



CR-2020-001581

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

The Honourable Mr Justice Adam Johnson
17 December 2020

**IN THE MATTER OF THE UNITED KINGDOM MUTUAL STEAM SHIP
ASSURANCE ASSOCIATION (LONDON) LIMITED**

**AND IN THE MATTER OF THE UNITED KINGDOM MUTUAL STEAM SHIP
ASSURANCE ASSOCIATION (EUROPE) LIMITED**

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

ORDER

UPON THE APPLICATION by Claim Form dated 12 August 2020 of (1) The United Kingdom Mutual Steam Ship Assurance Association (London) Limited whose registered office is situated at 90 Fenchurch Street, London EC3M 4ST (**'UKL'**) and (2) The United Kingdom Mutual Steam Ship Assurance Association (Europe) Limited (**'UKE'**) whose registered office is situated at 90 Fenchurch Street, London EC3M 4ST for the sanctioning of the scheme set out at exhibit 1 to the first witness statement of Andrew John Taylor (the **'Scheme'**) pursuant to Part VII of the Financial Services and Markets Act 2000 (the **'Act'**);

AND UPON HEARING Andrew Thornton QC, Counsel for the Applicants via Microsoft Teams;

AND UPON READING the Claim Form and the evidence;

THIS COURT HEREBY sanctions pursuant to Section 111(1) of the Act the Scheme set out in Schedule 1 hereto;

AND IT IS ORDERED pursuant to Section 112(1) of the Act that, using the definitions as set out in the Scheme:

1. notwithstanding any other provision of this Scheme, the Scheme and the proposed transfer of the Transferred Business pursuant to it is conditional upon the sanction by the Court of the UAE Scheme prior to the Effective Time;
2. the Transferred Business shall be transferred to and be vested in UAE in accordance with this Scheme notwithstanding any terms in any agreement prohibiting all or any of such transfer and/or vesting and/or imposing any limitations on the circumstances in which any assets or liabilities comprised in the Transferred Business may be transferred and/or vested or purporting to terminate, limit or otherwise affect such assets or liabilities in the event of a transfer;
3. on and with effect from the Effective Time, the Transferred Assets and all the estate and interest of UKL therein, shall, by the Order and without any further act or instrument, be transferred to and be vested in UAE. UKL and UAE shall as and when appropriate execute all such documents and perform such other acts and things as may be required to effect or perfect the transfer to and vesting in UAE of

any Transferred Asset in accordance with the terms of this Scheme or otherwise for effecting or perfecting the transfer of the Transferred Business in accordance with the terms of this Scheme;

4. on and with effect from the Effective Time, the Transferred Liabilities shall, by the Order and without any further act or instrument, be transferred to and become liabilities of UKE and shall cease to be liabilities of UKL;
5. without prejudice to the generality of paragraphs 2, 3 and 4, on and with effect from the Effective Time, UKE shall by the Order, and without any further act or instrument, be entitled to all rights of UKL under the Transferred Policies and be subject to all UKL's obligations under the Transferred Policies whatsoever subsisting at the Effective Time, and in any document evidencing or constituting a Transferred Policy references to UKL and/or to rights and/or liabilities of UKL, its board of directors or other officers, employees or agents and/or to liabilities of holders of Transferred Policies to UKL shall, to the extent necessary to give full effect to this Scheme, be read, manipulated, construed and treated as references to UKE and/or to rights and/or liabilities of UKE, its board of directors or other officers, employees, agents or managers and/or to liabilities of the holders of Transferred Policies to UKE, in each case subject to and in accordance with the terms of this Scheme;
6. without prejudice to the generality of paragraphs 2, 3 and 4, on and with effect from the Effective Time, UKE shall by the Order and without any further act or instrument, be entitled to all rights of UKL under the Transferred Reinsurances and be subject to all liabilities of UKL under the Transferred Reinsurances (including any obligation to indemnify under the Pooling Agreements) whatsoever subsisting at the Effective Time, and in any document evidencing or constituting

a Transferred Reinsurance references to UKL and/or to rights and/or liabilities of UKL, its board of directors or other officers, employees, agents or managers and/or to liabilities of the reinsurers or other third parties under Transferred Reinsurances to UKL shall, to the extent necessary to give full effect to this Scheme, be read, manipulated, construed and treated as references to UKE, its board of directors or other officers, employees, agents or managers and/or to liabilities of the reinsurers or other third parties under Transferred Reinsurances to UKE subject to and in accordance with the terms of this Scheme and the Transferred Reinsurances shall (notwithstanding any provision to the contrary therein) continue in force and shall, to the extent necessary to give full effect to this Scheme, be read, manipulated, construed and treated so that the Transferred Reinsurances shall operate for the benefit of UKE as if UKE was the original party thereto in place of UKL;

