



**CR-2020-003995**

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

**The Honourable Mr Justice Edwin Johnson**

**2 December 2021**

**IN THE MATTER OF TT CLUB MUTUAL INSURANCE LIMITED**

**AND IN THE MATTER OF UK P&I CLUB NV**

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

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**ORDER**

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**UPON THE APPLICATION** by Claim Form dated 11 May 2021 of (1) TT Club Mutual Insurance Limited whose registered office is situated at 90 Fenchurch Street, London EC3M 4ST (**‘TTI’**) and (2) UK P&I Club NV (**‘UKNV’**) whose registered office is situated at Wilhelminakade 953 A, 3072 AP Rotterdam, The Netherlands for the sanctioning of the scheme set out at exhibit 1 to the first witness statement of Charles Edward Fenton (the **‘Scheme’**) pursuant to Part VII of the Financial Services and Markets Act 2000 (the **‘Act’**);

**AND UPON HEARING** Andrew Thornton QC, Counsel for the Applicants via Microsoft Teams and no other person appearing nor seeking to be heard in relation to the application;

**AND UPON READING** the Claim Form and the evidence;

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

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

1. the Transferred Business shall be transferred to and be vested in UKNV in accordance with this Scheme notwithstanding any terms in any agreement prohibiting all or any of such transfer and/or vesting and/or imposing any limitations on the circumstances in which any assets or liabilities comprised in the Transferred Business may be transferred and/or vested or purporting to terminate, limit or otherwise affect such assets or liabilities in the event of a transfer;
2. on and with effect from the Effective Time, the Transferred Assets and all the estate and interest of TTI therein, shall, by the Order and without any further act or instrument, be transferred to and be vested in UKNV. TTI and UKNV shall as and when appropriate execute all such documents and perform such other acts and things as may be required to effect or perfect the transfer to and vesting in UKNV of any Transferred Asset in accordance with the terms of this Scheme or otherwise for effecting or perfecting the transfer of the Transferred Business in accordance with the terms of this Scheme;
3. on and with effect from the Effective Time, the Transferred Liabilities shall, by the Order and without any further act or instrument, be transferred to and become liabilities of UKNV and shall cease to be liabilities of TTI;
4. without prejudice to the generality of paragraphs 1, 2 and 3, on and with effect from the Effective Time, UKNV shall by the Order, and without any further act or instrument, be entitled to all rights of TTI under the Transferred Policies (including the right to levy supplementary premiums) and be subject to all of TTI's obligations

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

5. without prejudice to the generality of paragraphs 1, 2 and 3 and without prejudice to paragraph 4, on and with effect from the Effective Time, any references to TTI in any contract between TTI and any third party relating to the Transferred Policies or otherwise comprised in the Transferred Business, shall, to the extent necessary to give full effect to this Scheme, be read, manipulated, construed and treated as references to UKNV and such contract shall operate as if UKNV was the original party to the contract in place of TTI;
6. on and with effect from the Effective Time, UKNV shall:
  - i. succeed to all rights, liabilities and obligations of TTI in respect of any personal data which relates to the Transferred Business, Transferred Policies, Transferred Assets or Transferred Liabilities to the extent transferred by this Scheme;
  - ii. become the data controller of any personal data which relates to the Transferred Business, Transferred Policies, Transferred Assets or Transferred Liabilities, to the extent required by the Data Protection Laws and shall be deemed to have been the controller of all such data at all material times when personal data is processed; and
  - iii. in respect of any personal data which relates to the Transferred Business, Transferred Policies, Transferred Assets or Transferred Liabilities be under the same duty as TTI was under to respect the confidentiality and privacy of any

person in relation to that personal data and shall be bound by any specific notice or consent given, or request made by, the data subject which was binding on TTI and which required TTI not to use the personal data for marketing purposes,

