

**IN THE HIGH COURT OF JUSTICE  
CHANCERY DIVISION  
COMPANIES COURT**

**No. 4486 of 2015**

**IN THE MATTER OF**

**EXCESS INSURANCE COMPANY LIMITED**

**AND**

**HARTFORD FIRE INSURANCE COMPANY, UK BRANCH**

**AND**

**AVIVA INSURANCE LIMITED**

**AND**

**HARTFORD FINANCIAL PRODUCTS INTERNATIONAL LIMITED**

**AND**

**IN THE MATTER OF**

**THE FINANCIAL SERVICES AND MARKETS ACT 2000**

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**SCHEME**

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**for the transfer of**

**the general insurance businesses of**

**Excess Insurance Company Limited**

**and**

**Hartford Fire Insurance Company, UK branch**

**and the L&E Transferred Business by Aviva Insurance Limited**

**to**

**Hartford Financial Products International Limited**

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

Contents

**PARAGRAPH**

**PAGE**

1.	DEFINITIONS AND INTERPRETATION .....	1
2.	INTRODUCTION .....	13
3.	TRANSFER OF POLICIES, ASSETS AND LIABILITIES .....	14
4.	CONTINUITY OF PROCEEDINGS .....	16
5.	RETAINED POLICIES .....	17
6.	MANDATES .....	17
7.	RIGHTS AND OBLIGATIONS UNDER THE TRANSFERRED POLICIES .....	17
8.	DECLARATION OF TRUST BY THE TRANSFERORS.....	18
9.	INDEMNITIES .....	19
11.	EFFECTIVE DATE.....	21
12.	MODIFICATIONS OR ADDITIONS.....	21
13.	COSTS AND EXPENSES.....	22
14.	THIRD PARTY RIGHTS.....	22
15.	SEVERAL UNDERTAKINGS .....	22
16.	EVIDENCE OF TRANSFER .....	22
17.	GOVERNING LAW.....	22

## PART A – DEFINITIONS AND INTERPRETATION

### 1. Definitions and Interpretation

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

*Affiliate* means, in relation to any entity, any subsidiary or parent company of the entity and any subsidiary of any such parent company, in each case from time to time;

*Authorised Person* has the meaning set out in the Regulatory Handbook;

*Aviva* means Aviva Insurance Limited, a company incorporated in Scotland, with registered number SC002116 whose registered office is at Pitheavlis, Perth, PH2 0NH;

*Aviva Indemnity* means the indemnity provided by HFSG in favour of Norwich Union Insurance Limited (and now in favour of Aviva Insurance Limited) under the L&E SPA in respect of liabilities arising under or in respect of the L&E Transferred Policies;

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

*EEA State* and *State in which the risk is situated* bear the meanings given to those terms for the purposes of Part VII of FSMA;

*Effective Date* means the time and date on which this Scheme shall become effective in accordance with paragraph 11;

*Excess* means Excess Insurance Company Limited, a company incorporated in England and Wales with registered number 00040759 whose registered office is at DLM House, Downlands Business Park, Lyons Way, Worthing, West Sussex, BN14 9RX;

*Excess Expense Agreement* means the letter of understanding and commitment between HFSG and Excess dated 31 December 1998;

*Excess Guarantee* means the guarantee made by ITT Hartford Group, Inc. at the request of Excess dated 20 November 1991;

*Excess ILU Guarantee* means the guarantee between ITT Hartford Group, Inc., ITT Industries Inc. and the ILU dated 18 September 1996 (as amended from time to time);

*Excess L&E Reinsurance Agreement* means the reinsurance agreement between Excess and L&E dated 30 September 1974, as amended by Excess and L&E on 17 November 1998, pursuant to which Excess agreed to reinsure certain risks of L&E;

*Excess Transferred Business* means the whole of the portfolio of business written by Excess which is effected and/or carried out in relation to the Excess Transferred Policies, including all rights, benefits and powers of Excess under

or by virtue of the Excess Transferred Policies, the Transferred Assets, the Residual Assets, the Transferred Liabilities and the Residual Liabilities;

***Excess Transferred Policies*** means any and all insurance and reinsurance policies relating to the Excess Transferred Business written or assumed in whole or in part or for the account of Excess as at the Effective Date (including any expired, surrendered, lapsed, matured or reinstated policies) and all binders, slips, other contracts of insurance or reinsurance and binding quotations written by or on behalf of Excess as insurer or reinsurer (including all supplements, endorsements, notices, assignments, novations and riders thereto and all ancillary agreements in connection therewith) that were entered into by Excess in relation to the Excess Transferred Business prior to the Effective Date;

***Excess Trust Agreement*** means the trust agreement between Excess and Citibank N.A. dated 9 November 1989;

***Excess Trust Assets*** means those assets of Excess which are held by it under the Excess Trust Agreement in a surplus lines trust fund in the US with Citibank N.A. in respect of its US surplus lines business for the benefit of its US surplus lines policyholders;

***Excluded Assets*** means any and all assets of any Transferor except for (i) an asset falling within the definition of Transferred Asset or (ii) a Residual Asset, and such Excluded Assets shall include:

- (a) the rights, benefits and powers of the Transferors under or by virtue of the Excluded Contracts or the Excluded Policies;
- (b) the Excess Trust Assets; and
- (c) the Hartford Fire Letter of Commitment;

***Excluded Business*** means the Excluded Assets, the Excluded Contracts, the Excluded Liabilities and the Excluded Policies;

***Excluded Contracts*** means:

- (a) the Excess Guarantee and the L&E Guarantee;
- (b) the Excess Expense Agreement; and
- (c) the Excess Trust Agreement;