7. without prejudice to the generality of paragraphs 2, 3 and 4 and without prejudice to paragraphs 5 and 6, on and with effect from the Effective Time, any references to UKL in any contract between UKL and any third party relating to the Transferred Policies, Transferred Reinsurances or otherwise comprised in the Transferred Business, shall, to the extent necessary to give full effect to this Scheme, be read, manipulated, construed and treated as references to UKE and such contract shall operate as if UKE was the original party to the contract in place of UKL;
8. on and with effect from the Effective Time, UKE shall:
 - i. succeed to all rights, liabilities and obligations of UKL in respect of any personal data which relates to the Transferred Business, Transferred Policies, Transferred Reinsurances, Transferred

Assets or Transferred Liabilities to the extent transferred by this Scheme;

- ii. become the data controller of any personal data which relates to the Transferred Business, Transferred Policies, Transferred Reinsurances, Transferred Assets or Transferred Liabilities, to the extent required by the Data Protection Laws and shall be deemed to have been the controller of all such data at all material times when personal data is processed; and
- iii. in respect of any personal data which relates to the Transferred Business, Transferred Policies, Transferred Reinsurances, Transferred Assets or Transferred Liabilities be under the same duty as UKL 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, the data subject which was binding on UKL and which required UKL not to use the personal data for marketing purposes,

and in any consent given by a data subject in respect of such data as is mentioned in this paragraph, any reference to UKL shall be deemed to include a reference to UKE;

- 9. at and with effect from the Effective Time, any judicial, quasi-judicial or arbitration proceedings or any complaint or claim to any ombudsman or similar or other proceedings for the resolution of a dispute or claim (whether current or future (including those not yet in contemplation)) by or against UKL from the Effective Time in connection with the Transferred Policies, the Transferred Reinsurances, the Transferred Assets, the Transferred Liabilities or otherwise in relation to the Transferred Business shall be continued

by or against UKE and UKE shall be entitled to all defences, claims, counterclaims and rights of set-off that would have been available to UKL in relation to such proceedings and UKL shall have no liability under those proceedings and, for the avoidance of doubt, UKE, in its absolute discretion, may determine to discontinue after the Effective Time any such proceedings brought by UKL;

10. at and with effect from the Effective Time, any judicial, quasi-judicial, or arbitration proceedings or any complaint or claim to any ombudsman or similar person or entity or other proceedings for the resolution of a dispute or claim (whether current or future (including those and yet in contemplation)) in relation to UKL and concerning the Transferred Policies, Transferred Reinsurances, Transferred Assets, Transferred Liabilities or otherwise in relation to the Transferred Business shall be commenced against UKE. Any such proceedings after the Effective Time commenced against UKL shall be deemed to have been commenced and shall be continued against UKE without the need for further order, whether for substitution of parties or otherwise. In any event, UKE shall be entitled to all defences, claims, counterclaims and rights of set off that would have been available to UKL in relation to such proceedings, complaint or claim;
11. any judgment, order or award obtained by or against UKL (whether before or after the Effective Time) which relates to any part of the Transferred Business and which is not fully satisfied before the Effective Date shall, on and from that date, be enforceable by or against UKE and shall be dealt with by UKE without the need for further order;

12. the Excluded Policies shall not be transferred to UKE by this Scheme and the liabilities and assets of UKL relating to the Excluded Policies shall remain liabilities and assets of UKL subject to paragraph 13;

13. if

i. UKL or UKE procures the novation of any Excluded Policy to UKE;

ii. any impediment to the transfer of any Excluded Policy to UKE shall have been removed or overcome (including any waiver, consent, permission or licence having been obtained or notice having been given);

iii. any conditions to the transfer of an Excluded Policy to UKE contained in the Order shall have been satisfied; or

iv. the Court orders the transfer of such Excluded Policy to UKE,

then, notwithstanding any other provisions of this Scheme, the assets and liabilities relating to such Excluded Policy shall be transferred to UKE and such Excluded Policy, assets and liabilities shall thereafter be dealt with by UKE under the provisions of this Scheme in all respects as if such Excluded Policy were a Transferred Policy and as if such assets and liabilities were part of the Transferred Business and the Transferred Reinsurances, Transferred Assets and/or Transferred Liabilities, as relevant;

14. if:

i. any asset (other than an asset referred to in paragraphs 12 and 13) of UKL proposed to be transferred pursuant to this Scheme is not, or is not capable of being, immediately transferred at the Effective Time by the Order by reason of:

- a) such asset being governed by the law of any country or territory outside the UK; or
 - b) for any other reason; or
- ii. the transfer of any asset (other than an asset referred to in paragraphs 12 and 13) of UKL proposed to be transferred pursuant to this Scheme is not recognised by the law of the country or territory in which such asset is situated,

UKL shall, on and from the Effective Time and until the relevant asset is transferred to UKE, hold any asset referred to in paragraphs 14(i) or 14(ii) as trustee for UKE absolutely;