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

7. at and with effect from the Effective Time, any judicial, quasi-judicial or arbitration proceedings or any complaint or claim to any ombudsman or similar or other proceedings for the resolution of a dispute or claim (whether current or future (including those not yet in contemplation)) by or against TTI from the Effective Time in connection with the Transferred Policies, the Transferred Assets, the Transferred Liabilities or otherwise in relation to the Transferred Business shall be continued by or against UKNV and UKNV shall be entitled to all defences, claims, counterclaims and rights of set-off that would have been available to TTI in relation to such proceedings and TTI shall have no liability under those proceedings and, for the avoidance of doubt, UKNV, in its absolute discretion, may determine to discontinue after the Effective Time any such proceedings brought by TTI;
8. at and with effect from the Effective Time, any judicial, quasi-judicial, or arbitration proceedings or any complaint or claim to any ombudsman or similar person or entity or other proceedings for the resolution of a dispute or claim (whether current or future (including those not yet in contemplation)) in relation to TTI and concerning the Transferred Policies, Transferred Assets, Transferred Liabilities or otherwise in relation to the Transferred Business shall be commenced against UKNV. Any such proceedings after the Effective Time commenced against TTI shall be deemed to have been commenced and shall be continued against UKNV without the need for further order, whether for substitution of parties or otherwise. In any event, UKNV shall be entitled to all defences, claims, counterclaims and rights of set off that would have been available to TTI in relation to such proceedings, complaint or claim;

9. any judgment, order or award obtained by or against TTI (whether before or after the Effective Time) which relates to the Transferred Policies, the Transferred Assets, the Transferred Liabilities or otherwise to any part of the Transferred Business and which is not fully satisfied before the Effective Time shall, on and from that date, be enforceable by or against UKNV and shall be dealt with by UKNV without the need for further order;
10. without prejudice to the foregoing provisions of paragraphs 7, 8 and 9 and subject always to any laws, regulations or regulatory requirements applicable to UKNV from time to time, if any proceedings with the FOS are continuing at the Effective Time or commence after the Effective Time and which relate to the acts or omissions of TTI prior to the Effective Time, UKNV shall comply with:
  - i. each provision of DISP which relates to the complaint handling procedures of the FOS (including, but not limited to, DISP 3.7.12R) in the event that the relevant complaint is within the jurisdiction of the FOS under the provisions of DISP; and
  - ii. any judgment, settlement, order or award (or relevant part thereof) handed down by the FOS in respect of a complaint within the jurisdiction of the FOS under the provisions of DISP;
11. the Excluded Policies shall not be transferred to UKNV by this Scheme and the liabilities and assets of TTI relating to the Excluded Policies shall remain liabilities and assets of TTI subject to paragraph 12;
12. if
  - i. TTI or UKNV procures the novation of any Excluded Policy to UKNV;
  - ii. any impediment to the transfer of any Excluded Policy to UKNV shall have been removed or overcome (including any waiver, consent, permission or licence having been obtained or notice having been given);

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

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

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

13. all premiums (whether mutual or fixed) attributable or referable to the Transferred Policies shall on and after the Effective Time be payable to UKNV and shall be receivable and received by UKNV;

14. any mandate or other instruction in force at the Effective Time (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 of the Transferred Policies to TTI on their behalf shall thereafter take effect as if it had provided for and authorised such payment to UKNV;

15. if:

i. any asset (other than an asset referred to in paragraphs 11 and 12) of TTI proposed to be transferred pursuant to this Scheme is not, or is not capable of being, immediately transferred at the Effective Time by the Order by reason of:

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

b) for any other reason; or

- ii. the transfer of any asset (other than an asset referred to in paragraphs 11 and 12) of TTI proposed to be transferred pursuant to this Scheme is not recognised by the law of the country or territory in which such asset is situated,

TTI shall, on and from the Effective Time and until the relevant asset is transferred to UKNV, hold any asset referred to in paragraphs 15(i) or 15(ii) as trustee for UKNV absolutely;

