilities means any liability whatsoever of the Transferor:

- (a) that is attributable to or connected with an Excluded Asset;
- (b) which the Transferor and the Transferee agree prior to the Effective Date should not be transferred at all; ~~or~~
- (c) which cannot be transferred to or vested in the Transferee for any other reason on the Effective Date other than the Residual Liabilities;
- (d) that is to make a payment of or in respect of or of an amount representing, equal to, equivalent to, or deemed to be, taxation (whether actual, present, future, contingent or deferred); or

(e) [all obligations and liabilities under the Residual Policies Reinsurance Arrangement](#)

Excluded Policies means ~~policies~~[those Policies](#):

- (a) which the Transferor and the Transferee agree prior to the Effective Date should not be transferred; or
- (b) in relation to which the ~~policyholder~~[holder of or beneficiary](#) is included on any of the Sanctions Lists

FCA means the Financial Conduct Authority, or such other governmental, statutory or other authority or authorities as shall from time to time perform such regulatory and supervisory functions in relation to General Business carried on in the United Kingdom as are at the date of this Scheme allocated to the Financial Conduct Authority under FSMA

FCA Glossary means the Glossary of the FCA Handbook

FCA Handbook means the handbook of rules and guidance issued by the FCA from time to time pursuant to FSMA

FSMA means the Financial Services and Markets Act ~~2000, as amended~~[2000](#)

General Business means the business of effecting or carrying out general insurance contracts as principal, being contracts falling within Part 1 of Schedule 1 to the RAO or (as the context requires) Annex 1 to the German Insurance Supervisory Act (*Anlage 1 zum Versicherungsaufsichtsgesetz*)

General Data Protection Regulation means:

- (a) Regulation (EU) 2016/679 of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation); and
- (b) laws implementing Regulation 2016/679

German Assets means any and all Transferred Assets relating to the German branch of the Transferor and/or relating to the German Policies

German Liabilities means any and all Transferred Liabilities relating to the German branch of the Transferor and/or relating to the German Policies

German Policies means any and all Policies written and/or assumed by or on behalf of the Transferor through its branch in Germany

Governmental Authority means any national, supra-national, federal, state, provincial or local government, political subdivision, governmental, regulatory, department, bureau, board or other administrative authority, instrumentality, agency, body or commission, self-regulatory organization or any court (including, without limitation, the Court), tribunal, or judicial or arbitral body

Group means in respect of any person:

- (a) that person;
- (b) its holding companies from time to time;
- (c) its subsidiaries from time to time; and
- (d) each of the subsidiaries from time to time of any such holding company

Head Office Assets means any and all Transferred Assets relating to the Head Office Policies

Head Office Liabilities means any and all Transferred Liabilities relating to the Head Office Policies

Head Office Policies means any and all Policies (other than a ~~policy~~Policy which relates to a risk or risks situated solely in the United Kingdom) written and/or assumed by or on behalf of the Transferor:

- (a) on a freedom of services basis through its head office in the United Kingdom prior to the Effective Date in accordance with the Passporting Regulations;
- (b) as a result of the Transferor's merger with Markel Europe Plc on 1 July 2015 (which included business written by the Transferor's former Bermuda branch); and
- (c) as a result of the re-allocation of business from the Transferor's former branches in Belgium and Sweden to the Transferor's head office upon the closure of such branches; and
- (d) otherwise written and/or assumed by the Transferor other than through any of the Dutch, Irish, German, French and Spanish branches,

in each case, which wholly or partly relates to a risk or risks situated in any EEA State, except that if a ~~policy~~Policy relates to a risk or risks situated both in the EEA and outside the EEA, only the part of the ~~policy~~Policy which relates to a risk or risks situated in any EEA State (other than the United Kingdom);

~~holding company means a holding company (as defined by section 1159 CA 2006) or a parent undertaking (as defined by section 1162 CA 2006)~~

Independent Expert means Mr Niranjn Nathan, of Ernst & Young LLP, or any other independent expert approved pursuant to section 109(2)(b) of FSMA

Intellectual Property means all of the following, whether protected, created or arising under the laws of any jurisdiction and whether or not registered or published: copyrights; moral rights; database rights; design rights; trade secrets; Trademarks; all rights arising from or in respect of domain names and domain name registrations and reservations; intellectual property rights arising from or in respect of technology; and all other applications and registrations related to any of the rights set forth in this definition and all rights therein whether provided by international treaty, convention or otherwise

Intermediary means any broker, agent, employee benefit consultant, independent financial adviser or other intermediary that is not an appointed representative (as defined in the FCA Glossary) and that has entered into an agreement (and whether or not reduced to writing) with (as the case may be) the Transferor to distribute the Transferor's products in respect of the MIICL EEA Business from time to time

Irish Assets means any and all Transferred Assets relating to the Irish branch of the Transferor and/or relating to the Irish Policies

Irish Liabilities means any and all Transferred Liabilities relating to the Irish branch of the Transferor and/or relating to the Irish Policies

Irish Policies means any and all Policies, (other than a ~~policy~~Policy which relates to a risk or risks situated solely in the United Kingdom) written and/or assumed by or on behalf of the Transferor through its branch in Ireland which wholly or partly relates to a risk or risks situated in any EEA State, except that if a ~~policy~~Policy relates to a risk or risks situated both in the EEA and outside the EEA, only the part of the ~~policy~~Policy which relates to a risk or risks situated in any EEA State (other than the United Kingdom);

MIICL EEA Business means:

- (a) the business carried on by the Transferor comprising the underwriting, management and administration of the MIICL EEA Policies and all associated liabilities of the MIICL EEA Policies; together with
- (b) all activities carried on by the Transferor in relation or in connection thereto together with the rights and obligations of the Transferor under the Transferred Assets and the Transferred Liabilities,

but excluding the Excluded Assets, the Excluded Policies and the Excluded Liabilities] **Note:**
transferring assets TBD;

MIICL EEA Policies means any and all of the:

- (a) ~~(e)~~ Dutch Policies;
- (b) ~~(d)~~ German Policies;
- (c) ~~(e)~~ Irish Policies;
- (d) ~~(f)~~ Spanish Policies; and
- (e) ~~(g)~~ Head Office Policies,

and **MIICL EEA Policy** shall mean any one of them

MIICL EEA Policyholder means any person holding a MIICL EEA Policy

Order means an order made by the Court pursuant to section 111 of FSMA sanctioning this Scheme and any order (including any subsequent order) in relation to this Scheme made by the Court pursuant to section 112 of FSMA

Payment has the meaning in clause 10.4

Part 4A permission means a permission to carry on regulated activities granted under part 4A of FSMA, or having effect as if so given

Passporting Regulations means the Financial Services and Markets Act 2000 (EEA Passport Rights) Regulations 2001 (SI 2001/2011)

[Permits means any approvals, authorisations, consents, registrations, franchises, licences, permits or certificates of a Governmental Authority](#)

Policies ~~has the meaning in the Policyholder Order~~ [means all policies \(as defined in the Policyholder Order\), treaties, facultative certificates, binders, slips and other contracts of or for insurance, reinsurance or retrocession and all binding quotations \(and including at any time any constituent part of a Policy which gives rise to any separately identifiable benefit\) written by or on behalf of or assumed by the Transferor as insurer, reinsurer or retrocessionaire \(where such policy, treaty, facultative certificate, binder, slip or other contract was not written or assumed solely by or on behalf of the Transferor, to the extent and only for and in respect of the proportion written by or on behalf of the Transferor\) \(including, without limitation, all supplements, endorsements and riders thereto and all ancillary agreements in connection therewith\) prior to the Effective Date. For the avoidance of doubt, Policies shall include any](#)