- 15. UKL shall in any event be subject to UKE's directions in respect of any asset referred to in paragraphs 14(i) or 14(ii) until the relevant asset is transferred to or otherwise vested in UKE or is disposed of (whereupon UKL shall account to UKE for the proceeds of disposal thereof), and UKE shall have authority to act as the attorney of UKL in respect of such asset for all such purposes;
- 16. in the event of any payment being made to, or other asset being received by or being conferred upon, UKL on or after the Effective Time in respect of the Transferred Business or any Transferred Asset, UKL shall as soon as is reasonably practicable after its receipt pay over the full amount of such payment or (to the extent to which it is able to do so) transfer such asset to, or deal with such payment or asset in accordance with the reasonable directions of, UKE;
- 17. without prejudice to the foregoing provisions of paragraphs 14, 15 and 16 or the provisions of paragraphs 18 and 19, if:

- i. any asset or liability included in the Order is governed by the law of any country or territory outside the UK, UKL shall take all necessary steps as UKE may require for securing that the transfer to UKE of that asset or liability is fully effective under the law of that country or territory; and
- ii. any asset or liability of UKL proposed to be transferred pursuant to this Scheme is not for whatever reason immediately transferred to UKE at the Effective Time, UKL shall take all necessary steps as UKE may require for securing the transfer to UKE of that asset or liability;

18. if:

- i. any liability (other than a liability referred to in paragraphs 12 and 13) of UKL proposed to be transferred pursuant to this Scheme is not, or is not capable of being, immediately transferred at the Effective Time by the Order by reason of:
 - a) such liability being governed by the law of any country or territory outside the UK; or
 - b) for any other reason; or
- ii. the transfer of any liability (other than a liability referred to in paragraphs 12 and 13) of UKL proposed to be transferred pursuant to this Scheme is not recognised by the law of the country or territory in which such liability is situated,

on and with effect from the Effective Time, until the relevant liability is transferred to or becomes a liability of UKE, UKE shall discharge such liability on behalf of UKL or, failing that, indemnify UKL against

such liability and any other loss or expense incurred by or demand made against UKL that is attributable to such liability;

19. UKL shall in any event be subject to UKE's directions in respect of any liability referred to in paragraphs 18(i) and 18(ii) until the relevant liability is transferred to or becomes a liability of UKE, and UKE shall have authority to act as the attorney of UKL in respect of such liability for all such purposes;
20. this Scheme shall become operative at noon Greenwich Mean Time on 30 December 2020;

AND IT IS FURTHER ORDERED THAT:

21. the production of a copy of this Order and a copy of a certificate by a director of UKL for the time being that the Scheme has taken effect shall, for all purposes, be evidence of the transfer to, and vesting in, UKE of the Transferred Business, the Transferred Policies, the Transferred Reinsurances, the Transferred Assets and the Transferred Liabilities in accordance with this Order and the Scheme;
22. neither the transfer of the Transferred Business, the Transferred Policies, the Transferred Reinsurances, the Transferred Assets or the Transferred Liabilities nor any other matter provided for by this Order or the Scheme shall:
 - i. invalidate or discharge any agreement or other thing;
 - ii. constitute a breach of default under or termination event or require any obligation to be performed sooner or later than would have otherwise been the case under, any agreement or instrument to which UKL or UKE is a party or is bound;

- iii. allow any party to any agreement to terminate that agreement when it would not otherwise have been able to do so;
 - iv. entitle any party to any agreement to which UKL or UKE is a party or is bound to vary the terms of that agreement when it would not otherwise have been able to do so; or
 - v. 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;
23. in accordance with Section 114(2) of the Act:
- i. notice of the making of this Order shall be published in the Financial Times (European Edition); and
 - ii. such notice shall specify that the period during which the holder of any policy included within the transfer for which the Scheme provides, which evidences a contract of direct insurance in respect of which the relevant EEA state is the EEA state in which the risk is situated, may exercise the right (if any) under the law of the relevant EEA state to cancel the policy, shall be the period of 21 days starting from the date of such publication or such other period (if any) as provided for by the laws of the relevant EEA state;
24. in accordance with Section 112(10) of the Act, UKE shall within 10 days from the date of this Order or such longer period as the PRA may allow, deposit two office copies of this Order with the PRA; and
25. there shall be liberty to UKL and/or UKE to apply:
- i. for such Orders as may be expedient or necessary for the purposes set out in Section 112(1) of the Act;
 - ii. pursuant to paragraph 13 of the Scheme; and
 - iii. generally.