***Excluded Liabilities*** means:

- (a) any liabilities under or relating to the Excluded Policies, the Excluded Assets or the Excluded Contracts; and
- (b) any liability of the Transferors to corporation tax in the UK to the extent arising as a result of the transfer of the Transferred Business pursuant to the Order;

***Excluded Policies*** means, for the avoidance of doubt:

- (a) all policies of Aviva other than the L&E Transferred Policies; and
- (b) all policies of Hartford Fire other than the Hart Re Transferred Policies;

***FCA*** means the Financial Conduct Authority or its successors from time to time, or such other governmental, statutory or other authority as shall have or shall from time to time carry out such functions in relation to the Transferred Business carried on in the United Kingdom as were at the date of this Scheme allocated to the FCA under FSMA;

***First State Reinsurance Agreement*** means the reinsurance agreement between First State Insurance Company (***First State***), L&E and H.S. Weavers (Underwriting) Agencies Limited (***H.S. Weavers***) dated 1 January 1972, pursuant to which L&E agreed to cede and First State agreed to assume certain risks written by L&E through H.S. Weavers;

***FSMA*** means the Financial Services and Markets Act 2000 (as amended);

***GQS Reinsurance Agreements*** means the Group Quota Share Reinsurance Agreements effective from 1967 to 1972, pursuant to which Excess agreed to cede and HFSG agreed to assume certain risks of Excess;

***Hart Re*** means the UK branch of Hartford Fire;

***Hart Re Transferred Business*** means the whole portfolio of business of Hart Re which is effected and/or carried out in relation to the Hart Re Transferred Policies, including all rights, benefits and powers of Hart Re under or by virtue of the Hart Re Transferred Policies, the Transferred Assets, the Residual Assets, the Transferred Liabilities and the Residual Liabilities;

***Hart Re Transferred Policies*** means any and all policies in relation to the Hart Re Transferred Business written or assumed by Hart Re in whole or in part or for the account of Hart Re as at the Effective Date (including any expired, surrendered, lapsed, matured or reinstated policies) and all binders, slips, other contracts of reinsurance and binding quotations written by or on behalf of Hart Re as reinsurer (including all supplements, endorsements, notices, assignments, novations and riders thereto and all ancillary agreements in connection therewith) that were entered into by Hart Re in relation to the Hart Re Transferred Business prior to the Effective Date;

***Hartford Fire*** means Hartford Fire Insurance Company, a company incorporated in Connecticut with registered number 0280692 whose registered office is at One Hartford Plaza, Hartford, CT 06155;

***Hartford Fire Letter of Commitment*** means the letter of commitment from Hartford Fire to Hart Re dated 9 March 2004;

***Hartford Fire Stop-Loss Reinsurance Agreement*** means the aggregate excess reinsurance agreement between Hartford Fire and L&E in respect of the B.D.

Cooke pool of business dated 1 January 1996, as amended, pursuant to which L&E agreed to cede and Hartford Fire agreed to assume certain risks with respect to business classified by L&E as the B.D. Cooke pool of business;

**Hartford Group** means HFSG and its Affiliates from time to time;

**HFSG** means The Hartford Financial Services Group, Inc., a company incorporated in Delaware, US, whose registered office is at Hartford Plaza, Hartford, Connecticut, 06115 USA;

**HMRC** means Her Majesty's Revenue & Customs;

**ILU** means the Institute of London Underwriters, registered in England with registered number 19900 whose registered office is at 49 Leadenhall Street, London EC3A 2BE;

**ILU Guarantees** means the L&E ILU Guarantee and the Excess ILU Guarantee;

**ITT Hartford Group, Inc.** is the former name of HFSG;

**L&E** means London & Edinburgh Insurance Company Limited (formerly known as London & Edinburgh General Insurance Company Limited), a company incorporated in England and Wales with registered number 00924430 whose registered office is at 8 Surrey Street, Norwich, Norfolk, NR1 3NG;

**L&E Guarantee** means the guarantee made by ITT Hartford Group, Inc. at the request of L&E dated 14 April 1992;

**L&E ILU Guarantee** means the guarantee between ITT Hartford Group, Inc., ITT Industries Inc. and the ILU dated 13 September 1996 (as amended from time to time);

**L&E SPA** means the sale and purchase agreement in respect of all of the issued share capital of London & Edinburgh Insurance Group Limited between Norwich Union Insurance Limited (which subsequently changed its name to Aviva Insurance UK Limited), Norwich Union plc, The Hartford International Financial Services Group, Inc. and HFSG, dated 27 October 1998;

**L&E Transferred Business** means business written by L&E or for which L&E has assumed liability (including that written by Old L&E and reinsured in full by L&E) prior to 1992 and for which the Hartford Group assumed management of and continues to retain ultimate financial responsibility for under the L&E SPA, being:

- (a) business written by L&E in pooling arrangements through the following underwriting agents:
  - (i) B.D. Cooke and Partners (**B.D. Cooke**) between 1948 and 1968;

