

IN THE HIGH COURT OF JUSTICE

CHANCERY DIVISION

COMPANIES COURT DISTRICT REGISTRY

BETWEEN:

**IN THE MATTER OF
BASLER VERSICHERUNG AG**

- and -

**IN THE MATTER OF
BOTHNIA INTERNATIONAL INSURANCE COMPANY LIMITED**

- and -

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

**INSURANCE BUSINESS TRANSFER
SCHEME**
**for the transfer of part of the UK general
insurance and reinsurance business of Basler
Versicherung AG to Bothnia International
Insurance Company Limited in accordance with
Part VII of the Financial Services and Markets
Act 2000**

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PART A: DEFINITIONS & INTERPRETATION

1. DEFINITIONS AND INTERPRETATION

1.1 In this Scheme, unless the context otherwise requires, the following expressions shall have the following meanings:

"authorised person" has the meaning given in the Handbook of Rules and Guidance;

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

"Baloise" means Basler Versicherung AG, a company incorporated in Switzerland whose registered office is at Aeschengraben 21, Postfach, CH-4002 Basel with registered number CHE-105.805.649 and regulated by FINMA;

"Baloise UK Branch" means the UK branch of Baloise, being Baloise Insurance Limited (UK Branch) (formerly Baloise Insurance Company Limited (UK Branch)), with branch number BR002266;

"Business Day" means a day other than a Saturday or Sunday or a public holiday in England and Wales;

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

"Data Protection Legislation" has the meaning given in paragraph 9.1;

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

"Effective Date" means the time and date when this Scheme shall become effective in accordance with paragraph 11;

"Encumbrance" means any interest or equity of any person (including, without limitation, any right to acquire, option or right of pre-emption or conversion) or any mortgage, charge, pledge, lien, security, assignment, hypothecation, security

interest, title retention or any other security arrangement or arrangement having a similar effect, or any agreement to create any of the above;

"Excluded Assets" mean:

- a) the rights, benefits and powers of the Transferor (subject to the burden) of, under or by virtue of the Excluded Policies (including contractual, tortious and statutory rights); and
- b) any property of the Transferor attributable to the Transferring Business (including any right or benefit of the Transferor under any Transferring Policy) that the Transferor and the Transferee agree prior to the Effective Date should not be transferred at all;

"Excluded Liabilities" mean all Liabilities of the Transferor that do not arise from, or relate to, the Transferring Policies, Residual Policies, Transferring Assets and/or Residual Assets. The Excluded Liabilities shall include, but are not limited to, any Liability of the Transferor:

- a) arising from or in connection with the Excluded Policies;
- b) arising from or in connection with the Excluded Assets;
- c) any liabilities for or in respect of Taxation, including any Liability relating to the deduction or withholding of Taxation arising to any member of the Transferor's Group in respect of the operation of the Transferring Business on or prior to the Effective Date;
- d) which the Transferor and the Transferee agree in writing prior to the Effective Date should not be transferred at all; or
- e) in respect of any claim for mis-selling by any current or former policyholder who holds a Transferring Policy or has held a Transferring Policy prior to the Effective Date;

"Excluded Policies" mean:

- a) any policy (including any policy which would otherwise be a Transferring Policy) which the Transferor and the Transferee agree prior to the Effective Date should not be transferred; and

b) any policy that is not a Transferring Policy.

"**FCA**" means the UK Financial Conduct Authority or any successor regulator(s) of UK insurance companies;

"**FIN-FSA**" means the Finnish Financial Supervisory Authority or its successor(s) from time to time;

"**FINMA**" means the Swiss Financial Market Supervisory Authority or its successor(s) from time to time;

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

"**General Data Protection Regulation**" means:

(a) Regulation (EU) 2016/679 of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation); and

(b) Laws implementing Regulation 2016/679;

"**Handbook of Rules and Guidance**" means the combined PRA and FCA handbook of rules and guidance, as amended;

"**Independent Expert**" means Gary Wells of Milliman LLP, the independent expert approved by the PRA for the purposes of this Scheme or any other independent expert approved pursuant to section 109(2)(b) of FSMA;

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

"**LPTA**" means the Loss Portfolio Transfer Reinsurance Agreement between the Transferor and the Transferee dated 13 May 2019 in relation to the Transferring Business and in respect of the Transferring Policies;

"**Material Contracts**" means the following agreements:

- (a) the run-off administration and management agreement between (i) the Transferor (in respect of the business written or obtained on their behalf by R.W. Gibbon & Son and/or R.W. Gibbon & Son (Underwriting Agencies) Limited) and (ii) Pro, dated 1 January 2002, as amended by an addendum dated 1 January 2017;
- (b) the run-off administration and management agreement between (i) the Transferor (in respect of the business written or obtained on their behalf by H.S. Weavers (Underwriting) Agencies Limited) and (ii) Pro, dated 1 January 2010, as amended from time to time; and
- (c) the run-off administration and management agreement between (i) Lennox Underwriting Management Limited, (ii) Lennox Underwriting Agencies Limited, (iii) the Transferor and (iv) Pro, dated 1 January 2002;