Service of the order

The court has provided a sealed copy of this order to the serving party:

Reed Smith LLP, The Broadgate Tower, 20 Primrose Street, London EC2A 2RS,
Solicitors for the Claimant

SCHEDULE 1
Scheme

CR-2020-001581

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

**IN THE MATTER OF THE UNITED KINGDOM MUTUAL STEAM SHIP ASSURANCE
ASSOCIATION (LONDON) LIMITED**

**AND IN THE MATTER OF THE UNITED KINGDOM MUTUAL STEAM SHIP
ASSURANCE ASSOCIATION (EUROPE) LIMITED**

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

INSURANCE BUSINESS TRANSFER SCHEME

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1. DEFINITIONS AND INTERPRETATION

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

Act the Financial Services and Markets Act 2000.

Business Day means a day, other than a Saturday, Sunday or public holiday, on which banks in the City of London are open for business generally.

Court the High Court of Justice in England.

Data Protection Laws all applicable laws, directives, statutes, regulations and codes of practice (to the extent that any codes of practice have legal effect) relating to the processing and protection of personal data.

Effective Time the time and date on which the Scheme shall become operative in accordance with paragraph 12.

Excluded Assets and means:

Liabilities

- (a) the reinsurance agreement between UKL and UKB dated 20 February 1969 and as amended by an addendum dated 3 May 1981 and subsequently novated to UKE under the terms of a novation agreement between UKL, UKE and UKB dated 20 February 2013 (pursuant to which UKE reinsures all of UKL's insurance liabilities) including the rights and obligations of UKL arising out of or in connection with it;

- (b) all cash or non-cash assets held by or on behalf of UKL as, or in support of, the regulatory capital provisions imposed or required in respect of the Transferred Business; and
- (c) all assets and liabilities of UKL in respect of Tax.

Excluded Policies

all Policies written by or on behalf of UKL in the course of carrying on the Transferred Business:

- (a) which are not capable of being transferred under section 111 of Part VII of the Act at the Effective Time; or
- (b) which the Court determines for any reason not to transfer by virtue of the Order.

Independent Expert

Alex Lee of Ernst & Young LLP of 1 More London Place, London SE1 2AF, the expert appointed to report on the terms of this Scheme and approved by the Prudential Regulatory Authority pursuant to section 109 of the Act, or any successor appointed to report on the same and approved pursuant to section 109 of the Act.

International Group

the International Group of P&I Associations as constituted from time to time.

Order

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

Policy	shall have the meaning given to the term ‘policy’ in the Financial Services and Markets Act 2000 (Meaning of ‘Policy’ and ‘Policyholder’) Order 2001, regardless of how that contract of insurance may be evidenced, and includes rules, certificates of entry, policies, policy schedules and any clauses, endorsements, special conditions, warranties, variations, notices of termination and addenda to any of the foregoing, and shall in addition include any contract of reinsurance written by UKL, regardless of how that contract of reinsurance may be evidenced.
Policyholder	shall have the meaning given to the term ‘policyholder’ in the Financial Services and Markets Act 2000 (Meaning of ‘Policy’ and ‘Policyholder’) Order 2001 and in addition shall be construed in a manner consistent with the definition of ‘Policy’ in this Scheme.
Policy Year	a year from noon Greenwich Mean Time on any 20 February to noon Greenwich Mean Time on the next following 20 February and ‘Policy Years’ shall be construed accordingly.
Pooling Agreements	the pooling agreement in respect of the Policy Year ending 20 February 1972 between the P&I clubs in the International Group for the pooling of certain risks and all prior pooling agreements in respect of previous Policy Years between members of the International Group.
RAO	the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001.

Regulators

means the UK Prudential Regulation Authority and the UK Financial Conduct Authority (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 and/or reinsurance business in the UK).

Scheme

this Scheme in its original form or with or subject to any modification, addition, provision or condition which may be approved or imposed in accordance with paragraph 13.

Tax

means:

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

Transferred Assets

all of the assets of UKL at the Effective Time including:

- (a) all rights under the Transferred Policies and the Transferred Reinsurances;
- (b) all rights against any third party in relation to the Transferred Business;
- (c) all cash at bank and in hand and all cash equivalents;
- (d) all amounts owed to UKL in relation to the Transferred

Business; and

- (e) all other assets of UKL in relation to the Transferred Business,

but in each case excluding (i) all rights under the Excluded Policies (including the benefit of any reinsurance, retrocession or indemnity of UKL in relation to liabilities arising under the Excluded Policies) and (ii) all assets comprised in the Excluded Assets and Liabilities.

Transferred Business

the whole of the insurance business carried on at any time by UKL up to and including the Effective Time, but excluding such business to the extent it comprises (i) assets and/or liabilities relating to the Excluded Policies or (ii) the Excluded Assets and Liabilities.

