

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

Before: MR JUSTICE ZACAROLI

Dated: 8 May 2018

Case No. CR-2017-008329



IN THE MATTER OF ATLANTIC MUTUAL INTERNATIONAL LIMITED

- and -

IN THE MATTER OF THE UK BRANCH OF ATLANTIC MUTUAL INSURANCE  
COMPANY

- and -

IN THE MATTER OF BOTHNIA INTERNATIONAL INSURANCE COMPANY  
LIMITED

IN THE MATTER OF THE FINANCIAL SERVICES AND MARKETS ACT 2000

- and -

IN THE MATTER OF A TRANSFER OF INSURANCE BUSINESS BETWEEN  
ATLANTIC MUTUAL INTERNATIONAL LIMITED and THE UK BRANCH OF  
ATLANTIC MUTUAL INSURANCE COMPANY (Transferors) and BOTHNIA  
INTERNATIONAL INSURANCE COMPANY LIMITED (Transferee)

---

ORDER

---

UPON THE APPLICATION by Claim Form dated 20 November 2017 of the above-named Atlantic Mutual International Limited (“**AMIL**”) whose registered office is situated at CityPoint, 1 Ropemaker Street, London EC2Y 9AW and whose registered number is 03950815, one of the Claimants named in the Claim Form, and Atlantic Mutual Insurance Company a New York mutual company for its UK Branch (“**AMIC-UK**”) whose UK branch registration number is BRO12721, one of the Claimants named in the Claim form, and Bothnia International Insurance Company Limited (“**Bothnia**”) whose registered office is at Eerikinkatu 27, FL – 00180, Helsinki, Finland and whose Finnish business identification number is 0947118-3, one of the Claimants named in the Claim Form.

AND UPON HEARING Counsel for AMIL, AMIC-UK and Bothnia.

AND UPON READING the documents recorded on the Court File.

AND UPON Bothnia by counsel undertaking to be bound by the Scheme and to do all such acts and things as may be necessary or expedient to be done or executed by them for the purposes of giving effect thereto.

THE COURT HEREBY SANCTIONS pursuant to section 111(1) of the Financial Services and Markets Act 2000 (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 in Schedule 1:

- (a) On and with effect from the Transfer Date but subject to the terms of the Order and save as otherwise provided in the Scheme, each Transferring Policy and all the rights, discretions, authorities, benefits and powers of the Transferors whatsoever whether present, future, actual or contingent, subsisting on the Transfer Date under or by virtue of each Transferring Policy shall, by the Order and without any further act, instrument or consent of any person, be transferred to and vested in Bothnia and dealt with in accordance with the Scheme.
- (b) Subject to the provisions of the Scheme, every person who is insured or reinsured under or has a right in respect of a Transferring Policy shall, on and with effect from the Transfer Date, continue to be entitled, to the exclusion of any rights which he may have had against AMIL or AMIC UK under or in respect of the Transferring Policy concerned, to the same rights against Bothnia as were available to him against the Transferors under or in respect of that Transferring Policy and (as regards any Transferring Policy under which premiums or other sums attributable or referable thereto continue to be payable) each such person shall, on and with effect from the Transfer Date, account to Bothnia for any further or additional premiums or other sums attributable or referable thereto as and when the same become due and payable.
- (c) On and with effect from the Transfer Date each Transferring Policy Liability shall, by the Order and without any further act or instrument or consent of any person (but subject to the terms of the Order and save as otherwise provided by the Scheme) be transferred to and become a liability of Bothnia, with the effect that Bothnia shall succeed to and discharge each such liability to the exclusion of the Transferors.
- (d) On and with effect from the Transfer Date, each Transferring Asset and all the rights, discretions, authorities, benefits and powers of the Transferors whatsoever whether present, future, actual or contingent, subsisting on the Transfer Date under or by virtue of each Transferring Asset shall, by the Order and without any further act, instrument or consent of any person (but subject to the terms of the Order and save as otherwise provided by the Scheme) be transferred to and vested in Bothnia.
- (e) Subject to the provisions of the Scheme, every person which is a counterparty to, or has a right in respect of, a Transferring Asset shall on and with effect from the Transfer Date, continue to be entitled, to the exclusion of any rights which he may have had against the Transferors under or in respect of the Transferring Asset

concerned, to the same rights against Bothnia as were available to him against the Transferors under or in respect of that Transferring Asset.

- (f) On and with effect from the Transfer Date each Transferring Asset Liability shall, by the Order and without any further act or instrument or consent of any person (but subject to the terms of the Order and save as otherwise provided by the Scheme), be transferred to and become a liability of Bothnia, with the effect that Bothnia shall succeed to and discharge each such liability to the exclusion of the Transferors.
- (g) The transfers effected by paragraphs (a), (c), (d) and (f) above shall have effect:
  - (i) notwithstanding any provision to the contrary in any agreement or arrangement with any person; and
  - (ii) whether or not AMIL or AMIC-UK would apart from the terms of the Order have capacity to effect the same.
- (h) At either Transferors' option and in the manner of the relevant Transferor's choice, Bothnia and such Transferor shall as soon as possible after the Transfer Date do all such acts and things as may be reasonably necessary to procure the novation of any Retained Policy to Bothnia or, if this should not prove practicable, to effect or perfect the transfer to and vesting in Bothnia by any other reasonably practicable means of any Retained Policy.
- (i) On and with effect from the Transfer Date until the relevant Retained Policy is novated or otherwise transferred to Bothnia pursuant to paragraph (j):
  - (i) all rights, benefits, powers, claims, obligations and liabilities whatsoever under the Relevant Retrocessions, to the extent relating to the Retained Policies, shall remain vested in AMIL;
  - (ii) all rights, benefits, powers, claims, obligations and liabilities whatsoever under the Relevant Retrocessions, to the extent relating to the Transferring Policies, shall vest in Bothnia; and
  - (iii) the Relevant Retrocessions shall be interpreted as reinsuring AMIL (in respect of the Retained Policies issued by AMIL) and Bothnia (in respect of the Transferring Policies) and, for the avoidance of doubt, all claims by AMIL and Bothnia under the Relevant Retrocessions shall be aggregated for the purposes of calculating the aggregate limits of liabilities, deductibles and levels of excess under the Relevant Retrocessions.
- (j) With effect from the date of completion of all necessary steps referred to in paragraph (i) required to transfer any Retained Policy under the Scheme:
  - (i) the transfer of the Retained Policy and all liabilities whatsoever (whether present or future, actual or contingent) of either Transferor under, in connection with or by virtue of the Retained Policies shall take effect and shall thereafter be dealt with by Bothnia under the provisions of the Scheme in all respects as if that Retained Policy were a Transferring Policy and such liabilities were Transferring Policy Liabilities; and