- (ii) H.S. Weavers (Underwriting) Agencies Limited (*H.S. Weavers*) between 1972 and 1976;
  - (iii) Tower Underwriting Management (also known as “Old Tower”) between 1967 and 1972;
  - (iv) Highlands Underwriting Agents (also known as “Tower X”) between 1973 and 1978;
  - (v) Westminster Marine Insurance Managers between 1960 and 1977; and
- (b) the following business:
- (i) marine business (including oil rigs and oil-related catastrophes) written before 1 January 1992 and marine liability business on the discontinued marine liability sub-line written during 1992 in respect of which L&E had a reserve of USD1,000 at the date of the L&E SPA;
  - (ii) insurance of non-UK situated asbestos, health hazards, environmental or pollution risks (other than insurance falling within: (1) personal lines and commercial lines general insurance business and financial bankers blanket bonds; or (2) hull, energy, excess of loss (principally reinsurance of London market marine insurers, including Lloyds syndicates) business lines, and cargo/specie business written since 1 January 1992);
  - (iii) insurance business written before 1 January 1992 through a managing agency or pool manager relating primarily to risks situated outside the UK;
  - (iv) inwards reinsurance business (other than within: (1) personal lines and commercial lines general insurance business and financial bankers blanket bonds); or (2) hull, energy, excess of loss (principally reinsurance of London market marine insurers, including Lloyds syndicates) business lines and cargo/specie business written since 1 January 1992) and other than the motor and creditor business reinsured by Excess into the L&E Group at or around the time of the L&E SPA); and
  - (v) insurance or reinsurance business written by Excess (other than the motor and creditor business reinsured by Excess into the L&E Group at or around the time of the L&E SPA),

which is effected and/or carried out in relation to the L&E Transferred Policies including all rights, benefits and powers of L&E or Aviva under or by virtue of the L&E Transferred Policies, the Transferred Assets, the Residual Assets, the Transferred Liabilities and the Residual Liabilities;

***L&E Transferred Policies*** means any and all insurance and reinsurance policies in relation to the L&E Transferred Business written or assumed in whole or in part or for the account of L&E as at the Effective Date (including any expired, surrendered, lapsed, matured or reinstated policies) and all binders, slips, other contracts of insurance or reinsurance and binding quotations written by or on behalf of L&E as insurer or reinsurer (including all supplements, endorsements, notices, assignments, novations and riders thereto and all ancillary agreements in connection therewith) that were entered into by L&E in relation to the L&E Transferred Business prior to the Effective Date;

***Old L&E*** means London and Edinburgh Insurance Company Limited (formerly known as English & Scottish Reinsurance Company Limited), a company incorporated in 1919, which was subsequently dissolved;

***Order*** means an order made by the Court pursuant to section 111 of FSMA sanctioning this Scheme and any order (including, without limitation, any subsequent order) in relation to this Scheme made by the Court pursuant to section 112 of FSMA;

***PRA*** means the Prudential Regulation Authority or its successors from time to time, or such other governmental, statutory or other authority as shall have or shall from time to time carry out such functions in relation to the Transferred Business carried on in the United Kingdom as were at the date of this Scheme allocated to the PRA under FSMA;

***Proceedings*** includes any action or other legal or administrative proceedings or step (whether direct or indirect, by way of a claim, demand, legal proceedings, execution of judgment, arbitration, complaint or otherwise howsoever) including arbitration, mediation, adjudication, any other dispute resolution procedure (whether or not it involves submission to any court), any judicial, quasi-judicial, administrative or regulatory review or process or any complaint or claim to any ombudsman or other proceedings for the resolution of a dispute or claim, in each case whether current, future, pending, threatened or otherwise;

***Records*** means:

- (a) all records and information relating to the Transferred Business; and
- (b) such other records and information relevant to the management and administration of the Transferred Policies by or on behalf of the Transferee as the relevant Transferor and the Transferee may agree at any time,

but excluding any records and information relating to the Transferred Policies that the relevant Transferor and the Transferee at any time agree to exclude;

***Regulatory Handbook*** means the combined FCA and PRA Handbooks of Rules and Guidance (and any successor handbooks of rules and guidance);

***Residual Assets*** means:



- (a) any Transferred Asset (including, without limitation, any right, benefit or power of any of the Transferors under any Transferred Policy) to be transferred pursuant to this Scheme:
  - (i) the transfer of which to the Transferee pursuant to this Scheme requires, at the Effective Date, either:
    - (A) the consent of any person (other than the Transferee, the Transferors or the 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 property, 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 Court determines, notwithstanding section 112(2A) of FSMA, not so to transfer or the transfer of which is not recognised by the laws of any relevant jurisdiction in which such property is situated;
- (b) any Transferred Asset to be transferred pursuant to this Scheme (including, without limitation, any right, benefit or power under a Transferred Policy) which the Transferors and the Transferee agree in writing prior to the Effective Date shall not be transferred on the Effective Date;
- (c) any other interest of any of the Transferors in any property or any agreement relating to any property which the Transferors and the Transferee shall agree in writing prior to the Effective Date should be transferred pursuant to this Scheme in conjunction with any property referred to in paragraphs (a) or (b) of this definition;
- (d) any property of the Transferors (other than Excluded Assets) which cannot be transferred to or vested in the Transferee pursuant to the Scheme for any other reason; or
- (e) any proceeds of sale or income or other accrual or return whatsoever, whether or not in any case in the form of cash, earned or received from time to time after the Effective Date in respect of any property referred to in paragraphs (a) to (d) of this definition;

***Residual Liability*** means any liability under or in connection with the Transferred Policies and in connection with the Transferred Assets:

- (a) the transfer of which liability to the Transferee pursuant to this Scheme requires, as at the Effective Date, the consent or waiver of any person (other than the Transferee, the Transferors or the Court) and which the 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 Court determines, notwithstanding section 112(2A) of FSMA, not to so transfer; or

- (b) which 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
- (c) which the Transferors and the Transferee agree in writing prior to the Effective Date shall not be transferred on the Effective Date; or
- (d) which cannot be transferred to or vested to the Transferee pursuant to the Scheme for any other reason;

