



IN THE HIGH COURT OF JUSTICE

BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES

COMPANIES COURT (ChD)

Before Mr Justice Meade

On the 20th day of November 2024

CR-2024-002935

**IN THE MATTER OF
F.M. INSURANCE COMPANY LIMITED**

AND

**IN THE MATTER OF
FM INSURANCE EUROPE S.A.**

AND

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

ORDER

UPON THE APPLICATION by Part 8 claim form issued on 30 July 2024 (the “**Claim Form**”) of F.M. Insurance Company Limited, whose registered office is at Voyager Place, Shoppenhangers Road, Maidenhead, Berkshire, England, SL6 2PJ and whose registered number is 00755780 (the “**Transferor**”) and FM Insurance Europe S.A., whose registered office is at One-On-One, 1 Route d'Esch, Luxembourg, L-1470, Luxembourg and whose registered number is FC039419, acting through its UK branch, registered in the United Kingdom with registered branch number BR024525 and its registered office at Voyager Place, Shoppenhangers Road, Maidenhead, SL6 2PJ (the “**Transferee**”), (the Transferor and the

Transferee together, the “**Claimants**”), which Claim Form seeks the sanction of an insurance business transfer scheme as set out in the Schedule hereto (the “**Scheme**”) pursuant to Part VII of the Financial Services and Markets Act 2000 (“**FSMA**”) and other ancillary orders;

AND UPON HEARING Andrew Thornton, KC, Counsel for the Claimants;

AND UPON READING the Claim Form and the supporting evidence;

AND UPON READING the reports of the Independent Expert dated 29 July 2024 and 6 November 2024 and the reports of the Prudential Regulation Authority (the “**PRA**”) dated 1 August 2024 and 15 November 2024 and the Financial Conduct Authority (the “**FCA**”) dated 1 August 2024 and 14 November 2024;

AND UPON the Court being satisfied that the appropriate certificate has been obtained as referred to in section 111(2)(a) of FSMA and paragraphs 1 and 2 of Part I of Schedule 12 to FSMA;

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;

AND UPON the Court considering that, in all the circumstances, it is appropriate to sanction the Scheme;

THIS COURT HEREBY SANCTIONS the Scheme in the form annexed at the Schedule hereto pursuant to section 111(1) of FSMA and adopts the defined terms used therein for the purposes of this Order;

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 FSMA 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 transfers of the Transferring Business provided for by paragraph 4 of the Scheme and the transfers of property and liabilities (as defined by sections 112(12) and (13) of FSMA respectively) provided for by paragraphs 5 and 6 of the Scheme shall take effect pursuant to section 112(1)(a) of FSMA and vest or transfer as provided for by section 112(3) of FSMA as a result of this Order;
2. the provisions in paragraph 9 of the Scheme relating to the continuation of proceedings shall take effect pursuant to section 112(1)(c) of FSMA; and
3. the provisions of all other paragraphs and clauses of the Scheme not referred to above shall take effect pursuant to section 112(1)(d) of FSMA.

AND IT IS FURTHER ORDERED THAT:

4. In accordance with section 112(10) of FSMA, the Transferee shall within 10 days from the date of this Order, or such longer period as the PRA shall allow, deposit two office copies of this Order with the PRA;
5. The Transferee shall within 10 days from the date of this Order, or such longer period as the FCA shall allow, deposit two office copies of this Order with the FCA;
6. The production of a copy of this Order shall, for all purposes, be evidence of the transfer to, and vesting in, the Transferee of the Transferring Business in accordance with this Order and the Scheme; and
7. There shall be permission for the Claimants to apply for such orders or directions as may be expedient or necessary for the purposes set out in section 112 of FSMA and generally.