- (ii) all such rights, benefits, powers, claims, obligations and liabilities whatsoever referred to in paragraph (i)(ii) which remained vested in AMIL, shall be transferred to Bothnia as if such rights and obligations were transferred as part of the Transferring Assets and Transferring Asset Liabilities.
- (k) On and with effect from the Transfer Date, until novated to Bothnia, or otherwise transferred pursuant to paragraph (i), Bothnia shall discharge on behalf of the Transferors, or failing that indemnify the Transferors against, all obligations and liabilities whatsoever of the Transferors under, in connection with or by virtue of each Retained Policy.
- (l) On and with effect from the Transfer Date and at no cost to the Transferors (and all such costs to be borne by Bothnia), the Transferors shall hold their rights under any Retained Policies and Relevant Retrocessions on trust for Bothnia absolutely and shall be subject to Bothnia's reasonable directions in respect of such rights until the relevant Retained Policy and its rights under Relevant Retrocessions are novated to Bothnia, or otherwise transferred pursuant to paragraph (h) or until such Relevant Retrocessions are commuted in which case the Transferors shall account to Bothnia for their share of the proceeds of such commutation. Bothnia shall have authority to act as the attorney of the Transferors in respect of their rights under any Retained Policies and Relevant Retrocessions for all actions necessary to enforce such rights under the Retained Policies and Relevant Retrocessions.
- (m) The amount of any payment made by Bothnia to a Transferor in respect of a liability arising under a Retained Policy pursuant to the indemnity contained in paragraph (k) shall be the amount of the said liability less (in the case of AMIL only) any sum already received by AMIL under any Relevant Retrocession at the time of payment by Bothnia.
- (n) Upon the full and final discharge by Bothnia of a liability pursuant to paragraph (k), AMIL shall pay any recoveries it received in relation to that liability under a Relevant Retrocession, so as to ensure that it does not benefit from a double recovery. Pending reimbursement to Bothnia, AMIL shall hold (at no cost to AMIL and all costs to be borne by Bothnia) such recovery (and any later recoveries in respect of the fully discharged liability) on trust for Bothnia in a separate designated bank account.
- (o) On and with effect from the Transfer Date, any legal proceedings in any country which are pending by or against either Transferor under, in connection with or by virtue of any of the Transferring Policies, Transferring Policy Liabilities, Transferring Assets or Transferring Asset Liabilities shall be continued, to the exclusion of the relevant Transferor, by or against Bothnia and Bothnia shall be entitled to all defences, claims and counterclaims that would have been available to the Transferor in relation to such proceedings.
- (p) Any mandate or other instruction in force on the Transfer Date (including any instruction given to a bank by its customer in the form of a direct debit or standing order) and providing for the payment by a banker or other intermediary of premiums payable under or in respect of any Transferring Policy or Transferring Asset to either Transferor shall, by the Order and without any further act or instrument or notification of any person, on and from the Transfer Date, take effect as if it had provided for and authorised such payment to Bothnia.

- (q) The Transferors shall transfer to Bothnia all personal data within the meaning of the Data Protection Act 1998 held by the Transferors in connection with the Transferring Policies and Transferring Assets and Bothnia may use such personal data for the same purposes as previously used by the Transferors.
- (r) On and with effect from the Transfer Date, but subject as otherwise provided in the Scheme, Bothnia shall discharge on behalf of the Transferors, or failing that indemnify the Transferors against, the Transferring Policy Liabilities and the Transferring Asset Liabilities.
- (s) Subject to paragraph (t), all references in each Transferring Policy and Transferring Asset to either Transferor, their directors, their board of directors, any of their other officers or employees shall, where the context requires and to the extent necessary to give full effects to the Scheme, be read as references to Bothnia, its directors, its board of directors, or other officers or employees of Bothnia (as the case may be) on and with effect from the Transfer Date.
- (t) All references in each Relevant Retrocession to AMIL, their directors, their board of directors, any of their other officers or employees shall, where the context requires and to the extent necessary to give full effect to the Scheme and in particular, paragraph (i)(iii), be read as references to either AMIL or Bothnia, AMIL's or Bothnia's directors, AMIL's or Bothnia's board of directors, or other officers or employees of AMIL or Bothnia (as the case may be) on and with effect from the Transfer Date.
- (u) Subject to paragraph (v), all rights and/or powers expressed to be exercisable or responsibilities, duties and/or obligations expressed to be performable by, and all liabilities imposed upon, either Transferor, their directors or board of directors, any other officers or employees in relation to any of the Transferring Policies, Transferring Policy Liabilities, Transferring Assets or Transferring Asset Liabilities shall, on and with effect from the Transfer Date to the extent necessary to give full effect to the Scheme, be exercisable or required to be performed by or imposed upon, respectively, Bothnia, its directors or board of directors, or other officer or employee of Bothnia (as the case may be).
- (v) All rights and/or powers expressed to be exercisable or responsibilities, duties and/or obligations expressed to be performed by, and all liabilities imposed upon, AMIL, their directors or board of directors, any other officers or employees in relation to any of the Relevant Retrocessions shall, on and with effect from the Transfer Date to the extent necessary to give full effect to the Scheme and, in particular, paragraph (i)(iii), be exercisable or required to be performed by or imposed upon, respectively, AMIL or Bothnia, AMIL's or Bothnia's directors or board of directors, or other officer or employee of AMIL or Bothnia (as the case may be).
- (w) On and with effect from the Transfer Date, both Transferors shall, to the extent they are in their possession or control, transfer to Bothnia the Transferring Records, subject to Bothnia providing both Transferors with all reasonable access and inspection rights to the Transferring Records on the relevant Transferor's request.

