



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

CR-2020-002750

MR JUSTICE MORGAN
18 December 2020

IN THE MATTER OF ARCH INSURANCE (UK) LIMITED

AND

IN THE MATTER OF ARCH INSURANCE (EU) DAC

AND

IN THE MATTER OF PART VII OF THE FINANCIAL SERVICES AND MARKETS ACT 2000

ORDER

UPON THE JOINT APPLICATION by Claim Form issued on 2 September 2020 of Arch Insurance (UK) Limited (the **Transferor**), a company incorporated in England and Wales under number 4977362, whose registered office is at 5th Floor Plantation Place South, 60 Great Tower Street, London, EC3R 5AZ and Arch Insurance (EU) dac (the **Transferee**), a designated activity company incorporated in the Republic of Ireland under number 505420, whose registered office is at 2nd Floor, Block 3 The Oval, 160 Shelbourne Road, Ballsbridge, Dublin 4, Republic of Ireland (together the **Applicants**) seeking, inter alia, an order sanctioning the insurance business transfer scheme as set out in the scheme document attached to the Claim Form (the **Scheme**) pursuant to Part VII of the Financial Services and Markets Act 2000 (the **Act**)

AND UPON HEARING Martin Moore QC, Counsel for the Applicants

AND UPON READING the Claim Form, the evidence, the Report of the Prudential Regulation Authority (**PRA**) and the Report of the Financial Conduct Authority (**FCA**)

AND UPON the Court being satisfied that the appropriate certificates have been obtained as referred to in section 111, and Schedule 12, of the Act

AND UPON the solicitors for the Applicants undertaking to hold hard copies of the evidence to the order of the Court for a period of one year commencing on the date of this Order

AND UPON THE COURT confirming that a non-party may not, unless the Court gives permission, obtain from the records of the court a copy of the Confidential Note prepared by the Independent Expert and dated 3 December 2020

AND UPON IT APPEARING that a copy of the application, the report and the statement referred to in regulation 3(4) of the Financial Services and Markets Act 2000 (Control of Business Transfers) (Requirements on Applicants) Regulations 2001 (SI 2001/3625) as amended (the **Regulations**) has been given free of charge to the PRA and the FCA in accordance with regulation 3(5) of the Regulations and that a period of more than 21 days has elapsed since the PRA and the FCA were given those documents

THE COURT HEREBY SANCTIONS the Scheme in the form annexed to Schedule 1 hereto pursuant to section 111(1) of the Act

AND IT IS ORDERED THAT all the terms of the Scheme shall as and from the dates and times therein provided take effect under section 112 of the Act without further act or instrument as if each were separately set out in this Order. Without prejudice to the generality of the foregoing:

- (1) the transfer of the Transferring Business (as defined in the Scheme) provided for by paragraph 3 of the Scheme and the transfer of property and liabilities (as defined by sections 112(12) and (13) of the Act respectively) provided for thereby shall take effect pursuant to section 112(1)(a) of the Act and vest or transfer as provided for by section 112(3) of the Act as a result of this Order;
- (2) the provisions in paragraph 4 of the Scheme relating to the continuity of Proceedings (as defined in the Scheme) shall take effect pursuant to section 112(1)(c) of the Act; and
- (3) the provisions of all other paragraphs of the Scheme not referred to in (1) and (2) above shall take effect pursuant to section 112(1)(d) of the Act

AND IT IS FURTHER ORDERED THAT:

- (1) in accordance with section 112(10) of the Act, the Transferee shall deposit two office copies of this Order with the PRA within ten days of the date of this Order or such longer period as may be permitted by the PRA

- (2) the production of a copy of this Order and a copy of a certificate by a director of the Transferee that the Scheme has taken effect shall, for all purposes, be evidence of the transfer to and vesting in the Transferee of the Transferring Business, the Transferring Assets and the Transferring Liabilities in accordance with this Order and the Scheme
- (3) notice of the sanction of the Scheme by this Order is published in accordance with section 114 and 114A of the Act in the Financial Times (International Edition) and in such other publications and in such form as may be required by the local regulatory authorities in any relevant EEA State. Such notice shall specify that any policyholder may exercise any right he has under the law of any relevant EEA State to cancel his policy within the period as may be specified by such law
- (4) the transfer of the Transferring Business and any other matter provided for by this Order or the Scheme shall not:
- a) invalidate or discharge any agreement or other thing;
 - b) constitute a breach of, or default under, or require any obligation to be performed sooner or later than would have otherwise been the case under, any agreement or instrument to which the Transferor or the Transferee is a party or is bound;
 - c) allow any party to any agreement to terminate that agreement when he would not otherwise have been able to do so;
 - d) entitle any party to any agreement to which the Transferor or the Transferee is a party or is bound to vary the terms of that agreement when he would not otherwise have been able to do so; or
 - e) cause the imposition of any greater or lesser obligation on any party to any such agreement when that greater or lesser obligation would not otherwise have been imposed; and
- (5) either or both of the Transferor and the Transferee shall have liberty to apply for such Orders as may be expedient or necessary for the purposes set out in section 112(1) of the Act and generally.

Service of this Order

The Court has provided a sealed copy of this Order to the serving parties.

Womble Bond Dickinson (UK) LLP, 4 More London Riverside, London, SE1 2AU, United Kingdom
Solicitors acting for the Applicants
Ref: 460738.00007

Schedule 1

IN THE HIGH COURT OF JUSTICE

NO. CR-2020-002750

BUSINESS AND PROPERTY COURTS
OF ENGLAND AND WALES

COMPANIES COURT (CHD)