Transferred Liabilities

all of the liabilities of UKL at the Effective Time including:

- (a) all liabilities under the Transferred Policies and the Transferred Reinsurances (including all obligations to indemnify under the Pooling Agreements);
- (b) all other liabilities of UKL in relation to the Transferred Business; and
- (c) all other amounts owing by UKL in relation to the Transferred Business,

but in each case excluding all liabilities under (i) the Excluded Policies and all other liabilities relating to the Excluded Policies (including liabilities relating to any reinsurance, retrocession or indemnity of UKL in relation to liabilities arising under the Excluded Policies) and (ii) all liabilities comprised in the Excluded Assets and Liabilities.

Transferred Policies	every Policy written by or on behalf of UKL or which is otherwise a Policy of UKL (including any Policy written by another entity and subsequently transferred or novated to or otherwise assumed by UKL) prior to the Effective Time and comprised in the Transferred Business, but excluding (i) the Excluded Policies and (ii) the Excluded Assets and Liabilities.
Transferred Reinsurances	all contracts of reinsurance (for the avoidance of doubt excluding any contract of reinsurance falling within the definition of ‘Policy’ above), retrocession and/or indemnity under which (and to the extent to which) UKL is covered in respect of any risks insured by UKL under or pursuant to any Transferred Policies (including all rights to be indemnified under the Pooling Agreements or any excess of loss program for the benefit of members of the International Group) but excluding (i) rights of reinsurance, retrocession or indemnity in respect of liabilities arising under the Excluded Policies and (ii) the Excluded Assets and Liabilities.
UK	the United Kingdom of Great Britain and Northern Ireland.
UKB	The United Kingdom Mutual Steam Ship Assurance Association (Bermuda) Limited, a company incorporated in Bermuda under number 1446.
UKE	The United Kingdom Mutual Steam Ship Assurance Association (Europe) Limited, a company incorporated in England and Wales under number 00022215.

UKE Scheme the scheme to give effect to the insurance business transfer by UKE to UKNV of UKE's EEA insurance and reinsurance business, in accordance with Part VII of the Act.

UKL The United Kingdom Mutual Steam Ship Assurance Association (London) Limited, a company incorporated in England and Wales under number 00010375.

UKNV UK P&I Club NV, a company incorporated in the Netherlands under number 73217484.

1.2 In this Scheme, unless the context otherwise requires:

1.2.1 **'asset'** includes property, assets, data, records, shares, securities, security interests and rights, in each case of every description, wherever located, whether tangible or intangible and whether present or future, actual or contingent and includes any of the foregoing held on trust, and any interest whatsoever or howsoever held in any of the foregoing;

1.2.2 **'liabilities'** includes duties and obligations of every description (whether present or future, actual or contingent) including liabilities and obligations under guarantees and letters of undertaking;

1.2.3 **'rights'** includes rights (including contractual rights and benefits, rights of subrogation, rights to be indemnified, rights under guarantees and any right to receive any security, counter-security or the benefit of any lien, assignment or trust), benefits (including the benefit of any security, counter-security, lien, assignment, trust, set-off or escrow), rights and benefits under any licence and/or permission, advantages, powers and claims of every description, in every case whether present or future, actual or contingent;

1.2.4 **'transfer'** includes (as the context may require) 'assign' or 'assignment' or 'assignment', 'dispose' or 'disposal', 'convey' or 'conveyance';

- 1.2.5 the singular includes the plural and vice versa;
- 1.2.6 any reference to any gender includes a reference to every other gender;
- 1.2.7 any reference to an enactment, a statutory provision or any subordinate legislation shall be deemed to include a reference to that enactment, statutory provision or subordinate legislation as amended, replaced or re-enacted from time to time and to any instrument or order made from time to time under such enactment, statutory provision or subordinate legislation;
- 1.2.8 any reference to a contract, agreement or other arrangement is to that contract, agreement or arrangement as in force and amended or varied at the relevant time;
- 1.2.9 references to paragraphs are to paragraphs of this Scheme;
- 1.2.10 any references to **‘including’** or to **‘in particular’** shall be deemed to be followed by the words ‘without limitation’; and
- 1.2.11 the headings in this Scheme are for convenience only and shall not affect its interpretation.

2. INTRODUCTION AND CONDITION

- 2.1 UKL is a mutual insurance company incorporated under the laws of England and Wales which has permission under Part 4A of the Act to effect and carry out contracts of general insurance under paragraphs 1, 4, 5, 6, 7, 11, 12 and 15 of part I of schedule 1 to the RAO.
- 2.2 UKE is a mutual insurance company incorporated under the laws of England and Wales which has permission under Part 4A of the Act to effect and carry out contracts of general insurance under paragraphs 1, 2, 4, 5, 6, 7, 11, 12, 13, 15, 16 and 17 of part I of schedule 1 to the RAO.
- 2.3 The risks insured by UKL are 100 per cent. reinsured by UKE.
- 2.4 Subject to paragraph 2.5, it is proposed that the Transferred Business shall, in accordance with this Scheme, be transferred to UKE (and that an Order be made accordingly for the sanction of this Scheme under section 111 of the Act).