- (x) The transfer of the Transferring Policies, the Transferring Policy Liabilities, the Transferring Assets, the Transferring Asset Liabilities or any other matter provided for by this Order or the Scheme shall not:
- (i) invalidate or discharge any agreement or other thing;
  - (ii) constitute a breach of, or default under, or require any obligation to be performed sooner or later than would have otherwise been the case under, any agreement or instrument to which any of Bothnia or the Transferors is a party or bound;
  - (iii) allow any party to an agreement to terminate that agreement when he would not otherwise have been able to do so;
  - (iv) entitle any party to any agreement to which any of Bothnia or the Transferors is a party or is bound to vary the terms of that agreement when he would not otherwise have been able to do so; or
  - (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 including, without limitation, the release of any obligation or liability of any party which would not have otherwise been released or the release of such liability or obligation sooner or later than would have otherwise been the case.

AND IT IS ORDERED THAT in accordance with Sections 114 and 114A of the Act:

- (i) notice of the making of this Order giving effect to the Scheme shall be published in each EEA state set out in Schedule 2 hereto by insertion of a notice in such publication as is advised to Bothnia by either the Prudential Regulation Authority or any other relevant regulatory authority or, failing such advice, in any official gazette or national or international newspaper circulating in the relevant EEA state; 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 insurance as regards which the relevant EEA state is the state of the risk, may exercise the right (if any) under the law of the relevant EEA state to cancel such policy shall be a period of 21 days from the date of such publication or such other period (if any) for which the laws of the relevant EEA state provide.

AND IT IS ORDERED THAT Two office copies of this Order shall be deposited with the Prudential Regulation Authority within 10 days of making this Order.

Dated: 8 May 2018

**SCHEDULE 1**

(Scheme)

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

Case No. CR-2017-008329

IN THE MATTER OF ATLANTIC MUTUAL INTERNATIONAL LIMITED

- and -

IN THE MATTER OF THE UK BRANCH OF ATLANTIC MUTUAL INSURANCE  
COMPANY

- and -

IN THE MATTER OF BOTHNIA INTERNATIONAL INSURANCE COMPANY  
LIMITED

IN THE MATTER OF THE FINANCIAL SERVICES AND MARKETS ACT 2000

- and -

IN THE MATTER OF A TRANSFER OF INSURANCE BUSINESS BETWEEN  
ATLANTIC MUTUAL INTERNATIONAL LIMITED and THE UK BRANCH OF  
ATLANTIC MUTUAL INSURANCE COMPANY (Transferors) and BOTHNIA  
INTERNATIONAL INSURANCE COMPANY LIMITED (Transferee)

INSURANCE BUSINESS TRANSFER SCHEME

**(pursuant to Part VII of the Financial Services and Markets Act 2000) for the transfer  
to Bothnia International Insurance Company Limited of certain non-life insurance and  
reinsurance business of Atlantic Mutual International Limited and the UK branch of  
Atlantic Mutual Insurance Company**



## CONTENTS

Paragraph	Page
1. INTRODUCTION.....	3
2. TRANSFER OF TRANSFERRING POLICIES .....	3
3. TRANSFER OF TRANSFERRING POLICY LIABILITIES .....	4
4. TRANSFER OF TRANSFERRING ASSETS .....	4
5. TRANSFER OF TRANSFERRING ASSET LIABILITIES.....	5
6. RETAINED POLICIES.....	5
7. CONTINUITY OF PROCEEDINGS.....	6
8. MANDATES AND OTHER INSTRUCTIONS.....	7
9. INDEMNITIES IN FAVOUR OF THE TRANSFERORS .....	8
10. CONSTRUCTION OF TRANSFERRING POLICIES AND TRANSFERRING ASSETS.....	9
11. TRANSFER DATE.....	9
12. MODIFICATIONS.....	9
13. RECORDS .....	10
14. FURTHER ASSURANCE.....	10
15. GOVERNING LAW .....	10
<b>APPENDIX 1: INTERPRETATION.....</b>	<b>11</b>
<b>SCHEDULE 1: OUTWARDS REINSURANCE.....</b>	<b>14</b>
<b>SCHEDULE 2: TRANSFERRING ASSETS .....</b>	<b>15</b>