[policies falling within class 15 of Part 1 of Schedule 1 to the Regulated Activities Order including surety bonds, admiralty bonds, performance bonds, appeals bonds and other similar surety or bond products](#)

Policyholder Order means the Financial Services and Markets Act 2000 (Meaning of "Policy" and "Policyholder") Order 2001 (SI 2001/2361)

PRA means the Prudential Regulation Authority, or such other governmental, statutory or other authority or authorities as shall from time to time perform such prudential and supervisory functions in relation to General Business carried on in the United Kingdom as are at the date of this Scheme allocated to the Prudential Regulation Authority under FSMA

PRA Rulebook means the rulebook of rules issued by the PRA from time to time pursuant to FSMA

Proceedings means any action or other legal or administrative proceedings or step (whether direct or indirect, by way of a claim, demand, legal proceedings, execution of judgement, arbitration, complaint or otherwise howsoever), including:

- (a) arbitration;
- (b) mediation;
- (c) other dispute resolution procedure (whether or not it involves submission to any court);
- (d) judicial, quasi-judicial, administrative or regulatory review or process; and
- (e) complaint or claim to any ombudsman, including the UK Financial Ombudsman Service

RAO means the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (SI 2001/544)

Residual Assets means:

- (a) the Residual Policies and the rights, benefits and powers of the Transferor under or by virtue of the Residual Policies;
- (b) any property of the Transferor attributable to the Residual Policies or the Transferred Business (including any right, benefit or power of the Transferor under any Transferred Policy) in respect of which the Court has declined to order the transfer to the Transferee under section 112(2) of FSMA on the Effective Date;

[\(c\) property held by the Transferor in an amount equal to the technical reserves for the Residual Policies as reflected in the books and records of the Transferor;](#)

- (d) ~~(e)~~ any property of the Transferor attributable to the Residual Policies or the Transferred Business which is outside the jurisdiction of the Court or in respect of which the transfer pursuant to an order of the Court is not recognised by the laws of the jurisdiction in which the property is situated or in respect of which further steps are necessary to effect the transfer pursuant to the laws of the jurisdiction in which such property is situated;
- (e) ~~(d)~~ any property of the Transferor attributable to the Residual Policies or the Transferred Business which cannot be transferred to or vested in the Transferee on the Effective Date for any other reason;
- (f) ~~(e)~~ any property of the Transferor attributable to the Residual Policies or the Transferred Business (including any right, benefit or power of the Transferor under any Residual Policy or any Transferred Policy) where the Transferor and the Transferee agree prior to the Effective Date that its transfer should be delayed;
- (g) ~~(f)~~ any other property of the Transferor attributable to the Residual Policies or the Transferred Business (including any right, benefit or power under a Residual Policy, a Transferred Policy or a Transferred Reinsurance Agreement) in respect of which:
 - (i) the Court makes an order as to the enforceability of an interest or right as referred to in section 112A(2)(b) of FSMA; and
 - (ii) the Transferor and the Transferee have agreed in writing prior to the Effective Date that its transfer should be delayed; and
- (h) ~~(g)~~ any proceeds of sale or income or other accrual or return whatsoever, whether or not in any case in the form of cash, earned or received from time to time after the Effective Date but prior to any relevant Subsequent Transfer Date in respect of any such property referred to in clauses (a) to ~~(eg)~~ of this definition,

but excluding any Excluded Assets ~~and any rights, benefits and powers under or relating to any Residual Policies Reinsurance Arrangement~~

Residual Liability means any liability whatsoever of the Transferor relating to the MIICL EEA Business (other than under an Excluded Policy):

- (a) to the extent that is attributable to or connected with a Residual Asset and arises at any time before the Subsequent Transfer Date applicable to that Residual Asset;
- (b) in respect of which the Court has declined to order the transfer to the Transferee under section 112(2) of FSMA on the Effective Date;
- (c) in respect of which the Transferor and the Transferee agree prior to the Effective Date that its transfer should be delayed; or

- (d) which cannot be transferred to or vested in the Transferee for any other reason on the Effective Date

Residual Policies means the MIICL EEA Policies (other than any Excluded Policies):

- (a) written by the Transferor in the course of carrying on insurance business in the United Kingdom or any other EEA State, in respect of which:
- (i) for the purpose of paragraph 1(4) of Schedule 12 to FSMA, an EEA State other than the United Kingdom is the State in which the risk is situated; and
 - (ii) the PRA has not prior to the making of the Order by which the Court sanctions this Scheme provided the certificate referred to in paragraph 5 of Schedule 12 to FSMA with respect to the relevant EEA State which is the State in which the risk is situated;
- (b) written by the Transferor in the course of carrying on General Business but which are not otherwise capable of being transferred pursuant to FSMA at the Effective Date; or
- (c) in respect of which further steps are necessary to be taken following the Order before any such MIICL EEA Policies can be transferred and the Transferor and the Transferee agree that such steps should be taken,

and any further MIICL EEA Policy issued by the Transferor pursuant to the exercise of any right or option under a Residual Policy, but excluding any MIICL EEA Policy that is or becomes a Transferred Policy as described in clause 7.2

Residual Policies Reinsurance Arrangement means ~~at~~[the](#) reinsurance arrangement implemented in respect of Residual Policies pursuant to and in accordance with clause 7.1

[Retained Records](#) means [any accounting and financial and other records of the Transferor which the Transferor is required by law to retain, including ad valorem tax records](#)

Sanctions Lists means the sanctions lists maintained by the following as at the Effective Date:

- (i) the United Nations; (ii) the European Union; (iii) the US Department of the Treasury; (iv) Switzerland (including any relevant governmental or regulatory body); (v) the Office of Foreign Asset Control; (vi) Her Majesty's Treasury; and (vii) Canada (including any relevant governmental or regulatory body)

Scheme means this scheme in its original form or with or subject to any modification, addition or condition which may be approved or imposed in accordance with clause 13

Spanish Assets means any and all Transferred Assets relating to the Spanish branch of the Transferor and/or relating to the Spanish Policies

Spanish Liabilities means any and all Transferred Liabilities relating to the Spanish branch of the Transferor and/or relating to the Spanish Policies

Spanish Policies means any and all Policies, written and/or assumed by or on behalf of the Transferor through its branch in Spain

Split Insurance Policies means those Irish Policies and Head Office Policies in respect of which ~~some~~the applicable proportion only of the property attaching to and liabilities arising under those Policies shall transfer from the Transferor to the Transferee pursuant to this Scheme (as set out in the definitions of Irish Policies and Head Office Policies respectively) ~~in accordance with clause 5.6~~

Split Reinsurance Agreements means those outwards reinsurance agreements ~~which are to be split in accordance with clause 6.3 in respect of~~ to which the Transferor is ~~the reinsured~~a party at the Effective Date and which reinsure or purport to reinsure liabilities under Residual Policies and/or Transferred Policies and/or any other Policies, including (but without limitation) those listed in Schedule 2

Subsequent Transfer Date means, in relation to any Residual Asset or Residual Liability, the date (and each date) after the Effective Date on which such Residual Asset or Residual Liability as the case may be is or is to be transferred to the Transferee, namely:

- (a) in respect of any Residual Asset falling within clauses (a), (b), ~~(ed)~~ or ~~(de)~~ of the definition of Residual Assets and of any Residual Liability which is attributable to or connected with that Residual Asset or which falls within clauses (a), (b) or (d) of the definition of Residual Liability, the date on which any impediment to its transfer shall have been removed or overcome;
- (b) in respect of any Residual Asset falling within clauses ~~(ef)~~ or ~~(fg)~~ of the definition of Residual Assets and of any Residual Liability which is attributable to or connected with that Residual Asset or which falls within clause (c) of the definition of Residual Liability, the date on which the Transferor and the Transferee agree the transfer should take effect; and
- (c) in respect of any Residual Asset falling within clause ~~(gh)~~ of the definition of Residual Assets and of any Residual Liability which is attributable to or connected with that Residual Asset, the date on which such Residual Asset is received or earned by the Transferor