**Retained Policies** means any policy of the Transferors (other than the Excluded Policies) under which any liability remains unsatisfied or outstanding at the Effective Date in respect of which:

- (a) for the purpose of paragraph 1(4) of Schedule 12 to FSMA, an EEA State other than the United Kingdom is the State in which the risk is situated; and
- (b) the PRA has not prior to the issue of the Order by which the Court sanctions this Scheme delivered a Schedule 12 Certificate;

**Scheme** means this Scheme in its original form or with or subject to any modification, addition or condition which may be approved or imposed in accordance with paragraph 12;

**Schedule 12 Certificate** means, in respect of any Transferred Policy, a certificate referred to in paragraph 5 of Part 1 of Schedule 12 to FSMA with respect to the relevant EEA State which is the State in which the risk is situated;

**Subsequent Transfer Date** means, in relation to any Residual Asset or Residual Liability, the date after the Effective Date on which such Residual Asset or Residual Liability is to be transferred to the Transferee, namely:

- (a) in respect of any Residual Asset falling within paragraph (a) of the definition thereof, and of any Residual Liability falling within paragraph (a) of the definition thereof, the date on which the requisite consent, waiver or order to enable the same to be transferred to the Transferee upon the terms of this Scheme is:
  - (i) obtained;
  - (ii) no longer required; or
  - (iii) dispensed with by Order of the Court;
- (b) in respect of any Residual Asset falling within paragraphs (b), (c) or (d) of the definition thereof and of any Residual Liability which falls within paragraph (b), (c) or (d) of the definition thereof, the date on which the relevant Transferor and the Transferee agree that the transfer

of the relevant Residual Asset or Residual Liability shall take effect;  
and

- (c) in the case of any Residual Asset falling within paragraph (e) of the definition thereof, the date on which such Residual Asset is received or earned by the Transferors;

**Tax or Taxation** includes, without limitation, (a) taxes on gross or net income, profits and gains, and (b) all other taxes, levies, duties, imposts, charges and withholdings of any nature, including any excise, property, value added, sales, use, occupation, transfer, franchise and payroll taxes and any national insurance or social security contributions, and any payment whatsoever which the relevant person may be or become bound to make to any person as a result of the discharge by that person of any tax which the relevant person has failed to discharge, together with all penalties, charges and interest relating to any of the foregoing or to any late or incorrect return in respect of any of them, and regardless of whether such taxes, levies, duties, imposts, charges, withholdings, penalties and interest are chargeable directly or primarily against or attributable directly or primarily to the relevant person or any other person and of whether any amount in respect of them is recoverable from any other person;

**Third Party Contracts** means:

- (a) the ILU Guarantees; and
- (b) all contracts, arrangements, licences and other commitments relating to the Transferred Businesses entered into on or before, and which remain to be performed in whole or in part as at the Effective Date, which have been entered into by or for the benefit of any Transferor in relation to the Transferred Business, or the benefit of which is held in trust for or has been assigned or subcontracted to any Transferor other than the Transferred Policies, the Transferred Reinsurance and the Excluded Contracts;

**Transfer** means the transfer of the Transferred Business pursuant to this Scheme;

**Transferee** means Hartford Financial Products International Limited, a company incorporated in England and Wales with registered number 05965916 whose registered office is at DLM House, Downlands Business Park, Lyons Way, Worthing, West Sussex, BN14 9RX;

**Transferee Board** means the board of directors, from time to time, of the Transferee;

**Transferor Boards** means the board of directors, from time to time, of each of the Transferors;

**Transferors** means, collectively, Excess, Aviva and Hart Re;

**Transferred Assets** means all of the following whatsoever and wheresoever situated as at the Effective Date:

- (a) the assets matching the reserves, balance sheet liabilities and surplus of the Transferred Business;
- (b) any rights of the Transferors to a refund or recovery of Taxation or any other tax asset, other than to the extent arising as a result of the transfer of the Transferred Business pursuant to the Order;
- (c) the Records and all rights, title and interest of each of the Transferors in the Records;
- (d) the rights, benefits and powers of each of the Transferors under or by virtue of the Transferred Policies;
- (e) the rights, benefits and powers of each of the Transferors under or by virtue of the Transferred Reinsurance;
- (f) the rights, benefits and powers of each of the Transferors under or by virtue of the Transferred Contracts and
- (g) the ILU Guarantees,

but excluding (i) the Residual Assets, (ii) the Excluded Assets, (iii) any rights, benefits and powers under the Retained Policies and (iii) any assets already transferred from a Transferor to the Transferee;

**Transferred Business** means the Excess Transferred Business, the Hart Re Transferred Business and the L&E Transferred Business, but excluding the Excluded Business;

**Transferred Contracts** means:

- (a) the Aviva Indemnity; and
- (b) the Third Party Contracts,

but excluding the Excluded Contracts;

**Transferred Intra Group Reinsurance** means:

- (a) the First State Reinsurance Agreement;
- (b) the Hartford Fire Stop-Loss Reinsurance Agreement;
- (c) the GQS Reinsurance Agreements; and
- (d) the Excess L&E Reinsurance Agreement;

**Transferred Liabilities** means in respect of a Transferor all liabilities and commitments of every kind and description of the Transferor under or in connection with the Transferred Policies or the Transferred Assets or arising from or attributable to the Transferred Business or the transfer thereof, irrespective of whether the liabilities and commitments shall arise prior to or

following the Effective Date, including (without limitation) all liabilities, if any, arising out of the jurisdiction of the Financial Ombudsman Service under DISP 2 (Jurisdiction of the Financial Ombudsman Service) of the Regulatory Handbook and any liability of the Transferors to Tax relating to the Transferred Business, but excluding the Residual Liabilities and the Excluded Liabilities;