"Order" means an order made by the Court pursuant to Section 111 of FSMA sanctioning this Scheme and any order (including any subsequent order, which is ancillary thereto) in relation to this Scheme made by the Court pursuant to Section 112 of FSMA;

"Policy" and **"Policyholder"** have the meanings ascribed to "policy" and "policyholder" by the Financial Services and Markets Act 2000 (meaning of "Policy" and "Policyholder") Order 2001 (S.I. 2001/2361) (and references to "Policies" shall be construed accordingly);

"PRA" means the UK Prudential Regulation Authority or any successor regulator(s) of UK insurance companies;

"Pro" means Pro Insurance Solutions Limited;

"Proceedings" means 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;

"Residual Asset" means:

- (a) any Residual Policy and the rights, benefits and powers (including contractual, tortious and statutory rights) of the Transferor under or by virtue of any of the Residual Policies;
- (b) any Asset of the Transferor to be transferred pursuant to this Scheme (including without limitation, any right, benefit or power under a Transferring Policy):
 - (i) the transfer of which to the Transferee requires, at the Effective Date, either:
 - A. the consent of any person (other than the Transferor, the Transferee or the Court); or
 - B. the waiver by any person of any right to acquire, or to be offered the right to, or to offer to, acquire or procure the acquisition by some other person of, all or any part of such Asset, being a right which directly or indirectly arises or is exercisable as a consequence of such transfer being proposed or taking effect; and
 - (ii) which the 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 Asset is situated;
- (c) any Asset of the Transferor to be transferred pursuant to this Scheme (including without limitation, any right, benefit or power under a Transferring Policy) which the Transferor and the Transferee agree in writing prior to the Effective Date shall not be transferred on the Effective Date;
- (d) any proceeds of sale or income or other accrual or return whatsoever, whether or not in any case in the form of cash, from time to time earned on or received after the Effective Date in respect of any such Assets referred to in paragraphs to (a) and (c) of this definition; and

- (e) any Asset of the Transferor to be transferred pursuant to this Scheme (including without limitation, any right, benefit or power under a Transferring Policy), which cannot, for any other reason, be transferred to or vested in the Transferee pursuant to the Scheme;

"Residual Liabilities" means any Liability under or in connection with the Transferring Policies and Residual Policies and in connection with the Transferring Assets and Residual 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 Transferor, the Transferee 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 transfer; or
- (b) which the Transferor and the Transferee agree in writing prior to the Effective Date shall not be transferred on the Effective Date; or
- (c) 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
- (d) which cannot be transferred to or vested in the Transferee pursuant to the Scheme for any other reason;

"Residual Policies" means any Transferring Policies comprised in the Transferring Business (other than Excluded Policies) in respect of which:

- (a) its transfer is expressly refused by a regulatory body or court of law having jurisdiction to do so;
- (b) the Order requires further steps be taken to make the transfer fully effective;
- (c) the Transferor and the Transferee agree prior to the Effective Date that its transfer is to be delayed until after the Effective Date;

- (d) for the purposes of paragraph 1(4) of Schedule 12 to FSMA, an EEA State other than the UK is the State in which the risk is insured and the PRA has not prior to the issue of the Order delivered a Schedule 12 Certificate;
- (e) which cannot be transferred to the Transferee pursuant to the Scheme for any other reason;

"ROMA" means the deed of novation and run-off management agreement between the Transferor, the Transferee and Pro dated 13 May 2019

"Schedule 12 Certificate" means, in respect of any Transferring 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 insured;

"Scheme" means this Scheme in its original form or with, or subject to, any modification, addition or condition thereto which may be approved or imposed in accordance with paragraph 13;

"Subsequent Transfer Date" means in relation to any Residual Asset, Residual Liability or Residual Policy any date, following the Effective Date, on which such Residual Asset, Residual Liability or Residual Policy is transferred, such date to be determined by:

- (a) in the case of any Residual Asset falling within paragraph (b) or (e) of the definition of Residual Asset or Residual Liability falling within paragraph (a) or (d) of the definition of Residual Liability or a Residual Policy falling within paragraph (a), (b), (d) or (e) of the definition of Residual Policy, the date on which the requisite consent, or where applicable, the requisite waiver or step or such other action to enable the same to be transferred upon the terms of the Scheme is:
 - (i) obtained or taken; or
 - (ii) no longer required; or
 - (iii) dispensed with by the Court;
- (b) in the case of any Residual Asset falling within paragraph (c) of the definition of Residual Asset or Residual Liability falling within paragraph (b) of the definition of Residual Liability or a Residual Policy

falling within paragraph (c) of the definition of Residual Policy, the date agreed in writing by the Transferor and the Transferee;