2.5 Notwithstanding any other provision of this Scheme, the Scheme and the proposed transfer of the Transferred Business pursuant to it is conditional upon the sanction by the Court of the UKE Scheme prior to the Effective Time.

3. TRANSFER OF BUSINESS

The Transferred Business shall be transferred to and be vested in UKE in accordance with this Scheme notwithstanding any terms in any agreement prohibiting all or any of such transfer and/or vesting and/or imposing any limitations on the circumstances in which any assets or liabilities comprised in the Transferred Business may be transferred and/or vested or purporting to terminate, limit or otherwise affect such assets or liabilities in the event of a transfer.

4. TRANSFER OF ASSETS

4.1 On and with effect from the Effective Time, the Transferred Assets and all the estate and interest of UKL therein, shall, by the Order and without any further act or instrument, be transferred to and be vested in UKE.

4.2 UKL and UKE shall as and when appropriate execute all such documents and perform such other acts and things as may be required to effect or perfect the transfer to and vesting in UKE of any Transferred Asset in accordance with the terms of this Scheme or otherwise for effecting or perfecting the transfer of the Transferred Business in accordance with the terms of this Scheme.

5. TRANSFER OF LIABILITIES

On and with effect from the Effective Time, the Transferred Liabilities shall, by the Order and without any further act or instrument, be transferred to and become liabilities of UKE and shall cease to be liabilities of UKL.

6. TRANSFERRED POLICIES AND TRANSFERRED REINSURANCES

6.1 Without prejudice to the generality of paragraphs 3, 4 and 5, on and with effect from the Effective Time, UKE shall by the Order, and without any further act or instrument, be entitled to all rights of UKL under the Transferred Policies and be subject to all UKL's obligations

under the Transferred Policies whatsoever subsisting at the Effective Time, and in any document evidencing or constituting a Transferred Policy references to UKL and/or to rights and/or liabilities of UKL, its board of directors or other officers, employees or agents and/or to liabilities of holders of Transferred Policies to UKL shall, to the extent necessary to give full effect to this Scheme, be read, manipulated, construed and treated as references to UKE and/or to rights and/or liabilities of UKE, its board of directors or other officers, employees, agents or managers and/or to liabilities of the holders of Transferred Policies to UKE, in each case subject to and in accordance with the terms of this Scheme.

- 6.2 Without prejudice to the generality of paragraphs 3, 4 and 5, on and with effect from the Effective Time, UKE shall by the Order and without any further act or instrument, be entitled to all rights of UKL under the Transferred Reinsurances and be subject to all liabilities of UKL under the Transferred Reinsurances (including any obligation to indemnify under the Pooling Agreements) whatsoever subsisting at the Effective Time, and in any document evidencing or constituting a Transferred Reinsurance references to UKL and/or to rights and/or liabilities of UKL, its board of directors or other officers, employees, agents or managers and/or to liabilities of the reinsurers or other third parties under Transferred Reinsurances to UKL shall, to the extent necessary to give full effect to this Scheme, be read, manipulated, construed and treated as references to UKE, its board of directors or other officers, employees, agents or managers and/or to liabilities of the reinsurers or other third parties under Transferred Reinsurances to UKE subject to and in accordance with the terms of this Scheme and the Transferred Reinsurances shall (notwithstanding any provision to the contrary therein) continue in force and shall, to the extent necessary to give full effect to this Scheme, be read, manipulated, construed and treated so that the Transferred Reinsurances shall operate for the benefit of UKE as if UKE was the original party thereto in place of UKL.
- 6.3 Without prejudice to the generality of paragraphs 3, 4 and 5 and without prejudice to paragraphs 6.1 and 6.2, on and with effect from the Effective Time, any references to UKL in any contract between UKL and any third party relating to the Transferred Policies, Transferred Reinsurances or otherwise comprised in the Transferred Business, shall, to the extent necessary to give full effect to this Scheme, be read, manipulated, construed and treated

as references to UKE and such contract shall operate as if UKE was the original party to the contract in place of UKL.

7. PERSONAL DATA

On and with effect from the Effective Time, UKE shall:

7.1.1 succeed to all rights, liabilities and obligations of UKL in respect of any personal data which relates to the Transferred Business, Transferred Policies, Transferred Reinsurances, Transferred Assets or Transferred Liabilities to the extent transferred by this Scheme;

7.1.2 become the data controller of any personal data which relates to the Transferred Business, Transferred Policies, Transferred Reinsurances, Transferred Assets or Transferred Liabilities, to the extent required by the Data Protection Laws and shall be deemed to have been the controller of all such data at all material times when personal data is processed; and

7.1.3 in respect of any personal data which relates to the Transferred Business, Transferred Policies, Transferred Reinsurances, Transferred Assets or Transferred Liabilities be under the same duty as UKL 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, the data subject which was binding on UKL and which required UKL not to use the personal data for marketing purposes,

and in any consent given by a data subject in respect of such data as is mentioned in this paragraph, any reference to UKL shall be deemed to include a reference to UKE.