~~subsidiary means a subsidiary undertaking (as defined by section 1162 CA 2006) or a subsidiary (as defined by section 1159 CA 2006)~~

taxation means:

- (a) all forms of tax, levy, duty, charge, impost, withholding or other amount whenever created or imposed and whether of the United Kingdom or elsewhere, payable to or imposed by any authority responsible for the collection or management of any such tax, levy, duty, charge, impost, withholding or other amount; and
- (b) all charges, interest, penalties and fines incidental or relating to any sum falling within (a) above or which arise as a result of the failure to pay that sum on the due date or to comply with any obligation relating to it

Third Party Contracts means all contracts to which the Transferor is party or beneficiary which relate to the Transferred Business other than the MIICL EEA Policies and the Transferred Reinsurance Agreements including all of the Transferor's rights, benefits and powers under any indemnity agreements, collateral agreements, pledges, liens, guarantees and other repayment or reimbursement rights of the Transferor related to MIICL EEA Policies written by or on behalf of or assumed by the Transferor as insurer, reinsurer or retrocessionaire

Trademarks means all of the following, whether protected, created or arising under the laws of England and Wales or the laws of any other jurisdiction: trademarks, service marks, trade names, service names, trade dress, logos, designs, slogans and other identifiers of source, including all goodwill associated therewith and all common law rights, registrations and applications for registration thereof, and all rights therein provided by international treaties or conventions, and all extensions and renewals of any of the foregoing

Transferee means Markel Insurance Societas Europaea

Transferor means Markel International Insurance Company Limited

Transferred Assets means any and all property of the Transferor whatsoever and wheresoever situated comprised in or attributable to the Transferred Business as at the Effective Date including (without prejudice to the generality of the foregoing):

- (a) the rights, benefits and powers of the Transferor under or by virtue of the Transferred Policies (including the appropriate proportion of the rights, benefits and powers of the Transferor which will pass to the Transferee upon the deemed variation of the Split Insurance Policies pursuant to clause 5.6);
- (b) all rights and claims (present or future, actual or contingent and known or unknown) against any third party in relation to the Transferred Business or arising as a result of the Transferor having carried on the Transferred Business; and
- (c) the rights, benefits and powers of the Transferor under the Transferred Reinsurance Agreements and (if applicable) the appropriate proportion of the rights, benefits and

powers of the Transferor which will pass to the Transferee upon the deemed variation of the Split Reinsurance Agreements;

- (d) property held as of the Effective Date by the Transferor in an amount equal to: the sum of (i) the technical reserves for the Transferred Policies as reflected in the books and records of the Transferor; and (ii) the amount of any other liabilities in respect of Transferred Liabilities;
- (e) ~~but excluding: (1) the Residual Assets; (2) any~~ the rights, benefits and powers of the Transferor ~~under or relating to the Residual Policies or any Residual Policies Reinsurance Arrangement; (3) the Excluded Assets; (4) the Third Party Contracts;~~
- (f) all accounts, notes, premiums, reinsurance, retrocession and subrogation recoveries and other receivables that primarily relate to the Transferred Business;
- (g) all expenses that have been prepaid by the Transferor relating to the Transferred Business, including ad valorem taxation and lease and rental payments;
- (h) all Intellectual Property other than the Excluded Intellectual Property;
- (i) all transferable Permits used in connection with the Transferred Business;
- (j) all books, records, files and papers, whether in hard copy or computer format, of the Transferred Business, including insurance and reinsurance contracts, claims and underwriting files, sales and promotional literature, manuals and data, sales and purchase correspondence and lists of present and former customers, excluding the Retained Records; and
- (k) all goodwill (including the renewal rights) associated with the Transferred Assets.

~~but excluding: (1) the Residual Assets;; (2) the Excluded Assets; (3) for the avoidance of doubt, the appropriate proportion of the rights, benefits and powers of the Transferor which will remain with the Transferor upon the deemed variation of the Split Insurance Policies (if applicable); (5) in accordance with clause 5.6; (4) the benefit of any charges attaching to any Transferred Reinsurance Agreement or Split Reinsurance Agreement (if applicable); and (6) the appropriate proportion of the rights, benefits and powers of the Transferor which will remain with the Transferor upon the deemed variation of the Split Reinsurance Agreements (if applicable)~~

Transferred Business means the whole of the MIICL EEA Business, save to the extent that such MIICL EEA Business relates solely to Excluded Policies and excluding any Residual Assets and Residual Liabilities

Transferred Liabilities means any and all liabilities whatsoever of the Transferor comprised in or attributable to the Transferred Business or otherwise arising in connection with or in relation to

the carrying on of the Transferred Business as at the Effective Date including (without prejudice to the generality of the foregoing):

- (a) all liabilities under and in connection with the Transferred Policies (including, for the avoidance of doubt, (if applicable) the appropriate proportion of the liabilities of the Transferor which will pass to the Transferee upon the deemed variation of the Split Insurance Policies in accordance with clause 5.6);
- (b) all liabilities under and in connection with lapsed, surrendered, expired and reinstated ~~policies~~Policies written and/or assumed by or on behalf of the Transferor:
 - (i) acting through its Dutch, German and Spanish branches prior to the Effective Date and which relate to a risk or risks situated in any EEA State other than the United Kingdom;
 - (ii) acting through its Irish branch prior to the Effective Date ~~and~~(other than where such Policies relate to a risk or risks situated solely in the United Kingdom) which wholly or partly relate to a risk or risks situated in any EEA State ~~(and, where partly, only the part of the policy which relates to a risk or risks situated in any EEA State (other than the United Kingdom) where a policy, except that if a Policy~~ relates to a risk or risks situated both in the EEA and outside the EEA)~~), other than policies, only the part of the Policy~~ which ~~wholly relate~~relates to a risk or risks insituated in any EEA State (other than the United Kingdom; ~~or~~);
 - (iii) on a freedom of services basis through its head office in the United Kingdom or otherwise in the United Kingdom prior to the Effective Date (other than where such Policies relate to a risk or risks situated solely in the United Kingdom) which wholly or partly relate to a risk or risks situated in any EEA State ~~(and, where partly, only the part of the policy which relates to a risk or risks situated in any EEA State (other than the United Kingdom) where a policy, except that if a Policy~~ relates to a risk or risks situated both in the EEA and outside the EEA)~~), other than policies, only the part of the Policy~~ which ~~wholly relate~~relates to a risk or risks insituated in any EEA State (other than the United Kingdom);
- (c) all liabilities in connection with quotations made by or on behalf of the Transferor:
 - (i) acting through its Dutch, German and Spanish branches prior to the Effective Date and which relate to a risk or risks situated in any EEA State other than the United Kingdom;
 - (ii) acting through its Irish branch prior to the Effective Date ~~and~~(other than where such quotations relate to a risk or risks situated solely in the United Kingdom) which wholly or partly relate to a risk or risks situated in any EEA State ~~(and, where partly,~~

except that if a quotation relates to a risk or risks situated both in the EEA and outside the EEA, only the part of the quotation which relates to a risk or risks situated in any EEA State (other than the United Kingdom) ~~where a quotation relates to a risk or risks situated both in the EEA and outside the EEA) other than a quotation which relates wholly to a risk or risks situated in the United Kingdom; or~~;