Service of the Order:

This Court has provided a sealed copy of this order to the serving party,

Willkie Farr & Gallagher (UK) LLP
1 Ropemaker Street
London EC2Y 9AW, United Kingdom

Schedule – The Scheme

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OF ENGLAND AND WALES
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IN THE MATTER OF

PART VII OF THE FINANCIAL SERVICES AND
MARKETS ACT 2000

INSURANCE BUSINESS TRANSFER SCHEME

WILLKIE FARR & GALLAGHER (UK) LLP

CityPoint
1 Ropemaker Street
London EC2Y 9AW

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1. Definitions and 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, together with the rules and regulations implemented pursuant thereto;

“**Asset**” or “**Assets**” means any assets, property, rights or powers of any kind or description, wherever located, whether tangible or intangible, present or future, actual or contingent, that are owned, leased or licensed including all rights, benefits and powers under any contract and all rights, claims and powers against any third party;

“**Data Protection Legislation**” means any law, enactment, regulation or order concerning the Processing of Personal Data, including the UK GDPR, the UK Data Protection Act 2018 and the Privacy and Electronic Communications (EC Directive) Regulations 2003, in each case to the extent applicable to the activities or obligations in respect of each of the Transferor or Transferee at the relevant date of determination;

“**Effective Date**” means the date and time on which the Scheme takes effect in accordance with Clause 14;

“**Encumbrance**” means any mortgage, charge, pledge, lien, option, restriction, assignment, right to acquire, right of pre-emption or any other form of right, interest, preference, security or encumbrance of any nature in favour of a third party or any agreement, arrangement or obligation to create any of them;

“**Excluded Assets**” means:

- (a) all of the issued share capital of FME held by the Transferor as at the Effective Date;
- (b) all of the issued share capital of FME Egypt held by the Transferor as at the Effective Date; and
- (c) certain debt securities, equity investments, other investment assets and cash held by the Transferor as at the Effective Date, as are identified and agreed between the Transferee and the Transferor prior to the Effective Date;

“**Excluded Employee**” means the engineering employee of the Transferor as at the date of this Scheme as identified by the Transferor to the Transferee;

“**Excluded Liabilities**” means any liabilities relating to Excluded Assets or the Excluded Employee;

“**FCA**” means the United Kingdom’s Financial Conduct Authority;

“**FME**” means FM Engineering International Limited, a private limited company registered in England and Wales with company number 03240945;

“**FME Egypt**” means FM Engineering Egypt LLC, a limited liability company registered in Egypt;

“**High Court**” means the High Court of Justice of England and Wales;

“**Independent Expert**” means Derek Newton of Milliman, the independent expert approved by the PRA for the purposes of this Scheme or any other independent expert approved pursuant to section 109(2)(b) of FSMA;

“**Insurance Regulator**” means the PRA and/or FCA, as applicable;

“**Liability**” or “**Liabilities**” means any claim, debt, liability, losses, damages, costs (including legal costs and experts’ fees and the cost of remediation), payment, redress, agreed settlement, buyback, commutation, compromise, duty or obligation of any kind or description (whether direct or indirect, absolute or contingent, accrued or unaccrued, liquidated or unliquidated or due or to become due);

“**Order**” means an order of the High Court pursuant to section 111 of the Act sanctioning the Scheme and any order (including any subsequent order which is ancillary thereto) in relation to the Scheme made by the High Court making provision under section 112 of the Act;

“**Outwards Reinsurance Contracts**” means the reinsurance policies with third-party reinsurers to which the Transferor is a party which covers any part of, or all of, the Transferring Business;

“**Personal Data**” means any information relating to an identified or identifiable natural person or as otherwise defined under applicable Data Protection Legislation;

“**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 United Kingdom’s Prudential Regulation Authority;

“**Proceedings**” means any judicial, quasi-judicial, administrative or arbitration proceedings or any complaint or claim (including 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;

“**Processing**” means any operation or set of operations which is performed on Personal Data or on sets of Personal Data, whether or not by automated means, such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or

combination, restriction, erasure or destruction, or as otherwise defined under applicable Data Protection Legislation;

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

“**Residual Asset**” means those Transferring Assets which do not transfer to the Transferee pursuant to the Order as at the Effective Date for any reason whatsoever and are not otherwise transferred including:

- a) any Asset of the Transferor to be transferred pursuant to this Scheme (including without limitation, any right, benefit or power under a Transferring Policy):
 - i) the transfer of which to the Transferee requires, at the Effective Date, either:
 - A) the consent of any person (other than the Transferor, the Transferee or the High Court); or
 - B) the waiver by any person of any right to acquire, or to be offered the right to, or to offer to, acquire or procure the acquisition by some other person of, all or any part of such Asset, being a right which directly or indirectly arises or is exercisable as a consequence of such transfer being proposed or taking effect; and
 - ii) which the High Court determines, notwithstanding section 112(2A) of FSMA, not to so transfer or the transfer of which is not recognised by the laws of any relevant jurisdiction in which such Transferring Asset is situated;
- b) any Asset of the Transferor to be transferred pursuant to this Scheme (including without limitation, any right, benefit or power under a Transferring Policy) which the Transferor and the Transferee agree in writing prior to the Effective Date shall not be transferred on the Effective Date;
- c) any proceeds of sale or income or other accrual or return whatsoever, whether or not in any case in the form of cash, from time to time earned on or received after the Effective Date in respect of any such Assets referred to in paragraphs to (a) and (c) of this definition; and
- d) any Asset of the Transferor to be transferred pursuant to this Scheme (including without limitation, any right, benefit or power under a Transferring Policy), which cannot, for any other reason, be transferred to or vested in the Transferee pursuant to the Scheme;

“**Residual Liabilities**” means those Transferring Liabilities which do not transfer to the Transferee pursuant to the Order as at the Effective Date for any reason whatsoever and are not otherwise transferred, including a Liability in respect of which:

- a) the transfer of the Liability to the Transferee pursuant to this Scheme requires, as at the Effective Date, the consent or waiver of any person (other than the Transferor, the Transferee or the High Court) and which the High Court either does not have jurisdiction to transfer to the Transferee pursuant to section 112(1)(a) of FSMA or which (despite having such jurisdiction) the High Court determines, notwithstanding section 112(2A) of FSMA, not to transfer; or
- b) the Transferor and the Transferee agree in writing prior to the Effective Date it shall not be transferred on the Effective Date; or
- c) it is attributable to or connected with a Residual Asset and arises at any time before the Subsequent Transfer Date applicable to that Residual Asset; or
- d) it cannot be transferred to or vested in the Transferee pursuant to the Scheme for any other reason;

“**Residual Policies**” means those Transferring Policies which do not transfer to the Transferee pursuant to the Order, or are alleged not to transfer to the Transferee pursuant to the Order, as at the Effective Date for any reason whatsoever and which are not otherwise transferred, including a Transferring Policy in respect of which:

- a) its transfer is expressly refused by a regulatory body or court of law having jurisdiction to do so;
- b) the Order requires further steps be taken to make the transfer fully effective;
- c) the Transferor and the Transferee agree prior to the Effective Date that its transfer is to be delayed until after the Effective Date;
- d) the PRA has not prior to the issue of the Order delivered, in respect of any Transferring Policy, a certificate referred to in paragraph 2 of Part 1 of Schedule 12 to FSMA; or
- e) which cannot be transferred to the Transferee pursuant to the Scheme for any other reason;

“**Scheme**” 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;

“**Subsequent Transfer Date**” means in relation to a Residual Policy, Residual Asset or Residual Liability, as applicable, the date on which the Transferor’s rights and/or liabilities under such Residual Policy, Residual Asset or Residual Liability, as applicable, are transferred to the Transferee whether by means of novation or as a result of any necessary consent or waiver being obtained or the making of a court order dispensing with such consent or waiver or otherwise;

“**Tax Liabilities**” means all liabilities to or in respect of taxation, duties and other imports which are attributable to the Transferring Business incurred prior to the Effective Date;

“**Transferee**” means FM Insurance Europe S.A., registered as a foreign company under the name of FM Europe S.A. in England and Wales with foreign company number FC039419, with a registered office at One-On-One, 1 Route d’Esch, Luxembourg, L-1470, Luxembourg, acting through its UK branch, registered in the United Kingdom with registered branch number BR024525 and its registered office at Voyager Place, Shoppenhangers Road, Maidenhead, SL6 2PJ;