IN THE MATTER OF ARCH INSURANCE (UK) LIMITED

AND

IN THE MATTER OF ARCH INSURANCE (EU) DAC

AND

IN THE MATTER OF PART VII OF THE FINANCIAL SERVICES AND MARKETS ACT 2000

INSURANCE BUSINESS TRANSFER SCHEME

Contents

<u>1</u>	<u>Interpretation</u>	3
<u>2</u>	<u>Introduction</u>	9
<u>3</u>	<u>Transfer of the Transferring Business</u>	10
<u>4</u>	<u>Legal Proceedings and Continuity</u>	12
<u>5</u>	<u>Treatment of Transferring Policies</u>	13
<u>6</u>	<u>Treatment of Transferring Contracts</u>	14
<u>7</u>	<u>Treatment of Transferring Reinsurances</u>	14
<u>8</u>	<u>Premiums, mandates and other payments</u>	15
<u>9</u>	<u>Declaration of trust</u>	16
<u>10</u>	<u>Indemnities</u>	16
<u>11</u>	<u>Personal Data</u>	17
<u>12</u>	<u>Third Parties</u>	17
<u>13</u>	<u>The Effective Date</u>	17
<u>14</u>	<u>Modification</u>	17
<u>15</u>	<u>Costs</u>	18
<u>16</u>	<u>Governing Law</u>	18

1 Interpretation

1.1 In this insurance business transfer scheme, unless the context otherwise requires, the following words or phrases have the following meanings:

Act means the Financial Services and Markets Act 2000, as amended;

Data Protection Legislation means the UK Data Protection Legislation and (for so long as and to the extent that the law of the European Union has legal effect in the UK) the General Data Protection Regulation ((EU) 2016/679) and any other directly applicable European Union regulation relating to privacy;

DISP means the Dispute Resolution part of the FCA Handbook;

EEA State bears the meaning set out in paragraph 8, Part I of Schedule 3 to the Act;

EEA Policy means a Policy (excluding any inwards reinsurance policy) or part thereof concluded by the Transferor and written in the course of carrying on insurance business in an EEA State utilising the Transferor's freedom of establishment and/or freedom of services;

Effective Date means the date and time on which the Transfer takes effect in accordance with Clause 13;

Encumbrance means a 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, or any other type of preferential arrangement (including, without limitation, title transfer and retention agreements) having a similar economic effect;

Excluded Policies means Policies comprised in the Transferring Business under which any liability remains unsatisfied or outstanding at the Effective Date:

(a) written in the course of carrying on insurance business in the United Kingdom or any other EEA State:

(i) which, for the purposes of paragraph 1(2A) of Part I of Schedule 12 to the Act evidences a contract of insurance (other than reinsurance) concluded in an EEA State other than the United Kingdom (the **Relevant EEA State**); and

(j) in respect of which the PRA has not prior to the making of the Order by which the High Court sanctions this Scheme provided the certificate referred to in Paragraph 3A of Part I of Schedule 12 to the Act with respect to the Relevant EEA State;

(b) written in an establishment situated in a Relevant EEA State, in respect of which the PRA has not prior to the making of the Order by which the High Court sanctions this Scheme provided the certificate referred to in Paragraph 3A of Part I of Schedule 12 to the Act with respect to the Relevant EEA State;

(c) which the Court for any reason determines will not be transferred by virtue of this Scheme or the Order; and

(d) which, prior to the Court making the Order, the Transferor and Transferee agree should be excluded from this Scheme;

FCA means the United Kingdom's Financial Conduct Authority;

FOS means the Financial Ombudsman Service, the scheme provided under Part XVI of the Act;

Freedom of Establishment means the right of an insurer in an EEA State to carry on business in an EEA State other than its Home State, pursuant to articles 145-146 of Directive 2009/138/EC;

Freedom of Services means the right of an insurer in an EEA State to carry on business in an EEA State other than its Home State, pursuant to articles 147-149 of Directive 2009/138/EC;

High Court means the High Court of Justice of England and Wales;

Home State means, in relation to an insurance undertaking, the EEA State in which the registered office of the insurance undertaking is situated (if any);

Insurance Regulator means the UK Prudential Regulation Authority and/or the UK Financial Conduct Authority, as applicable, (or any successor authority or authorities with responsibility to supervise the prudential and/or conduct of business requirements which apply to the carrying on of general insurance business in the UK);

Mis-selling and Historic Breach Liabilities means:

- (a) any liabilities, losses, costs and/or expenses relating to the mis-selling of any Transferring Policy including liabilities, losses, costs and/or expenses arising from:
 - (i) any misrepresentation or other false statement made to any person in connection with the entering into of a Transferring Policy;
 - (ii) a failure, prior to the Effective Date, to comply with applicable law, or with Regulatory Requirements set by the Insurance Regulator and /or any of its relevant counterparts in a relevant EEA State, including a failure to disclose any information required to be disclosed, and including any requirement to treat customers fairly;
- (b) all liabilities arising in relation to any breach, prior to the Effective Date, of the contractual terms of any Transferring Policy;
- (c) all liabilities arising in relation to any insurance policy quotations provided by the Transferor in the course of carrying on insurance business in an EEA State utilising the Transferor's freedom of establishment and/or freedom of service, where such quotations were not proceeded with or did not become EEA Policies;
- (d) all liabilities connected with an application for insurance which was refused by the Transferor, such that the application did not become an EEA Policy; and
- (e) any of the following arising in respect of any of paragraph (a), (b), (c) or (d) above:
 - (i) any complaint, claim, legal action or proceedings brought by or on behalf of any person;
 - (ii) any disciplinary action undertaken by the Insurance Regulator or its relevant counterparts in an EEA State;
 - (iii) any agreed settlement or compromise.