8. CONTINUITY OF PROCEEDINGS

8.1 At and with effect from the Effective Time, any judicial, quasi-judicial or arbitration proceedings or any complaint or claim to any ombudsman or similar or other proceedings for the resolution of a dispute or claim (whether current or future (including those not yet in contemplation)) by or against UKL from the Effective Time in connection with the

Transferred Policies, the Transferred Reinsurances, the Transferred Assets, the Transferred Liabilities or otherwise in relation to the Transferred Business shall be continued by or against UKE and UKE shall be entitled to all defences, claims, counterclaims and rights of set-off that would have been available to UKL in relation to such proceedings and UKL shall have no liability under those proceedings and, for the avoidance of doubt, UKE, in its absolute discretion, may determine to discontinue after the Effective Time any such proceedings brought by UKL.

8.2 At and with effect from the Effective Time, any judicial, quasi-judicial, or arbitration proceedings or any complaint or claim to any ombudsman or similar person or entity or other proceedings for the resolution of a dispute or claim (whether current or future (including those and yet in contemplation)) in relation to UKL and concerning the Transferred Policies, Transferred Reinsurances, Transferred Assets, Transferred Liabilities or otherwise in relation to the Transferred Business shall be commenced against UKE. Any such proceedings after the Effective Time commenced against UKL shall be deemed to have been commenced and shall be continued against UKE without the need for further order, whether for substitution of parties or otherwise. In any event, UKE shall be entitled to all defences, claims, counterclaims and rights of set off that would have been available to UKL in relation to such proceedings, complaint or claim.

8.3 Any judgment, order or award obtained by or against UKL (whether before or after the Effective Time) which relates to any part of the Transferred Business and which is not fully satisfied before the Effective Date shall, on and from that date, be enforceable by or against UKE and shall be dealt with by UKE without the need for further order.

9. EXCLUDED POLICIES

9.1 The Excluded Policies shall not be transferred to UKE by this Scheme and the liabilities and assets of UKL relating to the Excluded Policies shall remain liabilities and assets of UKL subject to paragraph 9.2.

9.2 If:

9.2.1 UKL or UKE procures the novation of any Excluded Policy to UKE;

9.2.2 any impediment to the transfer of any Excluded Policy to UKE shall have been removed or overcome (including any waiver, consent, permission or licence having been obtained or notice having been given);

9.2.3 any conditions to the transfer of an Excluded Policy to UKE contained in the Order shall have been satisfied; or

9.2.4 the Court orders the transfer of such Excluded Policy to UKE,

then, notwithstanding any other provisions of this Scheme, the assets and liabilities relating to such Excluded Policy shall be transferred to UKE and such Excluded Policy, assets and liabilities shall thereafter be dealt with by UKE under the provisions of this Scheme in all respects as if such Excluded Policy were a Transferred Policy and as if such assets and liabilities were part of the Transferred Business and the Transferred Reinsurances, Transferred Assets and/or Transferred Liabilities, as relevant.

10. DECLARATION OF TRUST BY UKL

10.1 If:

10.1.1 any asset (other than an asset referred to in paragraph 9) of UKL proposed to be transferred pursuant to this Scheme is not, or is not capable of being, immediately transferred at the Effective Time by the Order by reason of:

(a) such asset being governed by the law of any country or territory outside the UK; or

(b) for any other reason; or

10.1.2 the transfer of any asset (other than an asset referred to in paragraph 9) of UKL proposed to be transferred pursuant to this Scheme is not recognised by the law of the country or territory in which such asset is situated,

UKL shall, on and from the Effective Time and until the relevant asset is transferred to UKE, hold any asset referred to in paragraphs 10.1.1 or 10.1.2 as trustee for UKE absolutely.

10.2 UKL shall in any event be subject to UKE's directions in respect of any asset referred to in paragraphs 10.1.1 or 10.1.2 until the relevant asset is transferred to or otherwise vested in UKE or is disposed of (whereupon UKL shall account to UKE for the proceeds of disposal thereof), and UKE shall have authority to act as the attorney of UKL in respect of such asset for all such purposes.

10.3 In the event of any payment being made to, or other asset being received by or being conferred upon, UKL on or after the Effective Time in respect of the Transferred Business or any Transferred Asset, UKL shall as soon as is reasonably practicable after its receipt pay over the full amount of such payment or (to the extent to which it is able to do so) transfer such asset to, or deal with such payment or asset in accordance with the reasonable directions of, UKE.