- (iii) on a freedom of services basis through its head office in the United Kingdom or otherwise in the United Kingdom prior to the Effective Date (other than where such quotations relate to a risk or risks situated solely in the United Kingdom) which wholly or partly relate to a risk or risks situated in any EEA State ~~(and, where partly, except that if a quotation relates to a risk or risks situated both in the EEA and outside the EEA, only the part of the quotation which relates to a risk or risks situated in any EEA State (other than the United Kingdom) where a quotation relates to a risk or risks situated both in the EEA and outside the EEA) other than a quotation which relates wholly to a risk or risks situated in the United Kingdom;~~;

which, in each case, were not proceeded with and/or did not become ~~policies~~ Policies for any reason whatever (including due to an administrative or processing error);

- (d) all liabilities under and in connection with the Transferred Reinsurance Agreements arising in, and relating to, the period on and after the Effective Date and (if applicable) the appropriate proportion of the liabilities of the Transferor arising in, and relating to, the period on and after the Effective Date which will pass to the Transferee upon the deemed variation of the Split Reinsurance Agreements pursuant to clause 6.3; and

(e) all liabilities under and in connection with the Third Party Contracts;

(f) ~~(e)~~ all liabilities for damages (including compensatory, consequential, exemplary, punitive, bad faith or similar or other damages) which relate to the marketing, sale, underwriting, issuance, delivery, cancellation or administration of any Transferred Policy including: (1) any amount in respect of interest arising in connection thereto or in connection with any payment made in respect thereof; (2) any amount in respect of any additional liability or an increase in liability to taxation of a policyholder or former policyholder when compared to that person's liability to taxation if the event or series of events giving rise to the relevant damages had not occurred; and (3) any liability arising out of or relating to any alleged or actual act, error or omission by the Transferor or its agents, whether intentional or otherwise, with respect to any such Transferred Policy, including:

- (i) any alleged or actual reckless conduct or bad faith in connection with the handling of any claim arising out of or under such Transferred Policy; or
- (ii) the marketing, sale, underwriting, issuance, delivery, cancellation or administration of such Transferred Policy,

but excluding: (1) the Residual Liabilities; (2) the Excluded Liabilities; ~~(3) any liabilities under or relating to the Residual Policies or any Residual Policies Reinsurance Arrangement;~~ (3) the appropriate proportion of the liabilities of the Transferor which will remain with the Transferor upon the deemed variation of the Split Insurance Policies (if applicable) in accordance with clause 5.6; (4) the appropriate proportion of the liabilities of the Transferor which will remain with the Transferor upon the deemed variation of the Split ~~Insurance Policies (if applicable)~~ ~~[(including all liabilities relating to the period prior to the Effective Date)];~~ ~~(5) the appropriate proportion of the liabilities of the Transferor which will remain with the Transferor upon the deemed variation of the Split~~ Reinsurance Agreements (if applicable) ~~(including all liabilities relating to the period prior to the Effective Date);~~ and ~~(6)~~ (5) the liabilities under the Transferred Reinsurance Agreements relating to the period prior to the Effective Date

Transferred Policies means every MIICL EEA Policy written and/or assumed by the Transferor which is comprised in the Transferred Business (and any and all rights to renew the same), together with all proposals for insurance received by or on behalf of the Transferor before the Effective Date which have not become MIICL EEA Policies in force by the Effective Date but which subsequently become MIICL EEA Policies (including, for the avoidance of doubt, (if applicable) the appropriate proportion of the MIICL EEA Policies which ~~will pass~~ shall transfer to the Transferee ~~upon the deemed variation~~ in respect of the Split Insurance Policies ~~therein varied in accordance with clause 5.6~~); but excluding the Excluded Policies and (subject to clauses 7.1 to 7.3 inclusive) the Residual Policies

Transferred Reinsurance Agreements means all contracts, agreements, ~~policies~~ Policies and other arrangements of whatsoever nature made between the Transferor and a third party or a related party of the Transferor in the nature of retrocessions under or in connection with any Transferred Liability, including (without limitation) those which are listed in Schedule 1

1.2 In this Scheme:

- (a) **property** includes property, assets, interests, rights and powers of every description (whether present or future, actual or contingent) and includes property held on trust and securities, benefits, powers of any description and any interest whatsoever in any of the foregoing;
- (b) **liabilities** includes duties and obligations of every description (whether present or future, actual or contingent);
- (c) **transfer** includes (as the context may require) **assign, assignation or assignment, dispose or disposal or convey or conveyance;**

- (d) any reference to the singular shall include a reference to the plural and vice versa and any reference to the masculine shall include a reference to the feminine and neuter and vice versa;
- (e) any reference to an enactment, a statutory provision or any subordinate legislation shall be deemed to include a reference to that enactment, statutory provision or subordinate legislation as amended, replaced or re-enacted from time to time and to any instrument or order made from time to time under such enactment, statutory provision or subordinate legislation;
- (f) any reference to any rules, regulations or guidance made by the PRA and/or the FCA (as applicable) shall be deemed to include a reference to such rules or regulations as amended or replaced from time to time, and any reference to any provision of the Rulebook or Handbook of rules and guidance issued by the PRA and/or the FCA (as applicable) which is not in force at the date of this Scheme but will be in force by the Effective Date shall, in respect of the period before it comes into force, be deemed to include a reference to such rules or regulations issued by the PRA and/or the FCA (as applicable) as most closely corresponded to that provision at the date of this Scheme;
- (g) expressions used which have meanings under FSMA shall bear those meanings, including:
 - (i) **State in which the risk is situated** which bears the meaning set out in paragraph 6, Part 1 of Schedule 12 to FSMA; and
 - (ii) **EEA State** which bears the meaning set out in paragraph 8, Part 1 of Schedule 3 to FSMA;
- (h) the expressions **subsidiary** and **holding company** shall have the meanings given in section 1159 of the CA 2006, save that for the purposes only of the membership requirement contained in sections 1159(1)(b) and (c) of the CA 2006 a company shall be treated as a member of another company
 - (i) if any shares in that other company are held by a person acting on behalf of the company or any of its subsidiaries;
 - (ii) if any of its subsidiaries is a member of that other company; or
 - (iii) if any shares in that other company are held by a person (or that person's nominee) by way of security or in connection with the taking of security granted by the company or any of its subsidiaries;

- (i) the expression **subsidiary undertaking** shall have the meaning given in section 1162 of the CA 2006, save that for the purposes of section 1162(2) of the CA 2006, an undertaking shall also be treated as a member of another undertaking if any shares in that other undertaking are held by a person (or that person's nominee) by way of security or in connection with the taking of security granted by the undertaking or any of its subsidiary undertakings
- (j) ~~(h)~~ any reference to **this Scheme** shall include the Schedules to it and references to clauses or Schedules are to clauses or Schedules to this Scheme;
- (k) ~~(i)~~ headings are inserted for convenience only and shall not affect the construction of this Scheme;
- (l) ~~(j)~~ any reference to a person shall include a reference to a body corporate, a partnership, an unincorporated association or to a person's executors or administrators, and for the avoidance of doubt, shall include a trustee;
- (m) ~~(k)~~ unless otherwise specified, if a period of time is specified from a given day or date or from the day or date of an actual event, it shall be calculated exclusive of that day or date;
- (n) ~~(l)~~ any reference to writing shall include any modes of reproducing words in a legible and non-transitory form;
- (o) ~~(m)~~ any reference to a calculation, decision, determination or opinion of any of the Transferee's Board or the Transferor's Board (or any similar expression) shall be deemed to include a calculation, decision, determination or opinion of a duly constituted committee or duly authorised representative of the Transferee's Board or the Transferor's Board (as appropriate);
- (p) ~~(n)~~ the expression **variation** shall include any variation, supplement, deletion, replacement or termination, however effected;
- (q) ~~(o)~~ general words shall not be given a restrictive meaning by reason of the fact that they are followed by particular examples intended to be embraced by the general words;
- (r) ~~(p)~~ any reference to an amount shall be exclusive of any applicable value added or other tax; and
- (s) ~~(q)~~ any reference to **pounds** or **£** shall be to pounds sterling in the currency of the United Kingdom.