Order means an order of the High Court pursuant to section 111 of the Act sanctioning the Transfer and any order (including any subsequent order) in relation to the Transfer made by the High Court making provision under section 112 of the Act;

Policy and **Policyholder** has the meaning set out in section 424(2) of the Act and Regulation 2 and Regulation 3 of the Financial Services and Markets Act 2000 (Meaning of "Policy" and "Policyholder") Order 2001 (S.I. 2001/2361);

PRA means the Prudential Regulation Authority;

Proceedings means any judicial, quasi-judicial, administrative or arbitration proceedings or any complaint or claim to any ombudsman or other proceedings (whether current, threatened or pending) for the resolution of a dispute or claim (whether current or future, including those not yet in contemplation) by, against or in relation to the Transferor in respect of, or in connection with, the Transferring Business;

RAO means the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (S.I. 2001/544), as amended;

Records means in relation to the Transferring Policies:

- (a) the terms and conditions;
- (b) payment history;
- (c) all correspondence with Policyholders and other beneficiaries; and
- (d) the results of any investigations undertaken in relation to the Transferring Policy or policyholder,

in each case, whether stored in electronic or hard copy format and which are in the actual possession of, or under the control of (including being held by a service provider), the Transferor (including any documents, files, or other records relating to Tax relating to the Transferring Policies;

Regulatory Requirements means all applicable laws, statutes, regulations, rules, orders, directives, requirements, guidance, standards, guidelines and industry codes of practice in each case having legal effect stipulated by any legal, governmental or regulatory body with powers of direction over the relevant entity, including the rules of any stock exchange or listing authority, in each case existing and in force from time to time, wherever relevant in the context;

Reinsurance Policy means outwards reinsurance policies issued to the Transferor insofar as relevant to, and to the extent that they provide protection in respect of a Transferring Policy, together with any security arrangements or letters of credit which have been arranged by the relevant reinsurer (or otherwise) for the benefit of the Transferor (so far as such arrangements relate to the Transferring Business) and to which the Transferor is a party;

Related Policy means any Policy or part of a Policy forming part of the Transferring Business to the extent that it gives rise to rights under a Residual Reinsurance;

Related Residual Reinsurance Policy means any Reinsurance Policy or part of a Policy to the extent that it provides cover in respect of a Residual Policy;

Residual Assets means:

- (a) all Transferring Assets where the High Court has not sanctioned their transfer to the Transferee at the Effective Date under section 112(2) of the Act;
- (b) all Transferring Assets where their transfer is outside the territorial jurisdiction of the High Court, or where their transfer pursuant to an order of the Court is not recognised under the laws of the jurisdiction in which the property is situated, or where further steps are necessary to effect their transfer pursuant to the laws of the jurisdiction in which such property is situated;
- (c) all Transferring Assets which cannot be transferred to or vested in the Transferee at the Effective Date for any other reason;
- (d) all Transferring Assets where the Transferor and Transferee agree prior to the Effective Date that their transfer should be delayed; and

- (e) all 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 the relevant Subsequent Transfer Date in respect of any such property referred to in paragraphs (a) to (d) of this definition;

Residual Business means together:

- (a) the Residual Policies;
- (b) the Related Policies;
- (c) the Residual Contracts;
- (d) the Residual Reinsurance;
- (e) the Related Residual Reinsurance Policies;
- (f) the Residual Assets; and
- (g) the Residual Liabilities,

and all activities to the extent carried on in connection therewith;

Residual Contracts means:

- (a) all Transferring Contracts where the High Court has not sanctioned their transfer to the Transferee at the Effective Date under section 112(2) of the Act;
- (b) all Transferring Contracts where their transfer is outside the territorial jurisdiction of the High Court, or where their transfer pursuant to an order of the High Court is not recognised under the laws of the jurisdiction which govern such contract, or where further steps are necessary to effect their transfer pursuant to the laws of the jurisdiction which govern such contract;
- (c) all Transferring Contracts to the extent they cannot be transferred to or vested in the Transferee at the Effective Date for any other reason; and
- (d) all Transferring Contracts where the Transferor and Transferee agree prior to the Effective Date that their transfer should be delayed;

Residual Liabilities means:

- (a) all Transferring Liabilities to the extent they are attributable to or connected with a Residual Asset, Residual Contract, Residual Reinsurance or Residual Policy and that arise at any time before the Subsequent Transfer Date applicable to that Residual Asset;
- (b) all Transferring Liabilities where the High Court has not sanctioned their transfer to the Transferee at the Effective Date under section 112(2) of the Act;
- (c) all Transferring Liabilities where their transfer is outside the territorial jurisdiction of the High Court, or where their transfer pursuant to an order of the High Court is not recognised under the laws of the jurisdiction in which the liability is situated, or where further steps are necessary to effect their transfer pursuant to the laws of the jurisdiction in which such liability is situated;
- (d) all Transferring Liabilities which cannot be transferred to or vested in the Transferee at the Effective Date for any other reason: and
- (e) all Transferring Liabilities where the Transferor and Transferee agree prior to the Effective Date that their transfer should be delayed;

Residual Policies means:

- (a) all Transferring Policies where, for the purpose of section 111(2) of the Act and paragraphs 1(1)(ba) and 1(2A) of Schedule 12 to the Act, the PRA has not provided the certificate referred to in paragraph 3A of Schedule 12 to the Act prior to the making of the Order;
- (b) all Transferring Policies where the High Court has not sanctioned their transfer to the Transferee at the Effective Date under section 112(2) of the Act;
- (c) all Transferring Policies where their transfer is outside the territorial jurisdiction of the Court, or where their transfer pursuant to an order of the Court is not recognised under the laws of the jurisdiction which govern such Policy, or where further steps are necessary to effect their transfer pursuant to the laws of the jurisdiction which govern such Policy;
- (d) all Transferring Policies which cannot be transferred to or vested in the Transferee at the Effective Date for any other reason: and
- (e) all Transferring Policies where the Transferor and Transferee agree prior to the Effective Date that their transfer should be delayed;

Residual Reinsurance means:

- (a) all Transferring Reinsurances or parts of Transferring Reinsurances where the High Court has not sanctioned their transfer to the Transferee at the Effective Date under section 112(2) of the Act;
- (b) all Transferring Reinsurances or parts of Transferring Reinsurances where their transfer is outside the territorial jurisdiction of the High Court, or where their transfer pursuant to an order of the Court is not recognised under the laws of the jurisdiction in which the property is situated, or where further steps are necessary to effect their transfer pursuant to the laws of the jurisdiction in which such property is situated;
- (c) all Transferring Reinsurances or parts of Transferring Reinsurances which cannot be transferred to or vested in the Transferee at the Effective Date for any other reason; and
- (d) all Transferring Reinsurances or parts of Transferring reinsurances where the Transferor and Transferee agree prior to the Effective Date that their transfer should be delayed;