**Transferred Policies** means the Excess Transferred Policies, the L&E Transferred Policies and the Hart Re Transferred Policies but excluding the Retained Policies and the Excluded Policies;

**Transferred Reinsurance** means the Transferred Third Party Reinsurance and the Transferred Intra Group Reinsurance;

**Transferred Third Party Reinsurance** means, other than the Intra Group Reinsurance, that part or all of any contracts of reinsurance, together with any security arrangements or letter of credit facilities which have been arranged by the relevant reinsurer for the benefit of any of the Transferors to which any of the Transferors is a party, which cover any part or all of any of the Transferred Policies;

**United Kingdom** or **UK** means the United Kingdom of Great Britain and Northern Ireland; and

**US** means the United States of America.

1.2 In this Scheme:

- (a) **property** includes, without limitation property, assets, cash, causes of action, rights and powers of every description (whether present or future, actual or contingent), including, without limitation, income or interest accrued but unpaid, and includes property held on trust and securities, benefits, powers of any description and any interest whatsoever in any of the foregoing;
- (b) **liabilities** includes any debt or liability (whether direct or indirect, absolute or contingent, accrued or unaccrued, liquidated or unliquidated, or due or to become due) including all liability to taxation, and including all costs and expenses relating thereto;
- (c) **transfer** includes (as the context may require) assign, assignation and assignment, dispose, disposal, novate, novation, convey and conveyance;
- (d) references to rights or liabilities being “under” a Transferred Policy shall mean rights or liabilities howsoever arising whether contractually or otherwise in respect of the Transferred Policy;
- (e) any reference to the singular shall include a reference to the plural and vice versa and any reference to the masculine shall include a reference to the feminine and neuter and vice versa;

- (f) 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;
- (g) any reference to any rules or regulations issued by the FCA or PRA shall be deemed to include a reference to such rules or regulations as amended or replaced from time to time;
- (h) references to *holding company* and *subsidiary* shall have the same meanings as in the Companies Act 2006;
- (i) references to a *policy* and a *policyholder* shall have the meanings ascribed to them by the Financial Services and Markets Act 2000 (Meaning of Policy and Policyholder) Order 2001;
- (j) references to paragraphs, Parts or Schedules are to paragraphs, Parts and Schedules respectively of this Scheme;
- (k) headings are inserted for convenience only and shall not affect the construction of this Scheme;
- (l) any reference to a person shall include a reference to any individual, firm, joint venture, association, organisation, trust or agency, body corporate, partnership (whether or not having separate legal personality) or unincorporated association or to a person's executors or administrators, and for the avoidance of doubt, shall include a trustee;
- (m) if a period of time is specified from a given day or date or from the day or date of an actual event, it shall be calculated exclusive of that day or date;
- (n) any reference to writing shall include any modes of reproducing words in a legible and non-transitory form;
- (o) any reference to "includes" or "including" shall mean "includes without limitation" or "including without limitation"; and
- (p) the expression *variation* shall include any variation, supplement, deletion, replacement or termination, however effected.

## PART B - INTRODUCTION

### 2. Introduction

2.1 At the date of this Scheme, each of the Transferors and the Transferee is an Authorised Person with permission, *inter alia*, to carry on general insurance business in the United Kingdom (and also to carry on general insurance business in certain EEA States) with respect to certain classes of general insurance business that fall within Part I of Schedule 1 to the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001.

2.2 It is proposed that:

- (a) all of the Transferred Policies, Transferred Assets, Transferred Liabilities, Residual Assets and Residual Liabilities shall, in accordance with this Scheme, be transferred to the Transferee, and that the Order be made accordingly for the sanction of this Scheme under section 111(1) of FSMA; and
- (b) by the Order, provision be made, as hereinafter appearing, for, among other matters, the transfers of the Transferred Policies, Transferred Assets, Transferred Liabilities, Residual Assets and Residual Liabilities from the Transferors to the Transferee pursuant to section 112(1) of FSMA. Retained Policies and Excluded Policies, however, will not transfer to nor be reinsured by the Transferee under this Scheme but instead will remain with the relevant Transferor.

## **PART C - TRANSFER**

### **3. Transfer of policies, assets and liabilities**

3.1 At the Effective Date each:

- (a) Transferred Policy; and
- (b) Transferred Asset,

and, in each case, all the interest and title of the relevant Transferor in it shall, by the Order and without any further act or instrument, be transferred to and be vested in the Transferee.

3.2 At each Subsequent Transfer Date, each Residual Asset to which such Subsequent Transfer Date applies and all the interest and title of the relevant Transferor in it shall, by the Order and without any further act or instrument, be transferred to and be vested in the Transferee.

3.3 At the Effective Date, each Transferred Liability shall, by the Order and without any further act or instrument, be transferred to and become a liability of the Transferee and shall cease to be a liability of the relevant Transferor.

3.4 At 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 Transferors.

3.5 Unless and to the extent otherwise provided in the Order, the transfers made pursuant to paragraphs 3.1 to 3.4 inclusive shall take effect and shall be valid and binding on all parties having any interest in the same notwithstanding any restriction 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. Any entitlement which, but for section 112A of FSMA, would or might arise to terminate, modify, acquire or claim an interest or right or to treat an interest or right as terminated or modified as a result of anything done pursuant to the Scheme will not be enforceable.