- (c) in the case of any Residual Asset falling within paragraph (c) of the respective definition thereof, the transfer date applicable to the Assets to which such proceeds, income, accrual or return is earned on or received, or the transfer date applicable to the Residual Asset; and
- (d) in the case of any Residual Liability falling within paragraph (c) of the respective definition thereof, the transfer date of the relevant Residual Asset;

"Taxation" means:

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

"Third Party Contracts" means all contracts, arrangements, licences and other commitments relating to the Transferring Business entered into on or before the Effective Date, 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 the Transferor, or the benefit of which is held in trust for or has been assigned or subcontracted to the Transferor, other than the Transferring Policies, Transferring Reinsurance and Transaction Documents.

"Transaction Documents" means:

- (a) the business transfer agreement between the Transferor and the Transferee dated 13 May 2019;
- (b) the LPTA; and
- (c) the ROMA;

"Transferee" means Vakuutusosakeyhtiö Bothnia International, also known as Bothnia International Insurance Company Limited, a company incorporated in Finland whose registered office is at Eerikinkatu 27, FI - 00180 Helsinki with registered number 0947118-3 and regulated by the FIN-FSA;

"Transferee Board" means the board of directors of the Transferee from time to time;

"Transferor" means **Basler Versicherung AG**;

"Transferor Board" means the board of directors of Baloise from time to time;

"Transferring Assets" means any and all of the following whatsoever and wheresoever situated, comprised in or attributable to the Transferring Business as at the Effective Date, including (without prejudice to the generality of the foregoing):

- (a) the rights, benefits and powers of the Transferor (subject to the burden) under or by virtue of the Transferring Policies (including contractual, tortious and statutory rights);
- (b) the rights, benefits and powers of the Transferor (subject to the burden) under or by virtue of the Transferring Reinsurance including in each case all of the Transferor's rights (including contractual, tortious and statutory rights) to payment thereunder and collateral and security referred to therein;
- (c) the rights, benefits and powers of the Transferor under or by virtue of the Third Party Contracts; and
- (d) the reinsurance assets or cash deposits associated with the Transferring Policies,

but excluding, each of the Excluded Assets and, until the relevant Subsequent Transfer Date, each of the Residual Assets;

"Transferring Business" means the UK portfolio of general insurance and reinsurance business of the Transferor to be transferred to the Transferee pursuant to this Scheme, together with all activities carried on by the Transferor in relation or in connection thereto, and the Transferring Assets and the

Transferring Liabilities, in each case to the extent not previously transferred to the Transferee on or following the relevant Subsequent Transfer Date, but in all cases excluding the Excluded Policies, Excluded Assets, Excluded Liabilities, Residual Policies, Residual Assets and Residual Liabilities;

"Transferring Liabilities" means any and all Liabilities of every kind and description (whether present or future, actual or contingent, lapsed, expired or reinstated) of the Transferor comprised in or attributable to the Transferring Business or otherwise in connection with or in relation to the carrying on of the Transferring Business, including (without prejudice to the generality of the foregoing):

- (a) all Liabilities arising from, under or in connection with the Transferring Policies;
- (b) all Liabilities arising from, under and in connection with the Transferring Reinsurance;
- (c) all Liabilities arising from, under and in connection with the Third Party Contracts;
- (d) all Liabilities arising from, under and in connection with the Transferring Assets,

in each case, irrespective of whether the Liabilities shall arise prior to or following the Effective Date, but excluding the Excluded Liabilities and, until the relevant Subsequent Transfer Date, each of the Residual Liabilities;

"Transferring Policies" means the UK general insurance and reinsurance Policies, written for and on behalf of the Transferor (or by a predecessor company of the Transferor and transferred to it) as insurer, reinsurer or retrocessionaire (including without limitation, all endorsements and amendments thereto) that were entered into by the Transferor (including by any predecessor company) prior to the Effective Date and that are carried on by the Transferor as at the Effective Date and as set out below:

- (a) all policies underwritten by Baloise UK Branch as a member of the following pools and underwriting agencies:

- (i) RW Gibbon & Son Limited and/or RW Gibbon & Son (Underwriting Agencies) Limited 1950 to 1972 (the "**Gibbon Pool**"), including policies fronted by other insurers on the Transferor's behalf;
 - (ii) Lennox Underwriting Management Limited and/or Lennox Underwriting Agencies Limited 1973 to 1990 ("**Lennox**");
 - (iii) H.S. Weavers (Underwriting) Agencies Limited 1963 to 1966 ("**Weavers Pool**"), including policies fronted by other insurers on the Transferor's behalf;
 - (iv) Orion Insurance Company Limited under an aviation underwriting agency agreement 1972 to 1990 ("**Orion Pool**");
 - (v) Baloise Underwriting Agency including business underwritten by the Howden Underwriting Group 1963 to 1968 ("**BALAG**"); and
 - (vi) Groves John & Westrup Ltd. and/or Pemberton, Westrup & Co ("**Grove**").
- (b) all policies underwritten by/and or procured on behalf of Baloise:
- (i) C. R. Driver & Company Limited or Anglo-Portuguese Agencies Ltd. 1963 to 1966 ("**Drivers**");
 - (ii) BVF (Underwriting Management) Ltd and/or Bevington Vaizey & Foster Limited and/or Bevington Vaizey & Foster (Reinsurance) Limited 1964 and 1967 ("**BVF Pool**");
 - (iii) C. E. Golding and Company Ltd. and/or C. E. Golding & Company (Insurance and Reinsurance) Limited 1962 to 1966 ("**Golding**");
 - (iv) Alexander Howden & Co Ltd. and/or any company forming part of the Alexander Howden Group in respect of:
 - A. the Alexander Howden Konig & Reeker Excess Loss Pool (1957 - 1967) (which changed its name to the

Alexander Howden Continental Excess Loss Pool for 1967); and

B. the Alexander Howden Fidelidade 'Y' Account (1960-1968) (together with Alexander Howden Konig & Reeker Excess Loss Pool (1957 - 1967), the "**Howden Pool**").

(c) the following reinsurance policies between:

- (i) Aetna Reinsurance Company and/or Aetna Insurance Company and Baloise (as reinsurer) in respect of a Third Retrocessional Excess of Loss Reinsurance Agreement for 1981 and 1982 (USD 2 million excess USD 5.5 million; Baloise's share: 1.5% inception date 1 March 1981; 2.5% inception date 1 March 1982);
- (ii) H.S. Weavers Underwriting Agencies Ltd. on behalf of the Company and/or the Companies they underwrite and Baloise (as reinsurer) for losses occurring during 12 months from midnight on 31 December 1965 (USD 1 million excess USD 1 million; Baloise share 2.5%);
- (iii) Indemnity Insurance Company of North America, Philadelphia and Baloise (as reinsurer) for losses occurring during 12 months following midnight on 30 June 1950 (Baloise share 0.5%); and
- (iv) Baltica-Scandinavia Insurance Company (UK) Ltd. in respect of their London Marine Account underwritten by Lennox Underwriting Agencies Ltd. and Baloise (as reinsurer) (15% Quota Share of all insurance accepted by Baltica-Scandinavia in their Marine Account in 1985 and 1986),

but excluding, until the relevant Subsequent Transfer Date, each of the Residual Policies;

"Transferring Policyholder" means any person holding a Transferring Policy;

"Transferring Reinsurance" means, other than the LPTA, the 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 the Transferor, which cover any part or all of any part of the Transferring Policies;

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

In this Scheme:

- (a) **"transfer"** includes (as the context may require) "assign", "assignment" and "assignment", "dispose", "disposal", "novate", "novation", "convey" and "conveyance";
- (b) **"include"** and **"including"** shall be construed without limitation;
- (c) 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;
- (d) any reference in this Scheme to an enactment, a statutory provision or any subordinate legislation shall be deemed to include a reference to that enactment, statutory provision or subordinate legislation as amended, replaced or re-enacted from time to time and to any instrument or order made from time to time under such enactment, statutory provision or subordinate legislation;
- (e) expressions used in this Scheme which have meanings under FSMA shall bear those meanings unless otherwise expressly defined herein;
- (f) any reference to writing shall include any mode of reproducing words in a legible and non-transitory form; and
- (g) references to admissible assets, long term insurance business, realistic value of assets, market value of Liabilities, technical provisions, with-profits actuary (or successor role), actuarial function holder (or successor roles) and with-profits fund are to be construed in accordance with Handbook of Rules and Guidance as at the date of this Scheme.