Solvency II means Directive 2009/130/EC of the European Parliament and of the Council on 25 November 2009 on the taking up and pursuit of the business of insurance and reinsurance (as amended);

Split Transferring Contracts means any contract or where a constituent and identifiable part of such contract or, but not the entire contract, constitutes a Transferring Contract;

Split Transferring Policy means any Policy where a constituent and identifiable part of such Policy, but not the entire Policy, constitutes a Transferring Policy or Transferring Reinsurance;

Subsequent Transfer Date means, in relation to a Residual Policy, Residual Contract, Residual Reinsurance, Residual Asset or Residual Liability, the date after the Effective Date on which it is or is to be transferred to the Transferee, namely:

- (a) the date on which all impediments to its transfer shall have been removed or overcome;
 - (b) the date on which the Transferor and the Transferee agree the transfer should take effect;
or
 - (c) the date on which such Residual Asset is received or earned by the Transferor,
- (as applicable);

Tax means:

- (a) all forms of tax, levy, duty, charge, impost, withholding or other amount whenever created or imposed and whether of the United Kingdom, republic of Ireland 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 changes, 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 Right has the meaning given to it in paragraph 10.2;

Transfer means the insurance business transfer scheme set out in this document with or subject to any modification, addition or condition approved or imposed by the High Court;

Transferee means Arch Insurance (EU) DAC (company number 505420) a company incorporated and registered under the laws of Ireland whose registered office is at 2nd Floor, Block 3 The Oval, 160 Shelbourne Road, Ballsbridge, Dublin 4, Republic of Ireland;

Transferor means Arch Insurance (UK) Limited (company number 04977362) a company incorporated and registered under the laws of England and Wales whose registered office is at 5th Floor Plantation Place South, 60 Great Tower Street, London, EC3R 5AZ;

Transferring Assets means:

- (a) the assets matching the technical reserves, balance sheet liabilities and shareholders' funds of the Transferring Business (including, for the avoidance of doubt, trade debtors and investments relating to the Transferring Business);
- (b) all rights, benefits and powers of the Transferor arising under or by virtue of the Transferring Policies;
- (c) all rights, benefits and powers of the Transferor arising under or by virtue of the Transferring Contracts;
- (d) all rights, benefits and powers of the Transferor arising under or by virtue of the Transferring Reinsurances;
- (e) all rights and claims (in contemplation, present or future, actual or contingent) against any third party not within paragraphs (b), (c) or (d) above of this definition to the extent that such right or claim relates to any of the Transferring Policies, Transferring Contracts or the Transferring Reinsurances, or arises as a result of the Transferring Policies, Transferring Contracts or the Transferring Reinsurances; and
- (f) all books, records, files and papers, whether in hard copy or computer format relating to the Transferring Policies, Transferring Contracts and the Transferring Reinsurances, including claims and underwriting files, sales and promotional literature, manuals and data, sales and purchase correspondence and lists of present and former customers,

and, prior to the applicable Subsequent Transfer Date applicable thereto, the Residual Assets;

Transferring Business means the insurance business carried on by the Transferor (excluding inwards reinsurance business) in an EEA State utilising the Transferor's freedom of establishment and/or freedom of services and includes:

- (a) the Transferring Policies;
- (b) the Transferring Contracts;
- (c) the Transferring Reinsurances;

- (d) the Transferring Assets;
- (e) the Transferring Liabilities; and
- (f) the Records

and all activities to the extent carried on in connection therewith;

Transferring Contracts means that part of any contracts, service agreements, broker agreements, intermediary agreements, engagements, licences, guarantees and other commitments to which the Transferor is a party at the Effective Date and which relate to the Transferring Business but excluding, for the avoidance of doubt, the Transferring Policies;

Transferring Liabilities means all liabilities and commitments of any kind and description of the Transferor attributable to or in connection with the Transferring Business (including any liability of the Transferor to Tax relating to the Transferring Business) irrespective of whether they arise prior to or following the Effective Date but excluding any Mis-selling and Historic Breach Liabilities and, prior to the applicable Subsequent Transfer Date applicable thereto, the Residual Liabilities;

Transferring Policy means any EEA Policy at the Effective Date but excluding the Excluded Policies;

Transferring Reinsurances means any Reinsurance Policy or part of a Reinsurance Policy, which is not a Residual Reinsurance, together with any security arrangements or letters of credit which have been arranged by the relevant reinsurer (or otherwise) for the benefit of the Transferor (so far as such arrangements relate to the Transferring Business) and to which the Transferor is a party but not including, prior to the applicable Subsequent Transfer Date applicable thereto, the Residual Reinsurance;

UK Data Protection Legislation means any data protection legislation from time to time in force in the UK including the Data Protection Act 2018 or any successor legislation.

- 1.2 In this Transfer unless the context otherwise requires or expressly provides:
 - 1.2.1 references to Clauses and Schedules are to Clauses of and Schedules to this Transfer;
 - 1.2.2 **assets** includes property, rights and powers of any description;
 - 1.2.3 **liabilities** includes duties and obligations of every description (whether present or future, actual or contingent);
 - 1.2.4 **novation** includes transfer or assignment;
 - 1.2.5 **property** includes money, goods, things in action, land and every description of property wherever situated and also obligations and every description of interest, whether present, future or vested or contingent, arising out of, or incidental to, property;
 - 1.2.6 **rights** includes benefits, powers and claims of every description (whether present, future, actual or contingent) including without limitation rights to the repayment of taxation, duties or other imposts in respect of the period after the Effective Date;
 - 1.2.7 the singular includes the plural and vice versa and any reference to one gender includes the other;
 - 1.2.8 headings are for convenience only and shall not affect the interpretation of this Transfer;
 - 1.2.9 save as expressly provided otherwise, any reference in this Transfer 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 after the date of this Transfer and to any instrument or order made from time

to time after the date of this Transfer under such enactment, statutory provision or subordinate legislation;

- 1.2.10 any reference to a person shall include a reference to any individual, company, firm, partnership, joint venture, association, organisation, trust or agency, whether or not having a separate legal personality;
- 1.2.11 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;
- 1.2.12 any reference to writing shall include any modes of reproducing words in a legible and non-transitory form;
- 1.2.13 the expression variation or varied shall include any variation, supplement, deletion, replacement or termination, however effected; and
- 1.2.14 any reference to **including** shall mean **including without limitation**.