3.6 The Transferors (on the one hand) and the Transferee (on the other hand) shall, as and when necessary or appropriate, execute and deliver all documents and perform all such other acts as may be reasonably required to effect or perfect the transfer to, and vesting in, the Transferee of any relevant Transferred Policy, Transferred Asset, Residual Asset, Transferred Liability or Residual Liability in accordance with the terms of this Scheme including, for the avoidance of doubt, obtaining any required consent or waiver and the Transferee shall on demand indemnify each Transferor against any reasonable costs properly incurred by it in taking any such step.

3.7 Without limitation to paragraph 5, any existing indemnity (including for the avoidance of doubt the Aviva Indemnity), power of attorney, authority,



declaration or consent given to or by any of the Transferors relating to any part of the Transferred Business (including the Transferred Policies) shall have effect from the Effective Date as if given to, or as the case may be, by the Transferee.

- 3.8 On and with effect from the Effective Date or Subsequent Transfer Date, as the case may be, and without prejudice to any other provision of this Scheme, all references to any of the Transferors in any contract between such Transferor and any other party, or in any document or instrument, to the extent evidencing title to or the benefit or burden of the Transferred Policies, the Transferred Assets, the Residual Assets, the Transferred Liabilities and the Residual Liabilities shall, in so far as they are transferred to the Transferee, be read and construed as if the same were references to the Transferee so that such contract, document or instrument shall operate as if such references had always been to the Transferee rather than the Transferors.
- 3.9 No Transferor shall be liable to the Transferee for any claim or remedy arising in connection with the Transferors' title to the Transferred Policies, the Transferred Assets or the Residual Assets other than as previously agreed in writing between such Transferor and the Transferee.
- 3.10 On and with effect from the Effective Date, the Transferee shall:
- (a) succeed to all rights, liabilities and obligations of the Transferors in respect of any personal data which relates to the Transferred Business and which is subject to the Data Protection Act 1998;
  - (b) become the data controller of any personal data which relates to the Transferred Business and which is subject to the Data Protection Act 1998 in place of the Transferors and shall be deemed to have been the controller of all such data at all material times when personal data was processed;
  - (c) in respect of any personal data which relates to the Transferred Business be under the same duty by virtue of any law as each of the Transferors 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 a Transferor and which required a Transferor not to use the personal data for marketing purposes; and
  - (d) in any consent given by a data subject in respect of such data as is mentioned in this paragraph 3.10, any reference to a Transferor or its Affiliates shall be deemed to include a reference to the Transferee or its Affiliates, as applicable.
- 3.11 No Excluded Assets, Excluded Policies or Excluded Liabilities shall be transferred to or vested in the Transferee under or by virtue of the terms of this Scheme.

#### **4. Continuity of Proceedings**

- 4.1 On and with effect from the Effective Date, any Proceedings, to the extent issued, served or commenced in connection with the Transferred Policies, the Transferred Assets or the Transferred Liabilities relating to a Transferor, shall be continued by or against the Transferee and the Transferee shall be entitled to all claims, counterclaims, defences to counterclaims and rights of set-off that were or would have been available to the relevant Transferor in relation to those Proceedings. No Transferor shall have any liability under those Proceedings and for the avoidance of doubt the Transferee, in its absolute discretion, may determine after the Effective Date to discontinue any such Proceedings brought by a Transferor.
- 4.2 On and with effect from the Subsequent Transfer Date applicable thereto, any Proceedings, to the extent issued, served or commenced in connection with the relevant Residual Asset or the relevant Residual Liability which relate to a Transferred Asset or a Residual Asset which is to be transferred on such Subsequent Transfer Date relating to a Transferor, shall be continued by or against the Transferee and the Transferee shall be entitled to all claims, counterclaims, defences to counterclaims and rights of set-off that were or would have been available to the relevant Transferor in relation to those Proceedings. No Transferor shall have any liability under those Proceedings and for the avoidance of doubt the Transferee, in its absolute discretion, may determine after the Effective Date to discontinue any such Proceedings brought by a Transferor. Until such Subsequent Transfer Date, the relevant Proceedings shall be continued by the relevant Transferor.
- 4.3 For the avoidance of doubt, any Proceedings to the extent issued, served or commenced by or against the Transferors which are not to be continued by or against the Transferee pursuant to paragraph 4.1 or 4.2 shall be continued by or against the Transferors and the Transferors shall remain entitled to all defences, claims, counterclaims, defences to counterclaims and rights of set-off that were or would have been available to it in relation to those Proceedings.
- 4.4 Any judgment, settlement, order or award obtained by or against a Transferor which relates to any part of the Transferred Business, the Transferred Policies, the Transferred Assets, the Transferred Liabilities, the Residual Assets or Residual Liabilities and which is not fully satisfied before the Effective Date (or, in the case of the Residual Assets or Residual Liabilities, the Subsequent Transfer Date) shall, on that date and to the extent to which it was enforceable by or against the relevant Transferor immediately prior to such date, become enforceable by or against the Transferee (to the exclusion of such Transferor).
- 4.5 On and with effect from the Effective Date, without any restriction whatsoever, any Proceedings for the resolution of a dispute or a claim in relation to a Transferor and concerning the Transferred Business shall be commenced against the Transferee. Any such Proceedings commenced in error against a Transferor after the Effective Date or Subsequent Transfer Date (as the case may be) 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. In any event, the Transferee shall be entitled to all defences, claims, counterclaims and rights of set off that would have been available to the relevant Transferor in relation to such Proceedings.