“**Transferor**” means F.M. Insurance Company Limited, a company incorporated and registered in England & Wales with registered number 00755780, whose registered office is at Voyager Place, Shoppenhangers Road, Maidenhead, Berkshire, England, SL6 2PJ;

“**Transferring Assets**” means, other than the Excluded Assets, any and all tangible and intangible assets of the Transferor, wheresoever situated, comprised in or attributable to the Transferring 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 Transferring Contracts;
- b) the reinsurance assets or cash deposits comprising the insurance provisions and reserves associated with the Transferring Policies;
- c) all rights of recovery (including the right to continue or bring a legal claim) against any party which arises as a result of the Transferor underwriting or paying a claim under any of the Transferring Policies except for the Residual Policies;
- d) the Transferring Records including, without limitation, all rights, title and interest to the extent of the Transferor in such records; and
- e) all rights and claims (present or future, actual or contingent) against any third party in relation to the Transferring Business or arising as a result of the Transferor having carried on the Transferring Business;

“**Transferring Business**” means, other than the Excluded Assets, the Excluded Employee and the Excluded Liabilities, the entire undertaking of the Transferor, including the whole of the general insurance business effected and/or carried out by the Transferor immediately prior to the Effective Date, including, without limitation, all rights, benefits and powers of the Transferor under or by virtue of the Transferring Contracts, the Transferring Assets and all liabilities and obligations of the Transferor, under and by virtue of the Transferring Liabilities;

“**Transferring Contracts**” means any contract to which the Transferor is a party, including each Transferring Policy and each Outwards Reinsurance Contract;

“Transferring Liabilities” means, other than the Excluded Liabilities, all debts, liabilities and obligations whatsoever of the Transferor in respect of the Transferring Business including (without limitation):

- a) all debts, liabilities and obligations whatsoever under or by virtue of the Transferring Contracts or otherwise attributable to the Transferring Business;
- b) all debts, liabilities and obligations arising as a result of the Transferor having carried on the Transferring Business;
- c) in respect of any claim for mis-selling by any current or former Policyholder who holds a Transferring Policy or has held a Transferring Policy prior to the Effective Date; and
- d) all Tax Liabilities which are attributable to such Transferring Business or the transfer thereof (pursuant to the scheme or otherwise) or arising as a consequence of the provisions of the Scheme whensoever incurred;

but excluding:

- i) any other liabilities relating to taxation; and
- ii) any other liabilities excluded under the terms of,
the Scheme;

“Transferring Policies” means all Policies (including all constituent parts of a Policy) to the extent written by or on behalf of, or for which responsibility has been assumed by, the Transferor as insurer, reinsurer or retrocessionaire prior to the Effective Date and comprised in the Transferring Business under which any liability remains unsatisfied or outstanding at the Effective Date;

“Transferring Records” means all documents, files and other records (held in whatever medium) referable to the Transferring Business in the possession or control of the Transferor up to the Effective Date; and

“UK GDPR” means the General Data Protection Regulation 2016/679 as it forms part of retained EU law (as defined in the European Union (Withdrawal) Act 2018), as amended from time to time.

1.2 In this Scheme unless the context otherwise requires or expressly provides:

1.2.1 references to Clauses and Schedules are to Clauses and Schedules to this Scheme;

1.2.2 **“novation”** includes transfer or assignment;

- 1.2.3 “**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;
- 1.2.4 “**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;
- 1.2.5 references to the “**UK**” are references to the United Kingdom;
- 1.2.6 the singular includes the plural and vice versa and any reference to one gender includes the other;
- 1.2.7 headings are for convenience only and shall not affect the interpretation of this Scheme;
- 1.2.8 save as expressly provided otherwise, any reference in this Scheme 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 Scheme and to any instrument or order made from time to time after the date of this Scheme under such enactment, statutory provision or subordinate legislation;
- 1.2.9 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;
- 1.2.10 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;
- 1.2.11 any reference to writing shall include any modes of reproducing words in a legible and non-transitory form;
- 1.2.12 the expression variation or varied shall include any variation, supplement, deletion, replacement or termination, however effected; and
- 1.2.13 any reference to including shall mean including without limitation.