Part B – Introduction

2 Introduction

- 2.1 The Transferor is a company incorporated in England and Wales with registered number 00966670. The registered office of the Transferor is at 20 Fenchurch Street, London, EC3M 3AZ.
- 2.2 The Transferee is a company incorporated in Munich, Germany with registered number HRB 233618. The registered office of the Transferee is at Sophienstrasse 26, 80333 Munich, Germany.
- 2.3 The Transferor has Part 4A permission under FSMA to carry on General Business in the United Kingdom in classes 1 to 18 (inclusive) as set out in Part I of Schedule 1 to the RAO.
- 2.4 The Transferor established a branch under the Passporting Regulations in each of:
- (a) Germany on 20 September 2012;
 - (b) Ireland on 2 September 2014;
 - (c) the Netherlands on 7 October 2011; and
 - (d) Spain on 11 May 2005.

In addition, the Transferor established a third country branch in Switzerland on 29 October 2014.

- 2.5 The Transferor is in discussions with the Swiss Financial Market Supervisory Authority in relation to a separate transfer of the insurance business written by its Swiss branch to the Transferee.
- 2.6 In terms of the Transferred Business, all of the Dutch Policies were written through the Transferor's Dutch branch; all of the German Policies were written through the Transferor's German branch; all of the Irish Policies were written through the Transferor's Irish branch; and all of the Spanish Policies were written through the Transferor's Spanish branch.
- 2.7 The Transferee has a licence issued by BaFin (the German regulatory authority responsible for the supervision of the insurance sector) to carry on general (re)insurance business in Germany in classes 1, 2, 4, 5, 6, 7, , 9, 11, 12, 13, 14, 15, 16 and 18.¹ The Transferee established a branch under the German Supervisory Act (*Versicherungsaufsichtsgesetz*) in each of:

- (a) Ireland on [●];
- (b) the Netherlands on [●];

¹ Note: legal expenses licensing position in Germany to be finalised prior to the [DirectionsFinal](#) Hearing.

(c) Spain on [●]; and

(d) the United Kingdom on [●]. **[Note: TBC]**

It is proposed that, subject to the sanction of this Scheme by the Court, the Transferred Business carried on by the Transferor, other than the Excluded Policies, shall, in accordance with this Scheme, be transferred to the Transferee.

Part C – Transfer

3 Transfer of the Business

- 3.1 Each part of the Transferred Business, the Residual Assets and the Residual Liabilities shall be transferred to and be vested in the Transferee in accordance with this Scheme, so that:
- (a) subject to clause 9, ~~on and~~ with effect on and from the Effective Date, each Transferred Asset and all the property of the Transferor in it shall, by the Order and without any further act or instrument, be transferred to and be vested in the Transferee, subject to all Encumbrances (if any) affecting such property in accordance with this Scheme;
 - (b) subject to clause 9, ~~on and~~ with effect on and from each Subsequent Transfer Date, each Residual Asset to which such Subsequent Transfer Date applies and all the property of the Transferor in it shall, by the Order and without any further act or instrument, be transferred to and be vested in the Transferee, subject to all Encumbrances (if any) affecting such property in accordance with this Scheme;
 - (c) ~~on and~~ with effect on and from the Effective Date, each Transferred Liability shall, by the Order and without any further act or instrument, be transferred to and become a liability of the Transferee in accordance with this Scheme and shall cease to be a liability of the Transferor; and
 - (d) ~~on and~~ with effect on and from each Subsequent Transfer Date, each Residual Liability to which such Subsequent Transfer Date applies shall, by the Order and without any further act or instrument, be transferred to and become a liability of the Transferee in accordance with this Scheme and shall cease to be a liability of the Transferor.
- 3.2 The Transferee shall accept without investigation or requisition such title as the Transferor shall have at the Effective Date to the Transferred Assets and, at any Subsequent Transfer Date, to each Residual Asset then transferred and the Transferor shall not be liable for any charges, expenses, costs, claims, losses or any other liabilities in connection thereto that arise after the Effective Date, save as otherwise agreed between the parties in writing or as set out in this Scheme.
- 3.3 The Transferor and the Transferee shall take all such steps, and execute all such documents, as may be necessary or desirable:
- (a) to effect or perfect the transfer to and vesting in the Transferee of any Transferred Asset or Residual Asset pursuant to this Scheme;
 - (b) to correct any errors in the identity or amount of the property so transferred; and

- (c) to effect or perfect the transfer to and assumption by the Transferee of any Transferred Liability or Residual Liability pursuant to this Scheme.

3.4 ~~On and with~~With effect on and from the Effective Date, following the sanction of the Scheme by the Court:

- (a) the Dutch Assets and Dutch Liabilities shall be allocated to the Transferee's Dutch branch;
- (b) the German Assets and German Liabilities shall be allocated to the Transferee's head office;
- (c) the Irish Assets and Irish Liabilities shall be allocated to the Transferee's Irish branch;
- (d) the Spanish Assets and Spanish Liabilities shall be allocated to the Transferee's Spanish branch; and
- (e) the Head Office Assets and Head Office Liabilities shall be allocated to the Transferee's UK branch.

3.5 ~~On and with~~With effect on and from the Effective Date, following the sanction of the Scheme by the Court, the Transferred Business in relation to:

- (a) the Dutch Policies shall be carried on by the Transferee acting through its Dutch branch;
- (b) the German Policies shall be carried on by the Transferee from its head office;
- (c) the Irish Policies shall be carried on by the Transferee acting through its Irish branch;
- (d) the Spanish Policies shall be carried on by the Transferee acting through its Spanish branch; and
- (e) the Head Office Policies shall be carried on by the Transferee acting through its UK branch.

3.6 ~~On and with~~With effect on and from the Effective Date, the Transferee shall:

- (a) succeed to all property and liabilities of the Transferor in respect of any personal data which relates to the Transferred Business and which is subject to the Applicable Privacy Laws;
- (b) become the data controller of any personal data which relates to the Transferred Business and which is subject to the Applicable Privacy Laws and shall be deemed to have been controller of all such personal data at all material times when such personal data was processed; and

- (c) in respect of any personal data which relates to the Transferred Business be subject to the same duty by virtue of any law to which the Transferor was subject to respect the confidentiality and privacy of each data subject of that personal data and shall be bound by any specific notice or consent given, or request made, by the data subject which was binding on the Transferor and which required the Transferor not to use the personal data for marketing purposes,

and in any consent given by a data subject in respect of such data as is mentioned in this clause 3.6, any reference to the Transferor (or to any member of the Transferor's Group) shall be deemed to include a reference to the Transferee (and to any member of the Transferee's Group).

4 Continuity of Proceedings

4.1 ~~On and with~~ With effect on and from the Effective Date, any Proceedings (or any relevant part thereof) which

- (a) prior to the Effective Date, have been issued, served, commenced, threatened or contemplated;
- (b) as at the Effective Date are pending or are continued, or which are issued, served, commenced, threatened or contemplated;
- (c) as at the Effective Date may be brought in the future including those not yet in contemplation; or
- (d) as at the Effective Date are pending or are continued on or after the Effective Date, by or against the Transferor in connection with the Transferred Business, the Transferred Policies, the Transferred Assets or the Transferred Liabilities,

shall be continued or commenced by, against or in relation to the Transferee (and for the avoidance of doubt any future Proceedings (or any relevant part thereof) in connection with the Transferred Business, the Transferred Policies, the Transferred Assets or the Transferred Liabilities shall be brought by, against or in relation to the Transferee and the Transferee shall be entitled to all defences, claims, counterclaims, settlements, rights of set-off, rights of subrogation and any other rights that would have been available to the Transferor in relation to the Transferred Business, the Transferred Policies, the Transferred Assets or the Transferred Liabilities in any such Proceedings (or any relevant part thereof)).