PART B: INTRODUCTION

2. OVERVIEW

- 2.1 Baloise is a company incorporated in Switzerland at Aeschengraben 21, Postfach CH-4002, Basel and with registration number CHE - 105.805.649. It is authorised by FINMA, the Swiss financial services regulatory authority. Baloise is registered as an overseas company at Companies House with the number FC002092. Baloise UK Branch is registered as a branch of Baloise at Companies House with the number BR002266. Baloise UK Branch is regulated by the PRA and the FCA. The Transferee is an insurance company registered in Finland, which was incorporated on 22 September 1993. Its registered office is in Finland at Eerikinkatu 27, FI-00180, Helsinki and its registration number is 0947118-3.
- 2.2 As at the date of this Scheme and in accordance with section 105(2)(c) of FSMA, the Transferor is an authorised person who is neither a UK authorised person nor an EEA firm but who has permission to effect or carry out contracts of insurance. Baloise UK Branch has permission under Part 4A of FSMA to carry out contracts of insurance falling within classes 1-13 (inclusive) and 15 of the Financial Services and Markets Act (Regulated Activities) Order 2001 (SI 2001/544).
- 2.3 At the date of this Scheme, the Transferee is an "EEA firm" as defined in paragraph 5(d) of Schedule 3 of FSMA. It is authorised in Finland and supervised by FIN-FSA to carry out contracts of non-life insurance except for:
- 2.3.1 Classes 1 and 10 in accordance with the Finnish Motor Liability Insurance Act (275/59);
- 2.3.2 Class 13 in accordance with the Finnish Patient Injuries Act (585/86) and the Finnish Nuclear Liability Act (484/72); and

2.3.3 Insurance in accordance with the Finnish Workers' Compensation Insurance Act (608/48).¹

- 2.4 The Transferee has also been conducting insurance business in the UK on a cross-border basis from its head office in Finland since 2015. The Transferee will enter into the temporary permissions regime following the end of the transition period following the UK's exit from the European Union and it intends to establish a third country branch in the UK prior to the expiry of the temporary permissions regime.
- 2.5 As at the date of this Scheme, the Transferring Policies are reinsured by the Transferee under the LPTA. The administration of the Transferring Policies was delegated to the Transferee pursuant to the LPTA, which also permits sub-delegation of that administration to Pro.
- 2.6 The administration and claims handling of certain policies comprised in the Transferring Business was delegated from the Transferee to Pro pursuant to the terms of the LPTA. Prior to that date the administration of certain of the Transferring Policies was delegated from the Transferor to Pro. As at the date of this Scheme, Pro manages the business of the Gibbon Pool, Lennox and the Weavers Pool on behalf of the Transferee, pursuant to the ROMA, as well as managing the regulatory reporting requirements of Baloise UK Branch. Pro also provides services in connection with the tax obligations of Baloise UK Branch. The Transferee manages the Orion Pool, BALAG, Grove and the policies of Baloise listed under paragraphs (b) and (c) of the definition of Transferring Policies, again pursuant to the ROMA.
- 2.7 The Transferee shall continue to manage and administer the Transferring Policies following the sanction of the Scheme under section 111 of FSMA, save that Pro will continue to manage the relevant Transferring Policies that it manages as at the date of this Scheme, as set out in paragraph 2.6 above.
- 2.8 It is proposed that:

¹ NTD: Finnish counsel to confirm Finnish legislative citations are correct.

- 2.8.1 all of the Transferring Business shall, in accordance with the 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
- 2.8.2 by the Order, provision be made as provided herein for the transfer of the Transferring Business from the Transferor to the Transferee pursuant to section 112(1) of FSMA.
- 2.9 The Transferor and the Transferee confirm that this Scheme and ancillary documentation has been drafted in line with the FCA's finalised guidance on 'The FCA's approach to the review of Part VII insurance business transfers' ('FG 18/4').

**PART C: TRANSFER OF THE TRANSFERRING BUSINESS TO THE
TRANSFEEE**

3. TRANSFERRING ASSETS AND POLICIES

3.1 On and with effect from the Effective Date:

3.1.1 the Transferring Policies; and

3.1.2 the Transferring Assets

and, in each case, all the interest and title of the Transferor in them shall, by the Order and without any further act or instrument, be transferred to and be vested in the Transferee subject to all Encumbrances (if any) affecting such Transferring Assets and Transferring Policies in accordance with this Scheme.

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

3.3 The Transferee shall accept, without investigation or requisition, such title as the Transferor shall have at the Effective Date to the Transferring Policies and Transferring Assets and at each Subsequent Transfer Date to the Residual Policies and Residual Assets then transferred.

4. TRANSFERRING LIABILITIES AND RESIDUAL LIABILITIES

4.1 At the Effective Date, the Transferring Liabilities and all the estate and interest of the Transferor in them shall, by the Order and without any further act or instrument, be transferred to and become Liabilities of the Transferee and shall cease to be Liabilities of the Transferor.

4.2 At each Subsequent Transfer Date, each Residual Liability to which the Subsequent Transfer Date applies shall, by the Order, and without any further act or instrument, be transferred by the Transferor to, and

become a Liability of, the Transferee and shall cease to be a Liability of the Transferor.