## 1. INTRODUCTION

- 1.1. AMIL is a person who is authorised for the purposes of the Act and has permission to carry out contracts of general insurance falling within paragraphs 1, 2, 3, 7, 8, 9, 13, 15, 16 and 18 of part 1 of Schedule 1 to the RAO. AMIL has ceased underwriting new contracts of insurance and is currently in run-off.
- 1.2. AMIC-UK is a person who is authorised for the purposes of the Act and has permission to carry out contracts of general insurance falling within paragraphs 1, 2, 4, 5, 6, 7, 8, 9, 11, 12, 13, 14, 15, 16, 17 and 18 of part 1 of Schedule 1 to the RAO. AMIC-UK has ceased underwriting new contracts of insurance and is a branch of an insurance company incorporated in the state of New York, United States of America that is currently in liquidation.
- 1.3. Bothnia is a person who is authorised by the Financial Supervisory Authority of Finland to effect and carry out contracts of general insurance (both direct and reinsurance) in Finland for classes of business 1 to 17 set out in Part A of Annex I of the Solvency II Directive, but excluding certain insurance business under classes 1 and 10 in accordance with the Finnish statutory Motor Liability Insurance Act (275/59), certain insurance business under class 13 in accordance with the Finnish statutory Patient Injuries Act (585/86) and the Finnish Nuclear Liability Act (484/72) and certain insurance business in accordance with the Finnish Occupational Accidents, Injuries and Diseases Act (459/2015). It has also exercised its “passport” rights pursuant to the Solvency II Directive to provide insurance to persons in the UK for classes of business 1 to 9 and 11 to 17.
- 1.4. It is proposed that on and with effect from the Transfer Date, the Transferring Policies, the Transferring Policy Liabilities, the Transferring Assets and the Transferring Asset Liabilities shall be transferred to Bothnia by the Order in accordance with Part VII of the Act and be dealt with in accordance with this Scheme.
- 1.5. The definitions of terms defined in this Scheme are listed in Appendix 1 to this Scheme.

## 2. TRANSFER OF TRANSFERRING POLICIES

- 2.1. On and with effect from the Transfer Date but subject to the terms of the Order and save as otherwise provided by this Scheme, each Transferring Policy and all the rights, discretions, authorities, benefits and powers of the Transferors whatsoever whether present, future, actual or contingent, subsisting on the Transfer Date under or by virtue of each Transferring Policy shall, by the Order and without any further act, instrument or consent of any person, be transferred to and vested in Bothnia and dealt with in accordance with this Scheme.
- 2.2. Subject to the provisions of this Scheme, every person who is insured or reinsured under or has a right in respect of a Transferring Policy shall, on and with effect from the Transfer Date, continue to be entitled, to the exclusion of any rights which he may have had against AMIL or AMIC-UK under or in respect of the Transferring Policy concerned, to the same rights against Bothnia as were available to him against the Transferors under or in respect of that Transferring Policy and (as regards any Transferring Policy under which premiums or other sums attributable or referable thereto continue to be payable) each such person shall, on and with effect from the

Transfer Date, account to Bothnia for any further or additional premiums or other sums attributable or referable thereto as and when the same become due and payable.

- 2.3. Bothnia shall accept without investigation such title to each Transferring Policy as the Transferors shall have at the Transfer Date.
- 2.4. Without prejudice to any other provision in this Scheme, the Transferors and Bothnia shall each take all such steps and do all such things (including the execution and delivery of any document) as may be reasonably required to effect or perfect the transfer to and vesting in Bothnia of each Transferring Policy in accordance with the terms of this Scheme.

### **3. TRANSFER OF TRANSFERRING POLICY LIABILITIES**

- 3.1. On and with effect from the Transfer Date each Transferring Policy Liability shall, by the Order and without any further act or instrument or consent of any person (but subject to the terms of the Order and save as otherwise provided by this Scheme) be transferred to and become a liability of Bothnia, with the effect that Bothnia shall succeed to and discharge each such liability to the exclusion of the Transferors.
- 3.2. Without prejudice to any other provision in this Scheme, the Transferors and Bothnia shall each take all such steps and do all such things (including the execution and delivery of any document) as may be reasonably required to effect or perfect the transfer to and vesting in Bothnia of each Transferring Policy Liability in accordance with the terms of this Scheme.

### **4. TRANSFER OF TRANSFERRING ASSETS**

- 4.1. On and with effect from the Transfer Date, each Transferring Asset and all the rights, discretions, authorities, benefits and powers of the Transferors whatsoever whether present, future, actual or contingent, subsisting on the Transfer Date under or by virtue of each Transferring Asset shall, by the Order and without any further act, instrument or consent of any person (but subject to the terms of the Order and save as otherwise provided by this Scheme) be transferred to and vested in Bothnia.
- 4.2. Subject to the provisions of this Scheme, every person which is a counterparty to, or has a right in respect of, a Transferring Asset shall on and with effect from the Transfer Date, continue to be entitled, to the exclusion of any rights which he may have had against the Transferors under or in respect of the Transferring Asset concerned, to the same rights against Bothnia as were available to him against the Transferors under or in respect of that Transferring Asset.
- 4.3. As regards any Transferring Asset under which sums attributable or referable thereto continue to be payable by him, every person who is a counterparty to, or has a liability under, in connection with or by virtue of a Transferring Asset shall, on and with effect from the Transfer Date, account to Bothnia for any sums and any further or additional sums or obligations attributable or referable thereto as and when the same become due and payable.
- 4.4. In the event of any payment being made to, property being received by, or a right being conferred upon the Transferors on or after the Transfer Date in respect of the Transferring Assets, the Transferors, shall as soon as reasonably practicable notify Bothnia thereof and, at no cost to the Transferors (and all such costs to be borne by Bothnia), 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 reasonable directions of, Bothnia. The Transferors shall hold such property or right on trust for Bothnia (at no cost to the Transferors and all costs to be borne by Bothnia) until such time as it is transferred to or in accordance with the reasonable directions of Bothnia.