2. Introduction

2.1 Parties to the Scheme

- 2.1.1 The Transferor is a company incorporated and registered in England and Wales with registered number 00755780, whose registered office is at Voyager Place, Shoppenhangers Road, Maidenhead, Berkshire, England, SL6 2PJ. The Transferor is authorised by the PRA and regulated by the PRA and FCA and is registered on the FCA register with reference number 202145.

- 2.1.2 The Transferee is registered as a foreign company in England and Wales under the name of FM Insurance Europe S.A. in England and Wales with foreign company number FC039419, with a registered office at One-On-One, 1 Route d'Esch, Luxembourg, L-1470, Luxembourg, acting through its UK branch, registered in the United Kingdom with registered branch number BR024525 and a registered office at Voyager Place, Shoppenhangers Road, Maidenhead, SL6 2PJ. FM Insurance Europe S.A. ("FMIE") is authorised and regulated by the Commissariat aux Assurances and carries out insurance business in the United Kingdom via its UK branch, which is authorised by the PRA and regulated by the PRA and FCA. The Transferee is registered on the FCA register with the reference number 782276.
- 2.1.3 As at the date of this Scheme and in accordance with section 105(1) of FSMA, the Transferor is a UK authorised person and is regulated by the PRA and the FCA to carry out general insurance business in the United Kingdom, with permissions, *inter alia*, to effect and carry out contracts of general insurance business in the United Kingdom in classes 4, 5, 6, 7, 8, 9, 11, 12, 13, 14, 15, 16 and 17 of Part I of Schedule 1 of the RAO.
- 2.1.4 At the date of this Scheme, the Transferee is a UK authorised person and is regulated by the PRA and the FCA to carry out general insurance business in the United Kingdom, with permission, *inter alia*, to effect and carry out contracts of general insurance in the United Kingdom in classes 4, 5, 6, 7, 8, 9, 13 and 16 of Schedule 1 of the RAO.
- 2.1.5 Both the Transferor and FMIE are wholly-owned subsidiaries of Factory Mutual Insurance Company, a mutual commercial property insurance company incorporated in 1835 in Rhode Island, USA.

2.2 Transferring Business

- 2.2.1 The Transferring Business comprises the entire undertaking of the Transferor other than the Excluded Assets, the Excluded Employee and the Excluded Liabilities.
- 2.2.2 It is proposed that the Transferring Business be transferred to the Transferee in accordance with this Scheme and that an Order be sought for the sanction of this Scheme.

3. Transfer of Transferring Business

On and with effect from the Effective Date the Transferring Business and all the estate and interest of the Transferor in the Transferring Business shall by the Order and without any further act or instrument be transferred to and vest in the Transferee in accordance with and subject to the terms of the Scheme.

4. Transfer of Contracts

- 4.1 On and with effect from the Effective Date, the Transferee shall, by the Order and without any further act or instrument, be entitled to all the rights, benefits and powers, and be subject to all

the obligations and liabilities of the Transferor whatsoever subsisting on the Effective Date under or by virtue of the Transferring Contracts and all such rights, benefits and powers shall be vested in the Transferee.

- 4.2 Every person who immediately prior to the Effective Date is a holder of or party to a Transferring Contract shall, from and after the Effective Date, in substitution for any liability or obligation owed thereunder to the Transferor, be under the same liability or obligation to the Transferee and shall become entitled, 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 Contract.
- 4.3 All premiums and other amounts attributable or referable to the Transferring Contracts shall on and after the Effective Date be payable to the Transferee and shall be receivable and received by the Transferee and every person who is a holder of or party to any of the Transferring Contracts shall be liable to the Transferee for any outstanding, further or additional premiums or other sums attributable or referable to the Transferring Contracts as and when the same become due and payable.
- 4.4 The Transferee shall be entitled to any and all defences, claims, counterclaims and rights of set-off under or in respect of the Transferring Contracts which would have been available to the Transferor.
- 4.5 All references in any Transferring Contract to the Transferor, the board of directors of the Transferor, 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 board of directors of the Transferee, or any other officers, employees or agents of the Transferee or, where appropriate, agents of the Transferee to which the administration 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 board of directors of the Transferor, or any other 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, the board of directors of the Transferee or any other officers, employees or agents of the Transferee.