## **5. Retained Policies**

- 5.1 Without prejudice to paragraph 9.2, the Retained Policies shall not be transferred by this Scheme and the liabilities under each Retained Policy and any liabilities to any third party so far as they relate to any Retained Policy shall (except where such Retained Policy has been novated to the Transferee and is treated as a Transferred Policy pursuant to paragraph 5.2) remain liabilities of the relevant Transferor.
- 5.2 The Transferee shall use its reasonable endeavours to procure the novation to it of any Retained Policy with effect from the Effective Date or such later date as such novation is procured, and following such novation, such Retained Policy and the rights and obligations relating to it shall thereafter be dealt with by the Transferor and Transferee under the provisions of this Scheme in all respects as if it were a Transferred Policy.

## **6. Mandates**

- 6.1 Any mandate, standing order or other instruction or authority in force at the Effective Date (including, without limitation, any instructions given to a bank by its customer in the form of direct debit or standing order) and providing for the payment by a bank or other intermediary of premiums or other amounts payable to any of the Transferors under any Transferred Policy or Transferred Asset shall thereafter take effect as if it had provided for and authorised such payment to the Transferee.
- 6.2 Any mandate or other instruction or authority in force on the Effective Date as to the manner of payment by the Transferors of any sum payable under any Transferred Policy shall continue in force as an effective mandate, instruction or authority to the Transferee.

## **7. Rights and obligations under the Transferred Policies**

- 7.1 On the Effective Date, the Transferee shall become entitled to all the rights, benefits and powers of the Transferors whatsoever subsisting on the Effective Date under or by virtue of the Transferred Policies and be subject to all the obligations and liabilities, of the Transferors whatsoever subsisting on the Effective Date under or by virtue of the respective Transferred Policies.
- 7.2 Subject to the terms of this Scheme, every person who is a policyholder in respect of a Transferred Policy shall, on and with effect from the Effective Date, become entitled, in succession to, and to the exclusion of, any rights (including any rights in Proceedings) which he may have had against the Transferors under such Transferred Policy, to the same rights (including any rights in Proceedings) against the Transferee as were available to him against the Transferors under such Transferred Policy and (as regards a Transferred

Policy under which premiums or other sums attributable or referable thereto continue to be payable by him) shall on and with effect from the Effective Date account to the Transferee for any further or additional premiums or other sums attributable or referable thereto, if any, as and when the same become due and payable.

7.3 If any person entitled to do so with respect to a Transferred Policy exercises any right or option granted under the terms of that Transferred Policy and either:

- (a) the right or option provides for amendments to be made to an existing Transferred Policy; or
- (b) it is appropriate in the opinion of the Transferee Board in order to comply with that right or option to amend an existing Transferred Policy,

such person shall be entitled to require that the obligation thereby arising be satisfied by the amendment by the Transferee of the Transferred Policy in order to comply with the terms of such right or option.

7.4 All references in any Transferred Policy to any of the Transferors, a Transferor Board or any other officers, employees or agents of the Transferors shall, with effect on and from the Effective Date, be read as references to the Transferee, the Transferee Board or any other officers, employees or agents of the Transferee respectively or, where appropriate, agents of the Transferee to which the administration or investment management of the relevant part of the business carried on by the Transferee has been delegated. In particular, but without limitation, and subject to the other provisions of this Scheme, all rights and/or duties exercisable or expressed to be exercisable or responsibilities to be performed by any of the Transferors, a Transferor Board or any other officers, employees or agents of the Transferors in relation to any of the Transferred Policies shall, with effect on and from the Effective Date, be exercisable or required to be performed by the Transferee, the Transferee Board or any other officers, employees or such agents of the Transferee respectively, and accordingly all obligations of the Transferors, the Transferor Board or any other officers, employees or agents of the Transferors in relation to any of the Transferred Policies shall, with effect on and from the Effective Date, cease and determine. All references in a Transferred Policy to a Transferor and its Affiliates shall, where the context requires, be read and construed with effect from the Effective Date as references to the Transferee and its Affiliates.

7.5 The terms of this paragraph 7 shall apply, *mutatis mutandis*, to the Transferred Contracts and Transferred Reinsurance.

## **8. Declaration of trust by the Transferors**

8.1 If:

- (a) any property of the Transferors is not, or is not capable of being, transferred to and vested in the Transferee by the Order on the Effective Date by reason of such property being a Residual Asset or for any other reason; or
- (b) any Residual Asset is not, or is not capable of being, transferred to and vested in the Transferee by the Order on the Subsequent Transfer Date applicable thereto,

then the Transferors shall, from the Effective Date (but save to the extent that giving effect to such a trust would require a consent or waiver which has not been obtained) hold any property referred to in paragraphs 8.1(a) to 8.1(b) together with any proceeds of sale or income or other right accrued or return arising in respect thereof (including, without limitation, any payment, property or right within paragraph 8.3 below), as trustee for the Transferee.

- 8.2 The Transferors shall be subject to exclusive directions from the Transferee in respect of any property referred to in paragraphs 8.1(a) to 8.1(b) from the Effective Date until the relevant property is transferred to or otherwise vested in the Transferee or is disposed of (whereupon the Transferors shall account to the Transferee for the proceeds of the sale thereof), and the Transferee shall have authority to act as the attorney of the Transferors in respect of such property for all such purposes.
- 8.3 In the event of any payment being made to, property being received by, or right being conferred upon the Transferors on or after the Effective Date in respect of any Transferred Asset or any Residual Asset, the Transferors shall, as soon as is reasonably practicable after its receipt, pay over the full amount of such payment or (to the extent to which it is able to do so) transfer such property or right to, or in accordance with the directions of, the Transferee and the Transferee shall indemnify the Transferors on demand against any costs or liability reasonably incurred in making any such payment or transfer.