- 4.5. Bothnia shall accept without investigation such title to each Transferring Asset as the Transferors shall have at the Transfer Date.
- 4.6. Without prejudice to any other provision in this Scheme, the Transferors and Bothnia shall each take all such steps and do all such things (including the execution and delivery of any document) as may be reasonably required to effect or perfect the transfer to and vesting in Bothnia of each Transferring Asset in accordance with the terms of this Scheme.

## 5. TRANSFER OF TRANSFERRING ASSET LIABILITIES

- 5.1. On and with effect from the Transfer Date each Transferring Asset Liability shall, by the Order and without any further act or instrument or consent of any person (but subject to the terms of the Order and save as otherwise provided by this Scheme), be transferred to and become a liability of Bothnia, with the effect that Bothnia shall succeed to and discharge each such liability to the exclusion of the Transferors.
- 5.2. Without prejudice to any other provision in this Scheme, the Transferors and Bothnia shall each take all such steps and do all such things (including the execution and delivery of any document) as may be reasonably required to effect or perfect the transfer to and vesting in Bothnia of each Transferring Asset Liability in accordance with the terms of this Scheme.

## 6. RETAINED POLICIES

- 6.1. At either Transferor's option and in the manner of the relevant Transferor's choice, Bothnia and such Transferor shall as soon as possible after the Transfer Date do all such acts and things as may be reasonably necessary to procure the novation of any Retained Policy to Bothnia or, if this should not prove practicable, to effect or perfect the transfer to and vesting in Bothnia by any other reasonably practicable means of any Retained Policy.
- 6.2. On and with effect from the Transfer Date until the relevant Retained Policy is novated or otherwise transferred to Bothnia pursuant to paragraph 6.3:
  - 6.2.1. all rights, benefits, powers, claims, obligations and liabilities whatsoever under the Relevant Retrocessions, to the extent relating to the Retained Policies issued by AMIL, shall remain vested in AMIL;
  - 6.2.2. all rights, benefits, powers, claims, obligations and liabilities whatsoever under the Relevant Retrocessions, to the extent relating to the Transferring Policies, shall vest in Bothnia; and
  - 6.2.3. the Relevant Retrocessions shall be interpreted as reinsuring AMIL (in respect of the Retained Policies issued by AMIL) and Bothnia (in respect of the Transferring Policies) and, for the avoidance of doubt, all claims by AMIL and Bothnia under the Relevant Retrocessions shall be aggregated for the purposes of calculating the aggregate limits of liabilities, deductibles and levels of excess under the Relevant Retrocessions.

- 6.3. With effect from the date of completion of all necessary steps referred to in paragraph 6.1 required to transfer any Retained Policy under the Scheme:
- 6.3.1. the transfer of the Retained Policy and all liabilities whatsoever (whether present or future, actual or contingent) of either Transferor under, in connection with or by virtue of the Retained Policies shall take effect and shall thereafter be dealt with by Bothnia under the provisions of the Scheme in all respects as if that Retained Policy were a Transferring Policy and such liabilities were Transferring Policy Liabilities; and
  - 6.3.2. all such rights, benefits, powers, claims, obligations and liabilities whatsoever referred to in paragraph 6.2.1 which remained vested in AMIL, shall be transferred to Bothnia as if such rights and obligations were transferred as part of the Transferring Assets and Transferring Asset Liabilities.
- 6.4. On and with effect from the Transfer Date, until novated to Bothnia, or otherwise transferred pursuant to paragraph 6.1, Bothnia shall discharge on behalf of the Transferors, or failing that indemnify the Transferors against, all obligations and liabilities whatsoever of the Transferors under, in connection with or by virtue of each Retained Policy.
- 6.5. On and with effect from the Transfer Date and at no cost to the Transferors (and all such costs to be borne by Bothnia), the Transferors shall hold their rights under any Retained Policies and Relevant Retrocessions on trust for Bothnia absolutely and shall be subject to Bothnia's reasonable directions in respect of such rights until the relevant Retained Policy and its rights under Relevant Retrocessions are novated to Bothnia, or otherwise transferred pursuant to paragraph 6.1, or until such Relevant Retrocessions are commuted, in which case the Transferors shall account to Bothnia for their share of the proceeds of such commutation. Bothnia shall have authority to act as the attorney of the Transferors in respect of their rights under any Retained Policies and Relevant Retrocessions for all actions necessary to enforce such rights under the Retained Policies and Relevant Retrocessions.
- 6.6. The amount of any payment made by Bothnia to a Transferor in respect of a liability arising under a Retained Policy pursuant to the indemnity contained in paragraph 6.4 shall be the amount of the said liability less (in the case of AMIL only) any sum already received by AMIL under any Relevant Retrocession at the time of payment by Bothnia.
- 6.7. Upon the full and final discharge by Bothnia of a liability pursuant to paragraph 6.4, AMIL shall pay to Bothnia any recoveries it received in relation to that liability under a Relevant Retrocession, so as to ensure that it does not benefit from a double recovery. Pending reimbursement to Bothnia, AMIL shall hold (at no cost to AMIL and all costs to be borne by Bothnia) such recovery (and any later recoveries in respect of the fully discharged liability) on trust for Bothnia in a separate designated bank account.