5. RIGHTS AND OBLIGATIONS UNDER THE TRANSFERRING POLICIES

- 5.1 On and with effect from the Effective Date, the Transferee shall, by the Order and without any further act or instrument, be entitled to all the rights, benefits and powers, and be subject to all the obligations and Transferring Liabilities of the Transferor whatsoever subsisting immediately prior to the Effective Date under or by virtue of the Transferring Policies.
- 5.2 Every Transferring Policyholder shall, from the Effective Date, and to the exclusion of any rights which he may have had against the Transferor under any Transferring Policies, be entitled to the same rights against the Transferee as were available to him against the Transferor under such Transferring Policies and as regards Transferring Policies under which premiums or other sums attributable thereto continue to be payable, shall from the Effective Date account to the Transferee for any such premium as and when the same becomes due and payable.
- 5.3 Every Transferring Policyholder shall, from and after the Effective Date, in substitution for any Transferring Liability or obligation owed by him thereunder to the Transferor, be under the same Liability to the Transferee.
- 5.4 All premiums and other amounts attributable or referable to the Transferring Policies shall after the Effective Date be payable to the Transferee.
- 5.5 Any direct debit mandate, standing order or other instruction or authority in force on the Effective Date providing for payment by a bank or other intermediary of premiums or other sums payable to the Transferor under or in respect of any Transferring Policy shall thereafter take effect as if it had provided for and authorised such payment to the Transferee.
- 5.6 Any mandate or other instruction or authority in force on the Effective Date as to the manner of payment by the Transferor of any sum payable

under any Transferring Policy shall continue in force as an effective mandate, instruction or authority to or of the Transferee.

- 5.7 The Transferee shall be entitled to any and all defences, claims, counterclaims and rights of set-off under or in respect of the Transferring Policies which would have been available to the Transferor.
- 5.8 All references in any Transferring Policy or other agreement comprising the Transferring Business (including, but not limited to, the Material Contracts) to the Transferor, the Transferor Board, or any other officers, employees or agents of the Transferor shall from and after the Effective Date or Subsequent Transfer Date (as the case may be) be read as references to the Transferee, the Transferee Board, or any other officers, employees or agents of the Transferee. In particular, but without limitation, all rights and/or duties exercisable or expressed to be exercisable or responsibilities to be performed by the Transferor, the Transferor Board, or any other officers, employees or agents of the Transferor in relation to any of the Transferring Policies or Residual Policies shall, from and after the Effective Date or Subsequent Transfer Date (as the case may be) be exercisable or required to be performed by the Transferee, the Transferee Board or any other officers, employees or agents of the Transferee.
- 5.9 Unless and to the extent otherwise provided in the Order, the transfers made pursuant to paragraphs 3.1, 3.2, 4.1 and 4.2 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 any 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, 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.

- 5.10 The Residual Policies shall, pending their transfer to the Transferee (whether pursuant to this Scheme or otherwise) remain Policies of the Transferor.
- 5.11 On and with effect from each Subsequent Transfer Date, each Residual Policy to which a Subsequent Transfer Date applies and all Residual Assets and Residual Liabilities relating to such Policy shall, to the extent not previously transferred by the Order, be transferred to and be vested in the Transferee, whereupon it shall constitute a Transferring Policy under this Scheme and the terms of this Scheme shall, to the extent possible, apply to such Policy as if it had been transferred under the Scheme to the Transferee on the Effective Date.
- 5.12 The terms of this paragraph 5 shall apply, *mutatis mutandis*, to the Transferring Reinsurance and the Third Party Contracts.

6. GENERAL

- 6.1 The Transferee and the Transferor shall, as and when appropriate, execute all documents and perform all things as may be reasonably required by the other party to effect or perfect the transfer to, and vesting in, the Transferee of the Transferring Business in accordance with the terms of this Scheme, including, without limitation, obtaining any required consent or waiver.
- 6.2 As 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 the Transferor in any contract between the Transferor and any other party, or in any document or instrument, to the extent evidencing title to or the benefit or burden of the Transferring Business 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 Transferor.
- 6.3 The Transferor shall transfer to the Transferee any payment or any Assets which it receives or any right which is conferred upon it after the Effective Date in respect of any Transferring Assets, Transferring Policies and/or Transferring Liabilities and, on or after the Subsequent

Transfer Date in respect of each Residual Asset, Residual Liability and/or Residual Policy as soon as reasonably practicable after such receipt.