4.2 ~~On and with~~ With effect on and from the Subsequent Transfer Date applicable thereto, any Proceedings (or any relevant part thereof) which

- (a) prior to the Subsequent Transfer Date, have been issued, served, commenced, threatened or contemplated;
- (b) as at the Subsequent Transfer Date are pending or are continued, or which are issued, served, commenced, threatened or contemplated;
- (c) as at the Subsequent Transfer Date may be brought in the future including those not yet in contemplation; or
- (d) as at the Subsequent Transfer Date are pending or are continued on or after the Subsequent Transfer Date, by or against the Transferor in connection with the Residual Assets or the Residual Liabilities which are to be transferred on such Subsequent Transfer Date,

shall be continued or commenced by, against or in relation to the Transferee (and for the avoidance of doubt any future Proceedings (or any relevant part thereof) in connection with such Residual Assets or Residual Liabilities shall be brought by, against or in relation to the Transferee and the Transferee shall be entitled to all defences, claims, counterclaims, settlements, rights of set-off, rights of subrogation and any other rights that would have been available to the Transferor in relation to the Residual Assets and the Residual Liabilities). Until such Subsequent Transfer Date, the relevant Proceedings (or any relevant part thereof) shall be commenced or continued by or against the Transferor and the Transferor shall conduct such Proceedings (or any relevant part thereof) in accordance with the reasonable instructions of the Transferee and at the cost of the Transferee.

- 4.3 Any judgment, settlement, order or award (or any relevant part thereof) obtained by or against the Transferor whether before or after the Effective Date to the extent that it relates to any part of the Transferred Business, the Transferred Policies, the Transferred Assets, the Transferred Liabilities, the Residual Assets or the Residual Liabilities and which is not fully satisfied before the Effective Date or, as the case may be, the applicable Subsequent Transfer Date, shall, on that date and to the extent to which it was enforceable by or against the Transferor immediately prior to such date (or, if later, the date on which the judgment, settlement, order or award (or any relevant part thereof) is obtained), become enforceable by or against the Transferee (to the exclusion of the Transferor).
- 4.4 All documents which would before the Effective Date have been evidence in respect of any matter for or against the Transferor shall on and from the Effective Date be evidence in respect of the same matter for or against the Transferee.
- 4.5 On and from the Effective Date, the Transferee shall owe to the policyholders of the Transferred Business or to any other person the same duties of confidentiality and privacy (whether pursuant to statute or contract) as those which the Transferor owed under the Transferred Business immediately prior to the Effective Date.

- 4.6 In respect of the Transferred Business, the Transferee undertakes to comply with:
- (a) the relevant provisions of the Dispute Resolution (**DISP**) rules of the FCA Handbook that would apply to the handling of any complaints brought to the UK Financial Ombudsman Service that fall under its jurisdiction;
 - (b) any other relevant sections of the FCA Handbook where the application of local law is likely not to result in the same outcome for the holders of Transferred Policies; and
 - (c) any valid judgment, settlement, order or award (or any relevant part thereof) of the UK Financial Ombudsman Service, made under its jurisdiction as set out in DISP 2 of the FCA Handbook.
- 4.7 Notwithstanding clause 14.1, any holder of a Transferred Policy may enforce the provisions of clause 4.6(c) against the Transferee.

5 Rights and obligations in relation to the Transferred Business

- 5.1 ~~On and with~~With effect on and from the Effective Date, the Transferee shall become entitled to all the rights, benefits ~~and~~ powers and other property of the Transferor whatsoever subsisting on the Effective Date under or by virtue of the Transferred Policies.
- 5.2 Every person who is a policyholder (within the meaning of the Policyholder Order) of any of the Transferred Policies or is a party to, or has the benefit of, any of the agreements with the Transferor comprising the Transferred Business shall ~~on and~~ with effect on and from the Effective Date become entitled, in succession to, and to the exclusion of, any rights which he may have had against the Transferor under any of the Transferred Policies or any other such agreement comprising the Transferred Business, to the same rights against the Transferee subject to the terms of this Scheme as were available to him against the Transferor under such Transferred Policies or such other agreement comprising the Transferred Business and (as regards Transferred Policies under which premiums or other sums attributable or referable thereto continue to be payable) shall ~~on and~~ with effect on and from the Effective Date account to the Transferee for any further or additional premiums or other sums attributable or referable thereto as and when the same become due and payable.
- 5.3 All references in any Transferred Policy or other agreement comprising the Transferred Business to the Transferor, the Transferor's Board, the Transferor's Actuary or any other officers, employees or agents of the Transferor shall from and after the Effective Date be read as references to the Transferee, the Transferee's Board, the Transferee's Actuary or any other officers or employees of the Transferee or, where appropriate, agents of the Transferee to which the administration of the relevant part of the business carried on by the Transferee has been delegated. In particular, but without limitation, all rights and duties exercisable or expressed to be exercisable or responsibilities to be performed by the Transferor, the Transferor's Board, the

Transferor's Actuary or any other officers, employees or agents of the Transferor in relation to any of the Transferred Policies or other agreements relating to the Transferred Business shall, from and after the Effective Date, be exercisable or required to be performed by the Transferee, the Transferee's Board, the Transferee's Actuary or any other officers, employees or agents of the Transferee.

5.4 The transfer of any rights, benefits, liabilities and obligations under or in connection with any Transferred Policy, Transferred Asset, Residual Asset, Transferred Liability or Residual Liability pursuant to this Scheme shall take effect and shall be valid and binding on all parties having any interest in the same notwithstanding any restriction howsoever arising (including but not limited to, at law, in equity, tort or by contract) on transferring, assigning or otherwise dealing with the same and such transfer shall be deemed to take effect on the basis that it does not contravene any such restriction and does not give rise to any right to terminate, modify, acquire or claim an interest or right, or to treat an interest or right as terminated or modified or to treat any obligations or liabilities as discharged, modified or released.

5.5 The Transferee shall on and from the Effective Date, as principal, take over from the Transferor the administration and negotiation of proposals for insurance which would become Transferred Policies if the Transferee determined to accept them (but whether or not the Transferee does so determine). The Transferee shall bear all expenses and liabilities in relation thereto. Nothing contained herein shall oblige the Transferee to accept any proposal for insurance received by or on behalf of the Transferor before the Effective Date but not accepted by the Transferor by the Effective Date.

5.6 Unless otherwise agreed between the Transferor and the Transferee:

(a) each of the Split Insurance Policies shall be varied such that:

(i) it shall continue on its existing terms with the Transferor as the insurer to the extent that such Split Insurance ~~Policies relate~~Policy relates to assets which are not Transferred Assets or liabilities which are not Transferred Liabilities and remain with the Transferor after the Effective Date; ~~and shall constitute~~

(ii) a new agreement ~~with~~shall be constituted between the insured and the Transferee as the insurer on the same terms as the existing terms ~~(which, to the extent that~~such Split Insurance Policy relates to Transferred Assets or Transferred Liabilities which transfer to the Transferee under this Scheme;

(b) for the avoidance of doubt, the terms referred to in clause 5.6(a)(ii) shall be ~~terms that are~~ no more onerous for the insured than the existing terms of the applicable Split Insurance Policy are for the insured and shall operate in conjunction with ~~the~~such existing terms such that the insured has a contract with each of the Transferor and the Transferee but is no better or worse off in respect of such contractual terms and conditions as a result of

this Scheme) ~~to the extent that such Split Insurance Agreements relate to Transferred Assets or Transferred Liabilities which transfer to the Transferee under this Scheme;~~