## **7. CONTINUITY OF PROCEEDINGS**

- 7.1. At and with effect from the Transfer Date, all references to a Transferor in contracts or other documents with any third party relating to the Transferring Policies, the Transferring Assets, Transferring Asset Liabilities and the Transferring Policy Liabilities shall be read and construed as if the same were references to Bothnia so

that such references shall take effect as if Bothnia was the original party to the contracts in place of such Transferor.

- 7.2. At and with effect from the Transfer Date, any judicial, quasi-judicial or arbitration proceedings or any complaint or claim to any ombudsman or other proceedings for the resolution of a dispute or claim (whether current or future) by or against a Transferor from the Transfer Date in connection with the Transferring Policies, the Transferring Assets, Transferring Asset Liabilities and the Transferring Policy Liabilities shall be continued by or against Bothnia and Bothnia shall be entitled to all defences, claims, counterclaims and rights of set-off that would have been available to such Transferor in relation to such proceedings and such Transferor shall have no liability under those proceedings and, for the avoidance of doubt, Bothnia, in its absolute discretion, may determine to discontinue after the Transfer Date any such proceedings brought by such Transferor.
- 7.3. At and with effect from the Transfer Date, any judicial, quasi-judicial, or arbitration proceedings or any complaint or claim to any ombudsman or other proceedings for the resolution of a dispute or claim in relation to a Transferor and concerning the Transferring Policies, the Transferring Assets, Transferring Asset Liabilities and the Transferring Policy Liabilities shall be commenced against Bothnia. Any such proceedings after the Transfer Date commenced in error against a Transferor shall be deemed to have been commenced and shall be continued against Bothnia without the need for further order, whether for substitution of parties or otherwise. In any event, Bothnia shall be entitled to all defences, claims, counterclaims and rights of set off that would have been available to such Transferor in relation to such proceedings.
- 7.4. Pending the transfer to Bothnia pursuant to paragraph 6.1 of a Retained Policy, Bothnia shall have the right, at no cost to the relevant Transferor (and all such costs to be borne by Bothnia) and taking into account all reasonable requests of the Transferor, to direct the conduct of any legal proceedings which are at the Transfer Date pending by or against the Transferor under or in connection with such Retained Policy and relevant Retrocession.

## **8. MANDATES AND OTHER INSTRUCTIONS**

- 8.1. Any mandate or other instruction in force on the Transfer Date (including any instruction given to a bank by its customer in the form of a direct debit or standing order) and providing for the payment by a banker or other intermediary of premiums payable under or in respect of any Transferring Policy or Transferring Asset to either Transferor shall, by the Order and without any further act or instrument or notification of any person, on and from the Transfer Date, take effect as if it had provided for and authorised such payment to Bothnia.
- 8.2. The Transferors shall transfer to Bothnia all personal data within the meaning of the Data Protection Act 1998 held by the Transferors in connection with the Transferring Policies and Transferring Assets and Bothnia may use such personal data for the same purposes as previously used by the Transferors.
- 8.3. On and with effect from the Transfer Date, Bothnia shall:
  - 8.3.1. succeed to all rights, liabilities and obligations of the Transferors in respect of any personal data which relates to the Transferring Policies and Transferring Assets and which is subject to the Data Protection Act 1998;

- 8.3.2. become the data controller of any personal data which relates to the Transferring Policies and Transferring Assets 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;
- 8.3.3. in respect of any personal data which relates to the Transferring Policies and Transferring Assets, be under the same duty by virtue of any law as the Transferors were 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 the Transferors and which required a Transferor not to use the personal data for marketing purposes; and
- 8.3.4. in any consent given by a data subject in respect of such data as is mentioned in this Clause 8, any reference to a Transferor shall be deemed to include a reference to Bothnia.

## 9. INDEMNITIES IN FAVOUR OF THE TRANSFERORS

- 9.1. On and with effect from the Transfer Date, but subject as otherwise provided herein, Bothnia shall discharge on behalf of the Transferors, or failing that, indemnify the Transferors against, the Transferring Policy Liabilities and the Transferring Asset Liabilities.
- 9.2. Upon either Transferor becoming aware of any matter likely to give rise to such Transferor's right of indemnity in paragraph 9.1, such Transferor and Bothnia agree that the following provisions apply:
  - 9.2.1. The relevant Transferor shall give written notice to Bothnia (specifying, in such reasonable detail as is practicable in the circumstances, the nature of the matter which gives rise to such rights) as soon as reasonably practicable;
  - 9.2.2. The relevant Transferor shall not make any admission as to liability in relation to, or agree to any settlement of or compromise in respect of the matter giving rise to the right of indemnity without the prior written consent of Bothnia; and
  - 9.2.3. Bothnia shall be entitled, upon such written notice to the relevant Transferor, to have conduct of all litigation or other proceedings (including the right to settle or compromise) in respect of the matter giving rise to the indemnity and shall bear all costs of such conduct. The relevant Transferor shall give all reasonable assistance (including such information and access to personnel, premises, documents and records in such Transferor's possession) as Bothnia may reasonably require in the course of such litigation or other proceedings.
- 9.3. Where either Transferor is entitled to receive an amount pursuant to the indemnities contained in paragraph 9.1, it shall be entitled to receive such amount as, after payment of or provision for any liability to taxation in respect of the amount receivable, will result in the receipt of an amount equal to the liability indemnified against.