6.4 The transfer and vesting under the Scheme of any Asset or Liability relating to any part of the Transferring Business shall not:

6.4.1 invalidate or discharge any contract, security or other thing; or

6.4.2 require further registration in respect of any security or charge;
or

6.4.3 constitute a breach of, or default under, or require any obligation to be performed sooner or later than would otherwise be the case under any instrument or contract or arrangement to which the Transferee or the Transferor is a party or is bound; or

6.4.4 entitle any party to a contract or arrangement to which the Transferee or the Transferor is a party to terminate such contract or arrangement when he would not otherwise be entitled to terminate it; or

6.4.5 save as provided elsewhere in this Scheme, confer any greater or lesser rights or benefits, or impose any greater or lesser obligations, on any party to a contract to which the Transferee or the Transferor is a party where such greater or lesser rights, benefits or obligations would not otherwise have been conferred or imposed.

7. LPTA

Liabilities arising out of any Residual Policies shall, pending their transfer to the Transferee, remain Liabilities of the Transferor but the Liabilities under each Residual Policy and any Liabilities to any third party so far as they relate to any Residual Policy shall continue to be reassured in their entirety by the Transferee under the terms of the LPTA.

8. DECLARATION OF TRUST BY THE TRANSFEROR

- 8.1 The Transferor shall, from the Effective Date, hold any and all Residual Assets (excluding the Residual Policies) as trustee for the Transferee absolutely. Legal title to any Residual Asset shall remain with the Transferor, and there shall be no transfer of such legal title to the Transferee until the relevant Subsequent Transfer Date.
- 8.2 The Transferor shall be subject to the Transferee's directions in respect of the Residual Assets referred to in paragraph 8.1 until either:
- 8.2.1 the relevant Residual Asset is transferred to or otherwise vested in the Transferee; or
- 8.2.2 the relevant Residual Asset is disposed of by the Transferor whereupon the Transferor shall account to the Transferee for the proceeds of sale thereof.
- 8.3 The Transferee shall have the authority to act as the attorney of the Transferor in respect of such Residual Assets for all such purposes.

9. DATA PROTECTION

- 9.1 On and from the Effective Date:
- 9.1.1 The Transferee shall succeed to all rights, Liabilities and obligations of the Transferor in respect of any personal data which relates to the Transferring Business and which is subject to the General Data Protection Regulation and/or other applicable legislation (the "**Data Protection Legislation**");
- 9.1.2 The Transferee shall become the data controller of any personal data which relates to the Transferring Business and which is subject to the Data Protection Legislation in place of the Transferor and shall be deemed to have been the controller of all such data at all material times when personal data was processed;
- 9.1.3 in respect of any personal data which relates to the Transferring Business, the Transferee shall be bound by the same duty under

the Data Protection Legislation as the Transferor was bound, to respect the confidentiality and privacy of any person in relation to that personal data as well as to comply with any other obligations under the Data Protection Legislation including but not limited to rules relating to the security of personal data and rules regarding the information that must be provided to data subjects and/or the relevant authorities as the case may be. The Transferee shall also be bound by any specific notice or consent given or request made by, the data subject which was binding on the Transferor and which required the Transferor not to use the personal data for marketing purposes or which required the Transferor to comply with any other legitimate request made under the Data Protection Legislation; and

9.1.4 in any consent given by a data subject in respect of such data as is mentioned in this paragraph 9, any reference to the Transferor or the Transferor group shall be deemed to include a reference to the Transferee or the Transferee group.

9.2 On and with effect from the Effective Date, ownership and title to the records relating to the Transferring Business, which may include personal data protected under the Data Protection Legislation, shall be transferred to the Transferee and may be used by the Transferee for, and disclosed by the Transferee to, and used by, any agent or contractor of the Transferee to the same extent that they were used by the Transferor and its agents or contractors prior to the Effective Date for all purposes in connection with the Transferring Policies including, in particular, administration thereof and all matters relevant or incidental thereto, and no consent from the individual Policyholders in respect of such disclosure, transfer of records and use shall be required.

9.3 To the extent that an authority has been given to the Transferor in connection with a Transferring Policy by the Policyholder thereof or by any other relevant person, whether pursuant to the Data Protection Legislation or otherwise, such authority shall, on and after the Effective Date, be deemed to have been given to the Transferee and any agent or contractor of the Transferee for the purposes set out in paragraph 9.2.

9.4 In this paragraph 9, the expressions **personal data** and **data subject** shall have the meanings given in the General Data Protection Regulation.

10. CONTINUITY OF PROCEEDINGS

10.1 Subject to paragraph 10.2, with effect from the Effective Date, or any Subsequent Transfer Date, as applicable, any Proceedings which are pending by or against the Transferor, or any claims or complaints which may be brought by or against the Transferor in the future including those not yet in contemplation, in connection with the Transferring Business shall be commenced or continued by or against the Transferee and the Transferee shall be entitled to all defences, claims, counterclaims and rights of set-off that would have been available to the Transferor in relation to any such Proceedings. The Transferor shall have no liability under those Proceedings as from the Effective Date, or any Subsequent Transfer Date, as applicable.