2 Introduction

- 2.1 The Transferor is a UK authorised insurer with permission, *inter alia*, to effect and carry out contracts of general insurance in the UK in classes 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 16 and 18 of Part I of Schedule 1 of the RAO.
- 2.2 The Transferee is an Irish authorised insurer with permission, *inter alia*, to carry on general insurance business in Ireland in all classes of Part 1 of Schedule 1 of the European Union (Insurance and Reinsurance) Regulations 2015, (which transposed Solvency II into Irish law) other than class 18 'Assistance'.
- 2.3 Following the invocation of Article 50 of the Treaty on European Union by the United Kingdom on 29 March 2017, the United Kingdom's withdrawal from the European Union was confirmed on 31 January 2020 (**Brexit**). The legal terms of Brexit (following the current transitional period, which is due to end on 31 December 2020) are currently unknown, but there is a risk that the Transferor will lose its rights under the single market directives, including Solvency II, to carry out general insurance business in other EEA States on a Freedom of Services or Freedom of Establishment basis.
- 2.4 It is therefore proposed that, subject to the sanction of the Transfer by the High Court, the Transferring Business carried on by the Transferor shall, in accordance with this Transfer, be transferred to the Transferee.

3 Transfer of the Transferring Business

- 3.1 Each part of the Transferring Business shall be transferred to and be vested in the Transferee in accordance with this Transfer, so that:
 - 3.1.1 at and with effect from the Effective Date, each Transferring Asset and all the interest 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 applicable Encumbrances affecting such property and shall cease to be the property of the Transferor;
 - 3.1.2 at and with effect from the Effective Date, each Transferring Liability shall, by the Order and without any further act or instrument, be transferred to and become a liability of the Transferee and shall cease to be a liability of the Transferor;
 - 3.1.3 on and with effect from each Subsequent Transfer Date, each Residual Asset to which such Subsequent Transfer Date applies and all the interest of the Transferor in it shall, by the Order and without further act or instrument, be transferred to and be vested in the Transferee, subject to all applicable Encumbrances affecting such property and shall cease to be the property of the Transferor; and

- 3.1.4 on and with effect 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 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 Transferring Assets and, at any Subsequent Transfer Date, to each Residual Asset then transferred. The Transferor shall not be liable for any charges, expenses, costs, claims, losses or any other liabilities in connection with any Transferring Asset or Residual Asset that arise after the Effective Date, have as otherwise agreed between the parties in writing (including under any existing agreement between the Transferor and the Transferee in force at the date this Transfer takes effect) or as set out in this Transfer.
- 3.3 The Transferor and the Transferee shall take all such steps and execute all such documents, as may be necessary or desirable:
 - 3.3.1 to effect and/or perfect the transfer to and vesting in the Transferee of any Transferring Asset pursuant to this Transfer;
 - 3.3.2 to correct any errors in the identity or amount of the property so transferred; and
 - 3.3.3 to effect and/or perfect the transfer to and assumption by the Transferee of any Transferring Liability pursuant to this Transfer.
- 3.4 For the avoidance of doubt, and without prejudice to the generality of paragraph 3.1:
 - 3.4.1 an offer or invitation to treat made to or by the Transferor prior to the Effective Date in relation to the Transferring Business shall be construed and have effect after the Effective Date as an offer or invitation to treat made to or by the Transferee;
 - 3.4.2 any existing indemnity, power of attorney, authority, declaration or consent given to or by the Transferor relating to any part of the Transferring Business (including, for the avoidance of doubt, the Transferring Policies) shall have effect from the Effective Date as if given to or by the Transferee;
 - 3.4.3 any Transferring Asset which was held by the Transferor (whether alone or jointly with others) as a trustee, custodian or in a similar fiduciary capacity shall, with effect from the Effective Date (or relevant Subsequent Transfer Date, as the case may be), be held by the Transferee (alone or jointly, as the case may be, and in the capacity of a trustee, custodian or in a similar fiduciary capacity, as the case may be) subject to the rights, powers and duties previously applicable to the relevant trust, custodian or other fiduciary arrangement in question;
 - 3.4.4 any security in respect of the Transferring Business held immediately prior to the Effective Date by the Transferor, or by a nominee or agent of or a trustee for the Transferor, as security for the payment or discharge of any liability shall, on and from that day be held by the Transferee (or by that nominee, agent or trustee for the Transferee, as the case may be) and be available to the Transferee (whether for its own benefit or for the benefit of any other person) as security for the payment or discharge of that liability; and
 - 3.4.5 the Transferee shall be entitled to rely on and enforce any consent, waiver, representation, statement or estoppel given or made to the Transferor by a person in relation to the Transferring Business prior to the Effective Date as though such consent, waiver, representation, statement or estoppel had been given or made to the Transferee and to the same extent that the Transferor would have been able to rely on or enforce the same.
- 3.5 Each Split Transferring Contract shall be varied such that, from the Effective Date (or, to the extent that a Split Transferring Contract is a Residual Contract, after the relevant Subsequent Transfer Date), it shall:

- 3.5.1 continue on its original terms with the Transferor (subject to such amendments required to split the Split Transferring Contract in accordance with this paragraph 3.5) in relation to the constituent and identifiable part of the Split Transferring Contract which does not constitute a Transferring Contract; and
- 3.5.2 constitute a new agreement with the Transferee on the same terms as the original terms (subject to such amendments required to split the Split Transferring Contract in accordance with this paragraph 3.5) in relation to the constituent and identifiable part of the Split Transferring Contract which constitutes a Transferring Contract,

provided that (i) the terms of both parts of a Split Transferring Contract shall, taken together, operate to ensure that the counterparty is no better or worse off as a result of this paragraph 3.5; (ii) the method for allocating income and expenses in respect of such parts of Split Transferring Contracts shall be determined by agreement between the Transferor and the Transferee taking into account such matters as the Transferor and the Transferee consider relevant; and (iii) such splitting shall not constitute an event of default, suspension or otherwise give rise to a right of termination, early termination or unilateral variation (however described) under the terms of any such Split Transferring Contract.