## **10. CONSTRUCTION OF TRANSFERRING POLICIES AND TRANSFERRING ASSETS**

- 10.1. Subject to paragraph 10.2, all references in each Transferring Policy and Transferring Asset to either Transferor, their directors, their board of directors, any of their other officers or employees shall, where the context requires and to the extent necessary to give full effect to the Scheme, be read as references to Bothnia, its directors, its board of directors, or other officers or employees of Bothnia (as the case may be) on and with effect from the Transfer Date.
- 10.2. All references in each Relevant Retrocession to AMIL, their directors, their board of directors, any of their other officers or employees shall, where the context requires and to the extent necessary to give full effect to the Scheme and in particular, paragraph 6.2.3, be read as references to either AMIL or Bothnia, AMIL's or Bothnia's directors, AMIL's or Bothnia's board of directors, or other officers or employees of AMIL or Bothnia (as the case may be) on and with effect from the Transfer Date.
- 10.3. Subject to paragraph 10.4, all rights and/or powers expressed to be exercisable or responsibilities, duties and/or obligations expressed to be performable by, and all liabilities imposed upon, either Transferor, their directors or board of directors, any other officers or employees in relation to any of the Transferring Policies, Transferring Policy Liabilities, Transferring Assets or Transferring Asset Liabilities shall, on and with effect from the Transfer Date to the extent necessary to give full effect to the Scheme, be exercisable or required to be performed by or imposed upon, respectively, Bothnia, its directors or board of directors, or other officer or employee of Bothnia (as the case may be).
- 10.4. All rights and/or powers expressed to be exercisable or responsibilities, duties and/or obligations expressed to be performed by, and all liabilities imposed upon, AMIL, their directors or board of directors, any other officers or employees in relation to any of the Relevant Retrocessions shall, on and with effect from the Transfer Date to the extent necessary to give full effect to the Scheme and, in particular, paragraph 6.2.3, be exercisable or required to be performed by or imposed upon, respectively, AMIL or Bothnia, AMIL's or Bothnia's directors or board of directors, or other officer or employee of AMIL or Bothnia (as the case may be).

## **11. TRANSFER DATE**

- 11.1. The Scheme shall become effective at 23:59 (London time) on 18 May 2018 in London, or such later date as both Transferors and Bothnia may agree and the Court may allow.

## **12. MODIFICATIONS**

- 12.1. Subject to the prior consultation with, and the non-objection of both the Prudential Regulation Authority and the Financial Conduct Authority, Bothnia and both Transferors may at any time agree on behalf of themselves and all other persons concerned to any modification of or addition to this Scheme or to any further condition or provision affecting the same that the Court may approve or impose.



**13. RECORDS**

- 13.1. On and with effect from the Transfer Date, both Transferors shall, to the extent they are in their possession or control, transfer to Bothnia the Transferring Records, subject to Bothnia providing both Transferors with all reasonable access and inspection rights to the Transferring Records on the relevant Transferor's request.

**14. FURTHER ASSURANCE**

- 14.1. The Transferors and Bothnia shall each take such steps and execute such documents as may reasonably be required to effect or perfect the transfer to Bothnia of the Transferring Policies, Transferring Assets, Transferring Asset Liabilities, Transferring Policy Liabilities and Transferring Records.

**15. GOVERNING LAW**

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

8 May 2018

## SCHEME DOCUMENT

### APPENDIX 1: INTERPRETATION

#### 1. DEFINITIONS

1.1. In this Scheme, including the Appendices hereto:

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

**AMIL** means Atlantic Mutual International Limited, whose registered office is at CityPoint, 27th Floor, 1 Ropemaker Street, London EC2Y 9AW and whose registered number is 03950815;

**AMIC-UK** means the United Kingdom branch of Atlantic Mutual Insurance Company, a company incorporated in the state of New York U.S.A. that is in liquidation whose U.K. branch registration number is BR012721;

**Bothnia** means Bothnia International Insurance Company Limited, whose registered office is at Eerikinkatu 27, FI-00180 Helsinki, Finland, and whose registered number is 0947118-3;

**Bothnia QSA** means the amended and restated quota share agreement between AMIL, AMIC-UK and Bothnia entered into between those parties on 28<sup>th</sup> July 2015 as the same may be amended from time to time;

**Business** means the entire portfolios of non-life insurance and reinsurance contracts, underwritten by the Transferors either directly or through their agents;

**Business Day** means a day (other than a Saturday or Sunday) on which banks are generally open for business in London;

**Collateral Account** means account number 20696978 of AMIL with the HSBC Bank plc, and includes such account as renewed or re-designated from time to time;

**Court** means the High Court of Justice in England;

**Order** means an order of the Court sanctioning this Scheme pursuant to Section 111(1) of the Act and any order of the Court making provision under Section 112 of the Act;

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

**Retained Policies** means any contract of insurance or reinsurance which would otherwise be a Transferring Policy but for the Court declining to order its transfer to Bothnia (each such contract being a **Retained Policy**) because:

- (a) (i) such contract is governed by the law of any country or territory outside the United Kingdom; and  
(ii) further steps additional to the Order are required to make its transfer to Bothnia fully effective under the law of that country or territory; or
- (b) the Order requires further steps be taken to make the transfer of such contract to Bothnia fully effective; or

- (c) the relevant Transferor and Bothnia agree in writing prior to the Effective Date that such contract should not be transferred to Bothnia; or
- (d) the Order so specifies for any other reason that the Court determines.