10.4 Without prejudice to the foregoing provisions of this paragraph 10 or the provisions of paragraph 11, if:

10.4.1 any asset or liability included in the Order is governed by the law of any country or territory outside the UK, UKL shall take all necessary steps as UKE may require for securing that the transfer to UKE of that asset or liability is fully effective under the law of that country or territory; and

10.4.2 any asset or liability of UKL proposed to be transferred pursuant to this Scheme is not for whatever reason immediately transferred to UKE at the Effective Time, UKL shall take all necessary steps as UKE may require for securing the transfer to UKE of that asset or liability.

11. INDEMNITIES IN FAVOUR OF UKL

11.1 If:

11.1.1 any liability (other than a liability referred to in paragraph 9) of UKL proposed to be transferred pursuant to this Scheme is not, or is not capable of being, immediately transferred at the Effective Time by the Order by reason of:

- (a) such liability being governed by the law of any country or territory outside the UK; or
- (b) for any other reason; or

11.1.2 the transfer of any liability (other than a liability referred to in paragraph 9) of UKL proposed to be transferred pursuant to this Scheme is not recognised by the law of the country or territory in which such liability is situated,

on and with effect from the Effective Time, until the relevant liability is transferred to or becomes a liability of UKE, UKE shall discharge such liability on behalf of UKL or, failing that, indemnify UKL against such liability and any other loss or expense incurred by or demand made against UKL that is attributable to such liability.

11.2 UKL shall in any event be subject to UKE's directions in respect of any liability referred to in paragraphs 11.1.1 and 11.1.2 until the relevant liability is transferred to or becomes a liability of UKE, and UKE shall have authority to act as the attorney of UKL in respect of such liability for all such purposes.

12. EFFECTIVE TIME

Subject to the Court having made an Order under section 111 of the Act sanctioning this Scheme, this Scheme shall become operative at noon Greenwich Mean Time on 30 December 2020, or such other time and date as may be specified in the Order sanctioning this Scheme.

13. MODIFICATIONS OR ADDITIONS

13.1 Save as provided in paragraph 13.3, UKL and UKE may consent to any modification of or addition to this Scheme or to any further condition or provision affecting the same which the Court may approve or impose before the Effective Time.

13.2 Save as provided in paragraph 13.3, UKE may consent for and on behalf of UKL to any modification of or addition to this Scheme or to any further condition or provision affecting the same provided that the Regulators have been notified of the same at least 28 days in

advance of any hearing of the Court at which such application is considered, such period to commence on the earlier of:

13.2.1 the date (or the latest date) on which each of the Regulators gives notice of receipt of the notification of the amendment to UKL or UKE (as the case may be); and

13.2.2 the date which falls three Business Days following delivery of the notification of the amendment to the Regulators by UKL or UKE (as the case may be),

and each have indicated by the end of such 28 day notice period that they do not object thereto and which the Court may approve or impose after the Effective Time.

13.3 For the purposes of paragraphs 13.1 and 13.2, the consent of the Court shall not be required in relation to minor and/or technical amendments to the terms of this Scheme which are reasonably required to give full effect to the terms of the Scheme (including amendments to correct manifest errors), provided that the Regulators have been notified of the same at least 28 days in advance of the amendment being made, such period commencing on the earlier of:

13.3.1 the date (or the latest date) on which each of the Regulators gives notice of receipt of the notification of the amendment to UKL or UKE (as the case may be); and

13.3.2 the date which falls three Business Days following delivery of the notification of the amendment to the Regulators by UKL or UKE (as the case may be),

and each have indicated by the end of such 28 day notice period that they do not object thereto.

14. THIRD PARTY RIGHTS AND JURISDICTION

A person who is not a party to this Scheme may not enforce any term of this Scheme pursuant to the Contracts (Rights of Third Parties) Act 1999.

15. SUCCESSORS AND ASSIGNS

This Scheme will bind and enure to the benefit of the successors and assigns of each of UKE and UKL.

16. COSTS AND EXPENSES

All costs and expenses of and incidental to the preparation and carrying into effect of this Scheme shall be borne by UKE.

17. GOVERNING LAW AND JURISDICTION

17.1 The validity, construction and performance of this Scheme (and any claim, dispute or matter arising under or in connection with it or its enforceability), and any non-contractual obligations arising out of or in connection with it, shall be governed by and construed in accordance with English law.

17.2 Each of UKL and UKE irrevocably submits to the exclusive jurisdiction of the courts of England and Wales over any claim, dispute or matter arising out of or in connection with this Scheme or its enforceability or the legal relationships established by this Scheme (including non-contractual disputes or claims) and waives any objection to proceedings being brought in such courts on the grounds of venue or on the grounds that proceedings have been brought in an inconvenient forum. Each of UKL and UKE further irrevocably agrees that a judgment in any proceedings brought in the courts of England and Wales shall be conclusive and binding upon each of them and may be enforced in the courts of any other jurisdiction.