- 3.6 Each Split Transferring Policy shall be varied such that, from the Effective Date (or, to the extent that a Split Transferring Policy is a Residual Policy or Residual Reinsurance, after the relevant Subsequent Transfer Date), it shall:

- 3.6.1 continue on its original terms with the Transferor (subject to such amendments required to split the Split Transferring Policy in accordance with this paragraph 3.6) in relation to the constituent and identifiable part of the Split Transferring Policy which does not constitute a Transferring Policy or Transferring Reinsurance; and

- 3.6.2 shall constitute a new agreement with the Transferee on the same terms as the original terms (subject to amendments required to split the Split Transferring Policy in accordance with this paragraph 3.6) in relation to the constituent and identifiable part of the Split Transferring Policy which constitutes a Transferring Policy or Transferring Reinsurance,

provided that (i) the terms of both parts of a Split Transferring Policy (including the allocation of deductions, limits and any other applicable policy limitations between such parts) shall, taken together, operate to ensure that the policyholder is no better or worse off as a result of this paragraph 3.6; (ii) the method for allocating premiums, losses and related expenses in respect of such parts of Split Transferring Policies shall be determined by agreement between the Transferor and the Transferee taking into account such matters as the Transferor and the Transferee consider relevant (including the allocation or deductibles, limits and other applicable policy limitations between such parts), and (iii) such splitting shall not constitute an event of default, suspension or otherwise give rise to a right of termination, early termination or unilateral variation (however described) under the terms of any such Split Transferring Policy.

4 Legal Proceedings and Continuity

- 4.1 At and with effect from the Effective Date, any Proceedings which:

- 4.1.1 have been commenced prior to the Effective Date, or which are commenced at or after the Effective Date, against the Transferor; and

- 4.1.2 would give rise to a Transferring Liability in the event of the Proceedings being resolved in the claimant's favour,

shall be continued or commenced against 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 such Proceedings.

- 4.2 At and with effect from the Effective Date, any Proceedings which:

- 4.2.1 have been commenced prior to the Effective Date, or which are commenced at or after the Effective Date, by the Transferor; and
- 4.2.2 would give rise to a Transferring Asset in the event of the Proceedings being resolved in the Transferor's favour,
- shall be continued or commenced by 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 such Proceedings.
- 4.3 Any judgment, settlement, order or award obtained by or against the Transferor whether before or after the Effective Date to the extent that it relates to any part of the Transferring Business and which is not fully satisfied before the Effective 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, or award 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 Proceedings referred to in paragraphs 4.1 and 4.2 for or against the Transferor shall from the Effective Date be evidence in respect of the same matter for or against the Transferee.
- 4.5 At and with effect from the Effective Date, the Transferee shall owe to the policyholders of the Transferring Business and/or to any other relevant person(s) the same duties of confidentiality and privacy (whether pursuant to Regulatory Requirements or contract) as those which the Transferor owed in respect of the Transferring Business immediately prior to the Effective Date.
- 4.6 At and with effect from the Effective Date, any Proceedings in respect of the Transferring Business that are commenced in error against the Transferor shall be deemed to have been commenced and shall continue against the Transferee without the need for further order, whether for substitution of the parties or otherwise.
- 4.7 The provisions of paragraphs 4.1 to 4.6 inclusive shall also apply mutatis mutandis to all Proceedings in relation to Residual Business (with references to the Effective Date amended to the relevant Subsequent Transfer Date and references to Transferring Liabilities, Transferring Assets and Transferring Business amended to, respectively, Residual Liabilities, Residual Assets and Residual Business).
- 4.8 Any judgment, order or award obtained by or against the Transferor which relates to any part of the Transferring Business and which is not fully satisfied before the Effective Date shall, on and from that date, become enforceable by or against the Transferee without the need for further order.
- 4.9 The Transferee will comply with the FCA rules (set out in DISP) that apply to the handling of complaints brought to the FOS and any award or direction made or given by the FOS, relating to acts or omissions prior to the effective date of the transfer (save where inconsistent with Irish regulatory obligations). In particular, policyholders shall have a direct right of action against the Transferee as if the Transferee was bound by DISP 3.7.12R.

5 Treatment of Transferring Policies

- 5.1 At and with effect from the Effective Date, the Transferee shall become entitled to all the rights benefits and powers of the Transferor whatsoever under or by virtue of the Transferring Policies.
- 5.2 Any person who is a policyholder of any of the Transferring Policies shall, at and with effect 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 Transferring Policies to the same rights against the Transferee subject to the terms of this Transfer as were available to him against the Transferor under such Policies and (as regards Transferring Policies under which premiums or other sums attributable or referable thereto continue to be payable) shall at and with effect 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 If any person exercises any right or option which is granted at law or under the terms of a Transferring Policy and either:
 - 5.3.1 the right or option provides for a new additional or replacement Policy to be issued; or
 - 5.3.2 it is appropriate, in the opinion of the Transferee, to issue a new Policy in order to comply with that right or option,

such person shall be entitled to require that the obligation thereby arising shall be satisfied by the issue by the Transferee of a Policy which complies with the terms of such right or option. However (without prejudice to the right of such person to have the right or option satisfied by the issue by the Transferee of such a Policy) if the Transferee is not at the time of the exercise of such right or option writing Policies complying exactly with the Policy to which the right or option refers, the Transferee shall be entitled to offer to such person as an alternative (and, if accepted, in lieu thereof) a Policy commonly offered by the Transferee (or any other member of the Transferee's Group) which the Transferee considers to be the nearest equivalent Policy by reference to the terms and conditions applicable to Policies of the Transferee at that time.