5. Transferring Assets and Residual Assets

- 5.1 On and with effect from the Effective Date, the Transferring Assets and all the interest and title of the Transferor in them 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 Transferring Assets in accordance with this Scheme.
- 5.2 At each Subsequent Transfer Date, each Residual Asset to which such Subsequent Transfer Date applies and all title and interest of the Transferor in such Residual Asset 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 Residual Asset.

- 5.3 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 each Subsequent Transfer Date to the Residual Assets then transferred.
- 5.4 On the Effective Date the Transferor shall, to the extent in its possession or control, deliver or cause to be delivered to the Transferee the Transferring Records which are capable of being transferred by delivery.
- 5.5 The Transferor shall, from the Effective Date, hold any and all Residual Assets as trustee for the Transferee absolutely until:
- 5.5.1 the applicable Subsequent Transfer Date; or
- 5.5.2 such other date as the Transferor and the Transferee shall otherwise agree,
- and until then the Transferee shall indemnify the Transferor in accordance with Clause **8.1**.
- 5.6 Until the first to occur of the events referred to in Clauses **5.5.1** and **5.5.2**, the Transferee shall have authority to act as the attorney of the Transferor in respect of its rights under the Residual Assets for all purposes, and shall have the power to give reasonable directions to the Transferor for any lawful purpose in connection with such rights, and such authority and power shall include, without limitation, authority and power in relation to the exercise, enforcement, variation, commutation, compromise, settlement or transfer of such rights.

6. Transferring Liabilities and Residual Liabilities

- 6.1 At the Effective Date, the Transferring Liabilities and all the estate and interest of the Transferor in them shall, by the Order and without any further act or instrument, be transferred to and become Liabilities of the Transferee and shall cease to be Liabilities of the Transferor.
- 6.2 At each Subsequent Transfer Date, each Residual Liability to which the Subsequent Transfer Date applies shall, by the Order, and without any further act or instrument, be transferred by the Transferor to, and become a Liability.

7. Transfer of Residual Policies

- 7.1 The Transferor's rights and liabilities under Residual Policies shall transfer to and vest in and become rights and liabilities of the Transferee with effect from the applicable Subsequent Transfer Date. With effect from that date the provisions of this Scheme shall apply to the relevant Residual Policies as if references to Transferring Policies were references to such Residual Policies and as if references to the Effective Date were to the relevant Subsequent Transfer Date.
- 7.2 The Transferor shall on and with effect from the Effective Date hold its rights under each Residual Policy (including all contractual, tortious and statutory rights, benefits and powers of the Transferor under or by virtue of any such Residual Policy) on trust for the Transferee absolutely until:

7.2.1 the applicable Subsequent Transfer Date; or

7.2.2 such other date as the Transferor and the Transferee shall otherwise agree,

and until then the Transferee shall indemnify the Transferor in accordance with Clause **8.1**.

7.3 Until the first to occur of the events referred to in Clauses **7.2.1** and **7.2.2**, the Transferee shall have authority to act as the attorney of the Transferor in respect of its rights under the Residual Policies for all purposes, and shall have the power to give reasonable directions to the Transferor for any lawful purpose in connection with such rights, and such authority and power shall include, without limitation, authority and power in relation to the exercise, enforcement, variation, commutation, compromise, settlement or transfer of such rights.

8. Indemnity

8.1 From the Effective Date the Transferee shall:

8.1.1 indemnify and keep indemnified the Transferor against any loss or expense incurred by or demand made against the Transferor that is attributable to the Transferring Business or the Transferring Policies whether arising before or after the Effective Date; and

8.1.2 discharge on the Transferor's behalf or, failing that, indemnify the Transferor against all liabilities arising under the Residual Policies, Residual Assets and Residual Liabilities until any such liability is transferred to or becomes a liability of the Transferee.