## **9. Indemnities**

- 9.1 From the Effective Date the Transferee shall indemnify and keep indemnified each Transferor against any loss or expense incurred by or demand made against such Transferor that is attributable to the Transferred Policies, including in relation to any Proceedings, whether arising before or after the Effective Date.
- 9.2 From the Effective Date, the Transferee shall discharge on the Transferors' behalf or, failing that, shall indemnify the Transferors against (i) each Residual Liability until the relevant Subsequent Transfer Date, and (ii) all liabilities arising in respect of Retained Policies, provided always that the Transferee shall indemnify the Transferors in respect of any costs, claims, charges and other liabilities incurred by the Transferors in connection therewith.
- 9.3 In respect of each Residual Liability and all liabilities arising in respect of Retained Policies, to the extent that:

- (a) the Transferors recover under a policy of indemnity insurance or recover pursuant to a claim or right of recovery against a third party, a sum which compensates the Transferors (in whole or in part); and
- (b) the Transferee has discharged on such Transferor's behalf or indemnified such Transferor against a Residual Liability or other liability pursuant to paragraph 9.1,

such Transferor shall (i) promptly notify the Transferee of the fact and (ii) pay to the Transferee, as soon as reasonably practicable after receipt, an amount equal to the amount recovered from the third party less any Tax on such receipt, providing always that the Transferee shall indemnify the Transferors in respect of any costs, claims, charges and other liabilities incurred by the Transferors in recovering the same.

- 9.4 Where any Transferor is entitled to receive an amount pursuant to paragraph 9.1, they shall be entitled to receive such amount as, after payment of any liability to Tax in respect of the amount receivable and/or any deduction or withholding required to be made from any payment under paragraph 9.1, will result in the receipt of an amount equal to the liability indemnified against.
- 9.5 For the avoidance of doubt, none of the Transferors shall be entitled to obtain payment or indemnity more than once in respect of any shortfall or other event or circumstances which may give rise to a claim against the Transferee under the terms of this Scheme.

## **10. Order of Transfers**

- 10.1 On the Effective Date, the Transfers effected in accordance with this Scheme shall occur in the following sequence:
- (a) the Excess Transferred Business shall transfer to and be vested in the Transferee;
  - (b) the Hart Re Transferred Business shall transfer to and be vested in the Transferee; and
  - (c) the L&E Transferred Business shall transfer to and be vested in the Transferee.

## PART D – MISCELLANEOUS PROVISIONS

### **11. Effective Date**

- 11.1 Subject to the Court having made the Order sanctioning this Scheme, this Scheme shall become effective at 00.01 on 15 October 2015 or such other time as may be specified in the Order or such later date and/or time, if any, as the Transferors and Transferee may agree (being a date and time falling after the making of the Order).
- 11.2 Unless this Scheme shall become effective in its entirety at 00.01 on 15 October 2015 or such later date and/or time, if any, as the Transferors and Transferee may agree (being a date and time falling after the making of the Order), it shall lapse.

### **12. Modifications or additions**

- 12.1 The Transferee and the Transferors may consent for and on behalf of themselves and all other persons concerned (other than the PRA and/or FCA) to any modification of or addition to this Scheme or to any further condition or provision affecting the same which, in each case prior to its sanction of this Scheme, the Court may approve or impose.
- 12.2 At any time after the sanction of this Scheme, the Transferee and the Transferors shall be at liberty to apply to the Court for consent to amend its terms (such Court approval not being necessary in the event of immaterial amendments or in the event of manifest error, provided any such amendment is agreed in writing between the Transferors and Transferee), provided that in any such case:
- (a) the Transferors or the Transferee (as appropriate) shall be given reasonable notice of any proposed amendment in advance of any such application to the Court, subject to clause 12.3;
  - (b) the Transferors or the Transferee (as appropriate) shall have the right to be heard at any hearing of the Court at which such application is considered;
  - (c) the FCA and PRA shall be notified of, and have the right to be heard at, any hearing of the Court at which such application is considered; and
  - (d) such application shall be accompanied by a certificate from an independent actuary to the effect that in his opinion the proposed amendment will not materially adversely affect the holders of Transferred Policies.

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

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

correct manifest errors) that are agreed by the Transferors and the Transferee, provided that the FCA and PRA have been notified of the same and have indicated that they do not object thereto.

- 12.4 In the event that any Transferor ceases to exist, the requirement to provide notice pursuant to clause 12.2 (a) shall be satisfied by providing notice to the holding company of such Transferor or such other entity as the relevant Transferor may notify to the Transferee after the date of this Scheme.

### **13. Costs and expenses**

All costs and expenses in relation to the preparation and carrying into effect of this Scheme, other than in relation to Tax, whether before or after the Effective Date shall be borne by HFSG in accordance with the terms previously agreed between the Transferors and the Transferee.

### **14. Third party rights**

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. Several undertakings**

For the avoidance of doubt, the obligations of each of the Transferors under this Scheme are entered into on a several basis (but not jointly or jointly and severally).

### **16. Evidence of transfer**

The production of a copy of the Order with any modifications, amendments and/or additions made under paragraph 12, shall for all purposes be evidence of the transfer to and vesting in the Transferee of the Transferred Business, the Transferred Assets, the Transferred Liabilities and the Transferred Policies.

### **17. Governing law**

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

**Dated [13] October 2015**