- (c) ~~(b) such splitting and transfer~~ the variation of the Split Insurance Policy pursuant to clause 5.6(a) shall not constitute an event of default, suspension or otherwise give rise to a right of termination, early termination or unilateral variation (howsoever described) under the terms of any such Split Insurance Policy;
- (d) ~~(c)~~ each of the Transferor and the Transferee shall owe separate and individual (but not, for the avoidance of doubt, joint) obligations and duties under, and be liable for performance of, only the respective contract created under this Scheme to which it is a party, in accordance with its terms, and not under any contract created under this Scheme to which the other is a party;
- (e) ~~(d)~~ all rights, claims (including incurred but not reported claims), proceedings and benefits under and accruing to the insured, the Transferor or the Transferee (as the case may be) under each Split Insurance Policy shall not be terminated, reduced or otherwise adversely affected by such variation and new agreement and all such rights, claims (including incurred but not reported claims), proceedings and benefits under each Split Insurance Policies which relate to assets which are not Transferred Assets or liabilities which are not Transferred Liabilities will remain with and continue to be capable of being exercised by the Transferor and shall not be terminated, reduced or otherwise adversely affected by such variation and new agreement, and all such rights, claims (including incurred but not reported claims), proceedings and benefits under each Split Insurance Policy which relate to the Transferred Assets or the Transferred Liabilities shall not be terminated, reduced or otherwise adversely affected and shall accrue to and be capable of being exercised by the Transferee under such new agreement in replacement of the Transferor; and
- (f) ~~(e)~~ where applicable, the method of allocating premiums, losses and related expenses and taxation in respect of a Split Insurance Policy shall be determined by agreement between the Transferor and the Transferee.

6 Reinsurance arrangements

- 6.1 ~~On and with~~ With effect on and from the Effective Date, all the rights, benefits and powers conferred on or vested in the Transferor and all the liabilities imposed on the Transferor by or under the Transferred Reinsurance Agreements, whether express or implied, shall, by the Order and without any further act or instrument, be transferred to and vest in the Transferee who shall, where appropriate, be substituted as a party in place of the Transferor as if the Transferee had always been the original party to such agreements from inception.

- 6.2 All references in the Transferred Reinsurance Agreements to the Transferor, the Transferor's Board, or any other officers, employees or agents of the Transferor shall from and after the Effective Date be read as references to the Transferee, the Transferee's Board, or any other officers or employees of the Transferee or, where appropriate, agents of the Transferee to which the administration of the business carried on by the Transferee has been delegated. In particular, but without limitation, all rights and/or duties exercisable or expressed to be exercisable or responsibilities to be performed by the Transferor, the Transferor's Board, or any other officers, employees or agents of the Transferor in relation to any of the Transferred Reinsurance Agreements shall, from and after the Effective Date, be exercisable or required to be performed by the Transferee, the Transferee's Board or any other officers, employees or agents of the Transferee.
- 6.3 Unless otherwise agreed between the Transferor and the Transferee, each of the Split Reinsurance Agreements shall be varied such that it shall continue on its existing terms with the Transferor as the reinsured to the extent that such Split Reinsurance Agreements relate to liabilities which are not Transferred Liabilities and remain with the Transferor after the Effective Date, and shall constitute a new agreement with the Transferee as the reinsured on the same terms as the existing terms (which, for the avoidance of doubt, shall be terms that for the Transferee are no more onerous than the existing terms were for the Transferor) to the extent that such Split Reinsurance Agreements relate to Transferred Liabilities which transfer to the Transferee under this Scheme and such splitting and transfer shall not constitute an event of default, suspension or otherwise give rise to a right of termination, early termination or unilateral variation (howsoever described) under the terms of any such Split Reinsurance Agreement and all rights, claims (including incurred but not reported claims), proceedings and benefits under and accruing to the Transferor under each Split Reinsurance Agreement shall not be terminated, reduced or otherwise adversely affected by such variation and new agreement and all such rights, claims (including incurred but not reported claims), proceedings and benefits under each Split Reinsurance Agreement which relate to liabilities which are not Transferred Liabilities will remain with and continue to be capable of being exercised by the Transferor and shall not be terminated, reduced or otherwise adversely affected by such variation and new agreement, and all such rights, claims (including incurred but not reported claims), proceedings and benefits under each Split Reinsurance Agreement which relate to Transferred Liabilities shall not be terminated, reduced or otherwise adversely affected and shall accrue to and be capable of being exercised by the Transferee under such new agreement in replacement of the Transferor.

7 Residual Policies

- 7.1 Subject to clauses 7.2 and 7.3, the Residual Policies shall not be transferred to the Transferee by this Scheme and all liabilities attributable to the Residual Policies shall remain liabilities of the Transferor and be fully reinsured [to the Transferee](#) with effect from the Effective Date on the following basis:

- (a) all liabilities of the Transferor attributable to and arising under the Residual Policies shall be reinsured in full to the Transferee ~~on and~~ with effect on and from the Effective Date;
- (b) the liability of the Transferee ~~on and~~ with effect on and from the Effective Date shall be such that the rights, benefits and powers provided to holders of Residual Policies shall, to the extent possible, be the same as the rights, benefits and powers which would have been provided to such holders if the Residual Policies had been Transferred Policies;
- (c) the premiums payable by the Transferor to the Transferee in connection with the provision of the reinsurance described in this clause 7.1 shall comprise an amount equal to the sum of:
 - (i) the ~~Transferred~~Residual Assets which relate to such Residual Policies and which have been received by the Transferee;
 - (ii) all premiums received by the Transferor in respect of such Residual Policies at any time after the Effective Date, which premiums shall be paid to the Transferee as soon as practicable after they are received;
 - (iii) all charges due to or deductible ~~or receivable received~~ by the Transferor in accordance with the relevant Residual Policy's terms and conditions; and
 - (iv) less any fees, charges and expenses in respect of the Residual Policies to the extent that such fees, charges and expenses are deducted from amounts received by the Transferor in accordance with the terms and conditions of the Residual Policies; and
- (d) the Transferee shall assume from the Transferor the administration of the Residual Policies and shall bear all expenses and liabilities in relation thereto, save as otherwise agreed in writing between the parties.

7.2 If all consents, permissions or other requirements for the transfer of a Residual Policy from the Transferor to the Transferee are obtained:

- (a) such Residual Policy shall be transferred to the Transferee and shall thereafter be treated in all respects as if it were a Transferred Policy save that references in this Scheme to the Effective Date shall be deemed for these purposes to be references to the Subsequent Transfer Date applicable to such Residual Policy or Residual Liability (as the case may be); and
- (b) any liability attributable to such Residual Policy (which, if it were attributable to a Transferred Policy, would be a Transferred Liability) shall be transferred to the Transferee and shall thereafter be treated in all respects as if it were a Transferred Liability save that

references in this Scheme to the Effective Date shall be deemed for these purposes to be references to the Subsequent Transfer Date applicable to such Residual Policy or Residual Liability (as the case may be).

- 7.3 If any Residual Policy is novated by written agreement to the Transferee, the property and liabilities relating to such Residual Policy shall, to the extent not previously transferred, be transferred to the Transferee and such Residual Policy shall thereafter be dealt with by the Transferee under the provisions of this Scheme in all respects as if such Residual Policy were a Transferred Policy save that references in this Scheme to the Effective Date shall be deemed for these purposes to be references to the Subsequent Transfer Date applicable to such Residual Policy or Residual Liability (as the case may be).