- 5.4 All references in any Transferring Policy to the Transferor or any officers, employees, committees, function holders or agents of the Transferor shall with effect from the Effective Date be read as references to the Transferee or any officers, employees, committees or function holders of the Transferee or agents of the Transferee to which the administration of the relevant part of the business carried on by the Transferee has been delegated (as appropriate). In particular, but without limitation, all rights and duties exercisable or expressed to be exercisable or responsibilities to be performed by the Transferor or any officers, employees, committees, function holders or agents of the Transferor in relation to any of the Transferring Policies shall, from and after the Effective Date, be exercisable or required to be performed by the Transferee or any officers, employees, committees, function holders or agents of the Transferee.
- 5.5 The transfer of any rights, benefits, liabilities and obligations under or in connection with any Transferring Policy pursuant to this Transfer shall take effect and shall be valid and binding on all parties having any interest in the same notwithstanding any restriction howsoever arising (including at law, in equity, tort, delict 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.
- 5.6 All references in a Transferring Policy to the group of companies of which the Transferor is or has been a member shall, where the context requires, be (or continue to be) read and construed with effect from the Effective Date as references to the group of companies of which the Transferee is a member from time to time.
- 5.7 The Transferee shall be entitled to any defences, claims, counterclaims, rights of set-off and rights of subrogation under the Transferring Policies which would have been available to the Transferor.

6 Treatment of Transferring Contracts

- 6.1 At and with effect from the Effective Date, the Transferee shall become entitled to all the rights, benefits and powers of the Transferor whatsoever under or by virtue of the Transferring Contracts.
- 6.2 Any person who is a counterparty of any of the Transferring Contracts shall at and with effect from the Effective Date (but subject to the terms of this Transfer) become entitled, in succession to, and to the exclusion of, any rights which he may have had against the Transferor under any

of the Transferring Contracts to the same rights against the Transferee as were available to him against the Transferor under such Transferring Contracts.

- 6.3 All references in any Transferring Contract to the Transferor or any officers, employees or agents of the Transferor shall from and after the Effective Date be read as references to the Transferee or any officers or employees of the Transferee or agents of the Transferee to which the administration of the relevant part of the business carried on by the Transferee has been delegated (as appropriate). In particular, but without limitation, all rights and duties exercisable or expressed to be exercisable or responsibilities to be performed by the Transferor or any officers, employees or agents of the Transferor in relation to any of the Transferring Contracts shall, from and after the Effective Date, be exercisable or required to be performed by the Transferee or any officers, employees or agents of the Transferee.
- 6.4 The transfer of any rights, benefits, liabilities and obligations under or in connection with any Transferring Contract pursuant to this Transfer 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.
- 6.5 All references in a Transferring Contract to the group of companies of which the Transferor is or has been a member shall, where the context requires, be (or continue to be) read and construed with effect from the Effective Date as references to the group of companies of which the Transferee is a member from time to time.
- 6.6 The Transferee shall be entitled to any defences, claims, counterclaims, rights of set-off and rights of subrogation under the Transferring Contracts which would have been available to the Transferor.

7 Treatment of Transferring Reinsurances

- 7.1 At and with effect from the Effective Date, the Transferee shall become entitled to all the rights, benefits and powers of the Transferor whatsoever under or by virtue of the Transferring Reinsurance Policies.
- 7.2 Any person who is a counterparty of any of the Transferring Reinsurance Policies shall at and with effect from the Effective Date (but subject to the terms of this Transfer) become entitled, in succession to, and to the exclusion of, any rights which he may have had against the Transferor under any of the Transferring Reinsurance Policies to the same rights against the Transferee as were available to him against the Transferor under such Transferring Reinsurance Policies.
- 7.3 All references in any Transferring Reinsurance Policy to the Transferor or any officers, employees or agents of the Transferor shall from and after the Effective Date be read as references to the Transferee or any officers or employees of the Transferee or agents of the Transferee to which the administration of the relevant part of the business carried on by the Transferee has been delegated (as appropriate). In particular, but without limitation, all rights and duties exercisable or expressed to be exercisable or responsibilities to be performed by the Transferor or any officers, employees or agents of the Transferor in relation to any of the Transferring Reinsurance Policy shall, from and after the Effective Date, be exercisable or required to be performed by the Transferee or any officers, employees or agents of the Transferee.
- 7.4 The transfer of any rights, benefits, liabilities and obligations under or in connection with any Transferring Reinsurance Policy pursuant to this Transfer 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.

- 7.5 All references in a Transferring Reinsurance Policy to the group of companies of which the Transferor is or has been a member shall, where the context requires, be (or continue to be) read and construed with effect from the Effective Date as references to the group of companies of which the Transferee is a member from time to time.
- 7.6 The Transferee shall be entitled to any defences, claims, counterclaims, rights of set-off and rights of subrogation under the Transferring Reinsurance Policies which would have been available to the Transferor.
- 7.7 The Transferor shall retain the right to be indemnified under any Related Residual Reinsurance Policies in respect of any liability arising out of a Residual Policy until the Subsequent Transfer Date in relation to that Related Residual Reinsurance Policy. With effect from and including the Subsequent Transfer Date, the Transferee shall have the right to be indemnified in respect of any such liability.
- 7.8 Insofar as it is necessary to ensure that the indemnity under a Residual Reinsurance will still be available in respect of any liability arising under a Related Policy, the Transferor shall remain liable under such Related Policy until the Subsequent Transfer Date for the Residual Reinsurance.

8 Premiums, mandates and other payments

- 8.1 All premiums payable to the Transferor in respect of the Transferring Policies shall at and with effect from the Effective Date be payable to the Transferee.
- 8.2 Save as may otherwise be agreed between the Transferor and the Transferee prior to the Effective Date, any mandate or other instruction in force at 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 Transferring Policies or Transferring Contracts shall thereafter take effect as if it had provided for and authorised such payment to the Transferee.
- 8.3 Save as may otherwise be agreed between the Transferor and the Transferee prior to the Effective Date, any transferring mandate or other instruction in force at the Effective Date as to the manner of payment of any sum payable by the Transferor under any of the Transferring Policies or Transferring Contracts shall, at and with effect from the Effective Date, continue in force as an effective authority to the Transferee in place of the Transferor.