**Relevant Retrocessions** means those outwards retrocession contracts or policies which provide reinsurance in respect of liabilities arising under, in connection with or by virtue of any Retained Policy issued by AMIL as well as any Transferring Policy issued by AMIL, each such contract or policy being a **Relevant Retrocession**;

**Scheme** means this Scheme in its original form or with, or subject to, any modification, addition or condition which may be approved pursuant to paragraph 12.1 of this Scheme or imposed by the Court;

**Solvency II Directive** means Directive 2009/138/EC of the European Parliament and the European Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance;

**Transfer Date** means the date and time as determined in accordance with paragraph 11.1 of this Scheme becoming effective;

**Transferor** means AMIL or AMIC-UK and **Transferors** means both AMIL and AMIC-UK;

**Transferring Assets** means:

- (a) The outwards retrocession contracts or policies under which AMIL is indemnified in respect of liabilities arising out of the Business including (save to the extent of the rights of the Transferors to indemnity under a Relevant Retrocession arising under, in connection with or by virtue of any Retained Policy) those contracts and policies listed in Schedule 1 to the extent that they provide cover in respect of Transferring Policy Liabilities;
- (b) The Bothnia QSA and
- (c) The item listed in Schedule 2,

each such asset, agreement, contract or policy being a **Transferring Asset**;

**Transferring Asset Liabilities** means all liabilities whatsoever (whether present or future, certain or contingent) of the Transferors as at the Transfer Date under, in connection with, or by virtue of the Transferring Assets (including any cost, expense, liability, damage or loss of any kind) except for the liabilities of the Transferors to pay the Premium Amount and the Adjusted Net Income Amount (as such terms are defined in the Bothnia QSA), each such liability being a **Transferring Asset Liability**;

**Transferring Policies** means the insurance and reinsurance policies forming the Business including (without limitation) policies in respect of which liability remains unsatisfied, and policies whose period of coverage has expired, which have lapsed, matured, been reinstated or been surrendered but excluding the Retained Policies; and

**Transferring Policy Liabilities** means all liabilities whatsoever (whether present or future, certain or contingent) of the Transferors as at the Transfer Date under, in connection with, or by virtue of the Transferring Policies. Without prejudice to the generality of the foregoing such liability includes:

- (a) any cost, expense, liability, damage or loss of any kind;
- (b) liabilities in connection with lapsed, matured, surrendered, reinstated and expired policies of insurance and reinsurance;
- (c) liabilities in connection with any finding of mis-selling practices by or on behalf of a Transferor relating to insurance or reinsurance policies; and
- (d) liabilities arising out of or in connection with eligible complainants' complaints (howsoever arising), whether present or future, certain or contingent, against either or both of the Transferors within the Compulsory Jurisdiction of the Financial Ombudsman Service or, if applicable, within the Voluntary Jurisdiction of the Financial Ombudsman Service,

each such liability being a **Transferring Policy Liability**. In this definition the terms "eligible complainants", "complaints", "Compulsory Jurisdiction" and "Voluntary Jurisdiction" shall have the meaning set out in the handbook of rules and guidance of the Financial Conduct Authority as at the Transfer Date, as amended from time to time.

**Transferring Records** means all books, records, accounting, financial and legal information and marketing information of the Transferors (in whatever medium) to the extent they relate to the Transferring Policies, Transferring Policy Liabilities, Transferring Assets and Transferring Asset Liabilities including, but not limited to, all client lists, correspondence, copies of any documents relating to any judicial, quasi-judicial or arbitration proceedings, client data and books records relating to underwriting, claims handling and outstanding claims as at the Transfer Date.

## 2. INTERPRETATION

### 2.1. In this Scheme, including the Appendices hereto:

- 2.1.1. The words and expressions set out in Appendix 1 shall, save where the context requires otherwise, bear the meanings specified against them.
- 2.1.2. Any reference in this Scheme to an enactment, statutory provision, regulations or rules shall be deemed to include a reference to that enactment or statutory provision or those regulations or rules as from time to time amended, consolidated, modified, replaced or re-enacted by any statute or statutory provision.
- 2.1.3. Any reference in this Scheme to the singular includes a reference to the plural and vice versa. Any reference to he, she or it includes the others, any reference to a paragraph is to a paragraph of this Scheme.
- 2.1.4. Words denoting persons shall include any body corporate, unincorporated associations of persons, government, state or agency of a state (whether or not having separate legal personality).
- 2.1.5. The words "include", "includes" and "including" shall be construed as if they were followed by the words "without limitation".
- 2.1.6. Headings in this Scheme are inserted for convenience only and shall not affect its construction.

## SCHEME DOCUMENT

### SCHEDULE 1: OUTWARDS REINSURANCE

1. 65% Quota share reinsurance of the first USD1m in respect of all business written in AMIL's Property account broken with the following reinsurers (details of the reinsurers' respective shares of the 65% are provided):
  - 21.666% to Lloyd's syndicate 2791
  - 21.667% to Lloyd's syndicate 2987
  - 21.667% to Wellington Reinsurance Limited (now Aspen Re Ltd)
2. Terrorism cover 100% reinsured to Pool Re.
3. Facultative Reinsurance in respect of coverage to L Brown & Sons Ltd for £1m xs £500,000 each loss with General Cologne Re.
4. Facultative Reinsurance in respect of coverage to XTEX Polythene Ltd and BGM Plastic Ltd for £500,000 xs £1m each loss with General Reinsurance UK Limited

## **SCHEDULE 2: TRANSFERRING ASSETS**

In this Scheme, for the avoidance of doubt, “Transferring Assets” includes:

Cash in the Collateral Account up to the Premium Amount plus Adjusted Net Income Amount (as defined in the Bothnia QSA)

## **SCHEDULE 2**

(EEA states in which notices are to be published)

(Notices in respect of the making of the Order to conform to any requirements notified to the Claimants by an EEA regulator (further to consultation with the Prudential Regulation Authority). In any event, the Claimants to publish a notice of the making of the Order in an international newspaper circulating in the EEA states listed below.)

Germany

Italy

Ireland

France

Spain