8.2 From the Effective Date the Transferee shall observe and perform the Transferor's obligations under the Residual Policies and Residual Assets and in respect of the Residual Liabilities and shall indemnify and keep indemnified the Transferor against and in respect of any liability, loss or expense incurred by or demand made against the Transferor that is attributable to the same.

9. Legal Proceedings and Continuity

9.1 Any Proceedings shall be commenced and/or continued by, against or in relation to the Transferee from the Effective Date. The Transferee shall be entitled to all defences, claims, counterclaims and rights of set-off that would have been available to the Transferor in relation to such Proceedings and the Transferor shall have no liability under those Proceedings and, for the avoidance of doubt, the Transferee, in its absolute discretion, may discontinue any such Proceedings brought by the Transferor.

9.2 Until the relevant Subsequent Transfer Date, the Transferee shall have the right to direct the conduct of any legal Proceedings which at the Effective Date are pending by or against the Transferor in relation to the Residual Policies.

9.3 Any Proceedings after the Effective Date in respect of the Transferring Business commenced in error against the Transferor shall be deemed to have been commenced and shall be continued

against the Transferee without the need for further order, whether for substitution of parties or otherwise.

- 9.4 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.

10. Premiums, Mandates etc.

- 10.1 All premiums attributable or referable to the Transferring Policies shall from the Effective Date be payable to the Transferee.
- 10.2 Any direct debit mandate, standing order or other instruction or authority in force on the Effective Date including any instruction given to a bank by its customer in the form of a direct debit or standing order and providing for payment by a bank or other intermediary of premiums or other sums payable to the Transferor under or in respect of any Transferring Policy or other Transferring Contract shall thereafter take effect as if it had provided for and authorised such payment to the Transferee.
- 10.3 Any mandate or other instruction or authority in force on the Effective Date as to the manner of payment by the Transferor of any sum payable under any Transferring Policy or other Transferring Contract shall continue in force as an effective mandate, instruction or authority to or of the Transferee.

11. Personal Data

- 11.1 On and with effect from the Effective Date, the Transferee shall:
- 11.1.1 succeed to all rights, liabilities and obligations of the Transferor in respect of any Personal Data which relates to the Transferring Business and which is subject to applicable Data Protection Legislation;
- 11.1.2 become the controller (as defined in Data Protection Legislation) of any Personal Data which relates to the Transferring Business and which is subject to applicable Data Protection Legislation in place of the Transferor and shall comply with the obligations on controllers as set out in applicable Data Protection Legislation;
- 11.1.3 in respect of any Personal Data which relates to the Transferring Business, be under the same obligations under applicable Data Protection Legislation as the Transferor was under to respect the data protection rights of any data subject (as defined in Data Protection Legislation) in relation to 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

11.1.4 without prejudice to Clause **11.1.3**, in any consent given by a data subject in respect of such Personal Data as is mentioned in this Clause **11**, any reference to the Transferor shall be deemed to include a reference to the Transferee.

12. Further Assurance

The Transferor and the Transferee shall each take such steps and execute such documents as may reasonably be required to effect or perfect the transfer to the Transferee of the Transferring Business.

13. Third Parties

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

14. The Effective Date

Subject to the High Court having made an Order under Section 111 of the Act sanctioning the Scheme, the Scheme shall take effect at 23:59 (Luxembourg time) on 30 November 2024 or such other time and date as may be specified in the Order, or such later date and time as the Transferor and the Transferee have agreed in writing.

15. Modification

15.1 Subject to Clause **15.2**:

15.1.1 prior to the Effective Date, the Transferor and the Transferee may; and

15.1.2 from and including the Effective Date, 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 Scheme 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:

- (a) notification of any proposed Modification has been given to the Insurance Regulators and they have not objected thereto within 28 days of such notification; and
- (b) 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 Residual Policies or policies of the Transferee, in each case as they stood before the implementation of the proposed Modification.

15.2 The approval of the High 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) 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).

16. Costs

All costs and expenses relating to the preparation and effecting of the Scheme and application for the sanction of the Scheme, including the costs of the PRA, FCA, Independent Expert and counsel, shall be borne by the Transferee.

17. Governing Law

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

20 November 2024