8 Premiums, mandates and other payments

- 8.1 All premiums payable to the Transferor in respect of the Transferred Policies shall ~~on and~~ with effect on and from the Effective Date be payable to the Transferee.
- 8.2 Any mandate or other instruction in force on the Effective Date (including, without limitation, any instruction given to a bank by its customer in the form of a direct debit or standing order) and providing for the payment by a banker or other Intermediary of premiums payable to the Transferor under or in respect of any of the Transferred Policies shall thereafter take effect as if it had provided for and authorised such payment to the Transferee.
- 8.3 Any mandate or other instruction in force on the Effective Date as to the manner of payment of any sum payable by the Transferor under any of the Transferred Policies shall, ~~on and~~ with effect on and from the Effective Date, continue in force as an effective authority to the Transferee in place of the Transferor.

9 Declaration of trust by the Transferor

- 9.1 In the case of any Residual Asset, the Transferor shall from the Effective Date, until the relevant Subsequent Transfer Date, hold any such Residual Asset as trustee for the Transferee.
- 9.2 The Transferor shall be subject to the Transferee's directions in respect of any property referred to in clause 9.1 from the Effective Date until the relevant property is transferred to or otherwise vested in the Transferee or is disposed of (whereupon the Transferor shall account to the Transferee for the proceeds of sale thereof), and the Transferee shall have authority to act as the attorney of the Transferor in respect of such property for all such purposes.
- 9.3 In the event of any payment being made to, property being received by or right being conferred upon the Transferor after the Effective Date in respect of the Transferred Business, the Transferred Policies, any Transferred Asset or any Residual Asset, the Transferor shall, as soon as is reasonably practicable after its receipt, pay over the full amount of such payment or (to the

extent to which it is able to do so) transfer such property or right to, or in accordance with the directions of, the Transferee.

- 9.4 The Transferee shall indemnify the Transferor against any reasonable out-of-pocket charges, costs, expenses, claims and other liabilities arising in respect of any obligation under or in connection with this clause 9.

10 Indemnities in favour of the Transferor

- 10.1 ~~On and with~~ With effect on and from the Effective Date, the Transferee shall discharge on the Transferor's behalf or, failing that, shall indemnify the Transferor against:

- (a) charges, costs, expenses and claims and any other liabilities (which, in each case, the Transferor shall procure are reasonable to the extent such matters are within its control) arising in respect of all Transferred Liabilities and Residual Liabilities (other than liabilities which would otherwise be the subject of double recovery under clause 10.1(b) or clause 10.2 below) until the relevant liability is transferred to or becomes a liability of the Transferee;
- (b) any amount paid by the Transferor in respect of any Transferred Liabilities and Residual Liabilities that are, whether wholly or in part, the subject of a policy of indemnity insurance or a claim or right of recovery against a third party, but only to the extent that the Transferor, having made a claim under such a policy or against such third party, shall have failed to recover any such amount pursuant to rights it may have under such policy, claim or right of recovery (having used all reasonable endeavours to do so, including complying with clause 10.3); and
- (c) charges, costs and claims arising in respect of any relevant Proceedings continued by or against the Transferor in accordance with the instructions of the Transferee as contemplated by clause 4.2.

- 10.2 For the avoidance of doubt, the Transferee shall not be required under clause 10.1 to discharge or indemnify the Transferor against Excluded Liabilities or for any charges, costs, expenses and claims or any other liabilities arising in respect of any Excluded Liabilities.

- 10.3 The Transferee shall indemnify the Transferor against any reasonable costs and/or expenses which it may incur in pursuing any claim under any such policy of indemnity insurance or against any such third party as is referred to in clause 10.1(b). Subject thereto, the Transferor shall take such steps as the Transferee shall require in order to pursue the rights it may have under any such policy of indemnity insurance or against any such third party. The Transferee shall be entitled, upon notice to the Transferor, to have conduct of all litigation or other proceedings in respect of any such claim. In that connection, the Transferor shall give all such assistance as the Transferee may reasonably require in conducting any such proceedings.

10.4 Where the Transferor is entitled to receive an amount pursuant to the indemnities contained in clauses 10.1 or 10.3, it shall be entitled to receive such amount on the basis that the amount payable by the Transferee pursuant to such obligation (the **Payment**) shall be calculated in such a manner as will ensure that the Transferor is in the same position as that in which it would have been if the matter giving rise to the Payment had not occurred, including by taking into account:

- (a) any taxation required to be deducted or withheld by the Transferee from the Payment;
- (b) the amount of any additional taxation which becomes payable by the Transferor as a result of the Payment being subject to taxation in the hands of the Transferor; and
- (c) the amount of any tax relief which is obtained by the Transferor or another member of the Transferor's Group, to the extent that such tax relief is attributable to the matter giving rise to the Payment or as a result of receiving the Payment,

(which taxation and tax relief is to be determined, by taking into account its value, certainty of its availability and timing of its utilisation, by the Transferor, acting reasonably and in good faith, to the reasonable satisfaction of the Transferee).

10.5 For the avoidance of doubt, the Transferor shall not be entitled to obtain payment or indemnity more than once in respect of any shortfall or other event or any other circumstances which give rise to a claim under this Scheme or any other related agreement between the parties.

Part D – Miscellaneous provisions

11 Effective Date

- 11.1 Subject to clause 11.3, this Scheme shall become effective at 00:01 GMT on [29 March] 2019.
- 11.2 If this Scheme has not become effective on or before 00:01 GMT on [29 March] 2019, the provisions of this Scheme shall lapse.
- 11.3 This Scheme will not become effective on the Effective Date unless on or prior thereto the Order shall have been made.

12 Costs and expenses

Except as otherwise agreed in writing, the Transferor and the Transferee shall each bear its own costs and expenses in relation to the preparation and carrying into effect of this Scheme.

13 Modification or additions

- 13.1 The Transferor and the Transferee may, as required, consent for and on behalf of the parties hereto and all other persons concerned to any modification of or addition to this Scheme or to any further condition or provision affecting the same which, prior to its sanction of this Scheme, the Court may approve or impose.
- 13.2 Subject to clause 13.3, at any time after the sanction of this Scheme, the Transferee, with the Transferor's consent (not to be unreasonably withheld or delayed), shall be at liberty to apply to the Court for consent to amend clauses 1 to 10 (inclusive), provided that in any such case:
- (a) the PRA and the FCA shall be notified in advance of (and in any event not less than 28 days prior to), and shall have the right to be heard at, any hearing of the Court at which such application is considered; and
 - (b) such application shall be accompanied by a certificate (supported by a report which has been prepared on the basis of the most recent available financial information) from an independent actuary to the effect that in his opinion the proposed amendment will not materially adversely affect the policyholders of Transferred Policies or Residual Policies.

If the consent of the Court is granted, the Transferee may amend the terms of this Scheme in accordance with such consent.

- 13.3 The consent of the Court shall not be required in relation to minor and/or technical amendments to the terms of this Scheme (including amendments to correct manifest errors and/or to reflect

changes required by law or regulation, including changes in generally accepted actuarial practice) that are agreed by the Transferor and the Transferee, provided that either:

- (a) each of the PRA and the FCA has been notified of the same and has indicated that it does not object thereto; or
- (b) a period of 28 days commencing on the date of receipt of the relevant notification by both the PRA and the FCA has passed without either the PRA or the FCA indicating any objection thereto.

14 Third party rights and governing law

14.1 It is not intended that any person who is not a party to this Scheme may enforce any of its terms, whether by virtue of the Contracts (Rights of Third Parties) Act 1999 or otherwise.

14.2 This Scheme shall be governed by and construed in accordance with English law.

Dated this [●] day of [●] 2019

Schedule 1
Transferred Reinsurance Agreements

Policy Market Reference Number	Type	Inception Date	Expiry Date

Schedule 2
Split Reinsurance Agreements

Policy Market Reference Number	Type	Inception Date	Expiry Date

Document comparison by Workshare 9 on 29 November 2018 19:19:52

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