9 Declaration of trust

- 9.1 The Transferor shall, from the Effective Date until the relevant Subsequent Transfer Date, hold the Residual Business as trustee for the Transferee. The Transferor shall be subject to the Transferee's directions in respect of the Residual Business, until such part of the Residual Business 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). The Transferee shall have the authority (with authority to sub-delegate) to act as the attorney of the Transferor in respect of the Residual Business for all such purposes.
- 9.2 In the event of any property being received by the Transferor after the Effective Date in respect of the Transferring Business, the Transferor shall, as soon as is reasonably practicable after its receipt and to the extent to which it is able to do so, transfer such property to, or in accordance with the directions of, the Transferee.

9.3 In the event of any property being received by the Transferor after the Effective Date in respect of the Residual Business, the Transferor shall hold such property as trustee for the Transferee in accordance with paragraph 9.1.

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 paragraph 9.

10 Indemnities

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

10.1.1 any charges, costs, expenses, claims and other liabilities arising in respect of Transferring Liabilities;

10.1.2 any charges, costs, expenses and claims arising in respect of any relevant Third Party Rights continued by the Transferor in accordance with the instructions of the Transferee (subject to which the Transferor shall take such steps as the Transferee shall require in order to pursue such Third Party Rights); and

10.1.3 any stamp, registration, notarisation, documentary or similar tax and duty arising in respect of the transfer of the Transferring Business.

10.2 For the avoidance of doubt, the Transferee shall not be required under paragraph 10.1 to discharge or indemnify the Transferor for any liability if and to the extent that such liability is the subject of an indemnity from any third party in favour of the Transferor (including by way of insurance) or a claim or right against any third party which has not transferred to the Transferee as part of the Transferring Business (a **Third Party Right**), unless, and then only to the extent that, the Transferor shall have failed to recover any such amount pursuant to such Third Party Right.

10.3 Where the Transferor is entitled to receive an amount pursuant to an indemnity contained in paragraph 6.3, 9.4 or 10.1, it shall be entitled to receive such amount as, after payment of or provision for any liability to Tax in respect of the amount receivable, will result in the receipt of an amount equal to the value of the liability to be indemnified against.

10.4 The Transferor shall indemnify the Transferee against all liabilities, losses, claims and expenses in respect of the Transferring Liabilities:

10.4.1 to the extent that they are otherwise recoverable by the Transferor pursuant to a Third Party Right; or

10.4.2 in connection with any defect (whether in title or otherwise) in relation to, or any diminution in the value of, any property transferred to the Transferee to the extent that the loss resulting therefrom is recoverable pursuant to a Third Party Right,

provided that the indemnity in this paragraph 10.4 shall be limited to such amounts as the Transferor shall recover pursuant to such Third Party Right (net of the costs of any such recovery, including as to Tax).

11 Personal Data

11.1 On and with effect from the Effective Date:

11.1.1 the Transferee shall assume all future rights, liabilities and obligations of the Transferor in respect of any personal data which relates to the Transferring Business and which is subject to Data Protection Legislation;

- 11.1.2 the Transferee shall become the data controller of any personal data which relates to the Transferring Business and which is subject to the Data Protection Legislation in place of the Transferor;
- 11.1.3 the Transferee shall in respect of any personal data which relates to the Transferring Business, be under the same duties by virtue of any law as the Transferor was under to respect the confidentiality and privacy of any person in relation to that personal data and shall be bound by any specific notice or consent given, or request made by, a data subject which was binding on the Transferor and which required the Transferor not to use the personal data for marketing purposes; and
- 11.1.4 without prejudice to paragraph 11.1.3, in any consent given by a data subject in respect of such data as is mentioned in this paragraph 11 any reference to the Transferor shall be deemed to include a reference to the Transferee.

12 Third Parties

Other than for the purpose of enforcing rights against the Transferee, no term of this Transfer shall be enforceable by any person other than the parties.

13 The Effective Date

- 13.1 Subject to the High Court having made an Order under Section 111 of the Act sanctioning the Transfer, the Transfer shall take effect at 22.59 (London time) on:
 - 13.1.1 31 December 2020 unless the directors of the Transferor and the Transferee have resolved before that date that it shall not take effect on such date;
 - 13.1.2 if the said directors do so resolve, such other date as the said directors shall determine; and
 - 13.1.3 the Transferor will notify the FCA and PRA in the event there is an application to delay the Effective Date.
- 13.2 If this Transfer does not take effect on or before 31 December 2020, or such later date as the Court may allow upon the application of the Transferor and the Transferee, it shall lapse.

14 Modification

- 14.1 Subject to paragraph 14.2, the Transferee may, with the prior written consent of the Transferor, agree on behalf of all persons concerned to any amendment of or addition to this Transfer or to any further condition or provision affecting the same (a **Modification**) that the High Court may approve or impose, whether before or after the Effective Date, provided that:
 - 14.1.1 any Modification which is material to the Transfer may only be made with the consent of the Insurance Regulator;
 - 14.1.2 where the Insurance Regulator has given its written consent to a Modification, the Transferee and Transferor may amend the Transfer in accordance with such consent;
 - 14.1.3 the Insurance Regulator shall have the right to be heard at any hearing of the High Court at which any Modification to this Transfer is considered; and
 - 14.1.4 any application to the High Court for a Modification shall be accompanied by a certificate from an independent actuary to the effect that in his/her opinion the proposed Modification will not adversely affect the security or adversely affect the reasonable expectations of the holders of the Transferring Policies or Excluded Policies or policies of the Transferee, in each case as they stood before the implementation of the proposed Modification.
- 14.2 The approval of the High Court shall not be required in relation to minor and/or technical amendments to the terms of this Transfer (including amendments to correct manifest errors) that may be agreed by the Transferee and the Transferor in writing, provided that the relevant

department of the Insurance Regulator has been notified of the same at least 28 days in advance of the amendment being made and has not objected (unless the Insurance Regulator has confirmed non-objection prior to that date).

15 Costs

The costs of the Transfer shall be borne by the Transferor and Transferee.

16 Governing Law

This Transfer and any non-contractual obligation arising out or in connection with this Transfer shall be governed by and construed in accordance with English law.

18 December 2020