10.2 Every Transferring Policyholder, with effect from the Effective Date, or any Subsequent Transfer Date as applicable, who has commenced any Proceedings against the Transferor, will continue such Proceedings against the Transferee, and shall be entitled to all defences, claims, counterclaims and rights of set-off that would have been available to such Transferring Policyholder against the Transferor in relation to any such Proceedings.

10.3 The Transferee in its absolute discretion, may determine after the Effective Date or the Subsequent Transfer Date, as applicable, to:

10.3.1 continue any such Proceedings relating to the Transferring Business that have been brought by the Transferor;

10.3.2 discontinue any such Proceedings relating to the Transferring Business that have been brought by the Transferor; or

10.3.3 settle any such Proceedings relating to the Transferring Business that have been brought against the Transferor.

10.4 Any judgment, settlement, order or award (or relevant part thereof) obtained by or against the Transferor whether before or after the

Effective Date to the extent that it relates to any part of the Transferring Business, the Transferring Policies, the Transferring Assets, the Transferring Liabilities, the Residual Assets or the Residual Liabilities and which is not fully satisfied before the Effective Date or, as the case may be, the applicable Subsequent Transfer Date, shall, on that date and to the extent to which it was enforceable by or against immediately prior to such date (or, if later, the date on which the judgment, settlement, order or award is obtained), become enforceable by or against the Transferee (to the exclusion of the Transferor).

- 10.5 All documents which would before the Effective Date have been evidence in respect of any matter for or against the Transferor shall on and from the Effective Date be evidence in respect of the same matter for or against the Transferee.

PART D: GENERAL PROVISIONS

11. EFFECTIVE DATE

11.1 Subject to the Court having made the Order sanctioning the Scheme, this Scheme shall become effective at 23:59 on 18 December 2020 or such other time and date as may be specified in the Order, or such later date and time as the Transferee and the Transferor may agree in writing.

11.2 Unless this Scheme shall become effective on or before 23:59 on 18 December 2020, or such later date and time as the Transferee and the Transferor may agree in writing, this Scheme shall lapse.

12. COSTS AND EXPENSES

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

13. MODIFICATIONS OR ADDITIONS

13.1 The Transferor and the Transferee may consent to any amendment, modification or addition to this Scheme which the Court may approve prior to the sanction of this Scheme.

13.2 After the Effective Date, the Transferee may vary or amend the terms of this Scheme with the consent of the Court, provided that in any such case:

13.2.1 the PRA and FCA have been notified of the proposed amendment and have not objected thereto within 42 days of such notification;

13.2.2 the Independent Expert has certified that, in his opinion, the proposed amendment will not materially adversely affect the interests of the Policyholders affected by the proposed amendment; and

13.2.3 to the extent any such variation affects any right, obligation or interest of the Transferor, the Transferor has consented thereto.

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

13.3 Following the Effective Date, the Transferor may, with the consent of the Court, vary or amend the terms of this Scheme provided that such variation or amendment relates solely to Residual Policies, Residual Assets, Residual Liabilities, or any rights or obligations of the Transferor under this Scheme, provided that in each such case:

13.3.1 the steps in paragraph 13.2.1 and 13.2.2 have been taken; and

13.3.2 to the extent any such variation affects any right, obligation or interest of the Transferee, the Transferee has consented thereto.

If such consent is granted, the Transferor may amend the terms of the Scheme in accordance with such consent.

13.4 Paragraphs 13.1, 13.2 and 13.3 shall not apply, and the consent of the Court shall not be required, in relation to minor and/or technical amendments to the terms of the Scheme (including amendments to correct manifest errors) that are agreed in writing by the Transferee and the Transferor, provided that PRA and FCA have been notified of the proposed amendment and have not objected thereto within 42 days of such notification.

14. THIRD PARTY RIGHTS

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

15. SUCCESSORS AND ASSIGNS

This Scheme will bind and enure to the benefit of the successors and assigns of each of the Transferor and the Transferee.

16. GOVERNING LAW

This Scheme shall be governed by and construed in accordance with English law and the English courts will have exclusive jurisdiction in connection with all disputes and differences arising out of, under or in connection with this Scheme.

Dated 13 August 2020.

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

BETWEEN:

**IN THE MATTER OF
BASLER VERSICHERUNG AG**

- and -

**IN THE MATTER OF
BOTHNIA INTERNATIONAL INSURANCE
COMPANY LIMITED**

- and -

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

**INSURANCE BUSINESS TRANSFER
SCHEME
for the transfer of part of the UK general
insurance and reinsurance business of Basler
Versicherung AG to Bothnia International
Insurance Company Limited pursuant to
Part VII of the Financial Services and
Markets Act 2000**

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