- 16. TTI shall in any event be subject to UKNV's directions in respect of any asset referred to in paragraphs 15(i) or 15(ii) until the relevant asset is transferred to or otherwise vested in UKNV or is disposed of (whereupon TTI shall account to UKNV for the proceeds of disposal thereof), and UKNV shall have authority to act as the agent and/or attorney of TTI in respect of such asset for all such purposes;
- 17. in the event of any payment being made to, or other asset being received by or being conferred upon, TTI on or after the Effective Time in respect of the Transferred Business or any Transferred Asset, TTI shall as soon as is reasonably practicable after its receipt pay over the full amount of such payment or (to the extent to which it is able to do so) transfer such asset to, or deal with such payment or asset in accordance with the reasonable directions of, UKNV;
- 18. without prejudice to the foregoing provisions of paragraphs 15, 16 and 17 or the provisions of paragraphs 19 and 20, if:
  - i. any asset or liability included in the Order is governed by the law of any country or territory outside the UK, TTI shall take all necessary steps as UKNV may require for securing that the transfer to UKNV of that asset or liability is fully effective under the law of that country or territory; and
  - ii. any asset or liability of TTI proposed to be transferred pursuant to this Scheme is not for whatever reason immediately transferred to UKNV at the Effective Time, TTI shall take all necessary steps as UKNV may require for securing the transfer to UKNV of that asset or liability;

19. if:
- i. any liability (other than a liability referred to in paragraphs 11 and 12) of TTI proposed to be transferred pursuant to this Scheme is not, or is not capable of being, immediately transferred at the Effective Time by the Order by reason of;
    - a) such liability being governed by the law of any country or territory outside the UK; or
    - b) for any other reason; or
  - ii. the transfer of any liability (other than a liability referred to in paragraphs 11 and 12) of TTI proposed to be transferred pursuant to this Scheme is not recognised by the law of the country or territory in which such liability is situated,
- on and with effect from the Effective Time, until the relevant liability is transferred to or becomes a liability of UKNV, UKNV shall discharge such liability on behalf of TTI or, failing that, indemnify TTI against such liability and any other loss or expense incurred by or demand made against TTI that is attributable to such liability;
20. TTI shall in any event be subject to UKNV's directions in respect of any liability referred to in paragraphs 19(i) and 19(ii) until the relevant liability is transferred to or becomes a liability of UKNV, and UKNV shall have authority to act as the agent and/or attorney of TTI in respect of such liability for all such purposes;
21. this Scheme shall become operative at 24:00 hours Greenwich Mean Time on 31 December 2021;
22. a person who is not a party to this Scheme may not enforce any term of this Scheme pursuant to the UK Contracts (Rights of Third Parties) Act 1999;

**AND IT IS FURTHER ORDERED THAT:**

23. the production of a copy of this Order and a copy of a certificate by a director of TTI for the time being that the Scheme has taken effect shall, for all purposes, be evidence



of the transfer to, and vesting in, UKNV of the Transferred Business, the Transferred Policies, the Transferred Assets and the Transferred Liabilities in accordance with this Order and the Scheme;

24. neither the transfer of the Transferred Business, the Transferred Policies, the Transferred Assets or the Transferred Liabilities nor any other matter provided for by this Order or the Scheme shall:

- i. invalidate or discharge any agreement or other thing;
- ii. constitute a breach of default under or termination event or require any obligation to be performed sooner or later than would have otherwise been the case under, any agreement or instrument to which TTI or UKNV is a party or is bound;
- iii. allow any party to any agreement to terminate that agreement when it would not otherwise have been able to do so;
- iv. entitle any party to any agreement to which TTI or UKNV is a party or is bound to vary the terms of that agreement when it would not otherwise have been able to do so; or
- v. cause the imposition of any greater or lesser obligation on any party to any such agreement when that greater or lesser obligation would not otherwise have been imposed;

25. in accordance with Section 114(2) of the Act:

- i. notice of the making of this Order shall be published in the Financial Times (European Edition); and
- ii. such notice shall specify that the period during which the holder of any policy included within the transfer for which the Scheme provides, which evidences a contract of direct insurance in respect of which the relevant EEA state is the EEA state in which the risk is situated, may exercise the right (if any) under the law of the relevant EEA state to cancel the policy, shall be the period of 21 days starting from the date of such publication or such other period (if any) as provided for by the laws of the relevant EEA state;

26. in accordance with Section 112(10) of the Act, UKNV shall within 10 days from the date of this Order or such longer period as the PRA may allow, deposit two office copies of this Order with the PRA; and
27. there shall be liberty to TTI and/or UKNV to apply:
  - i. for such Orders as may be expedient or necessary for the purposes set out in Section 112(1) of the Act;
  - ii. pursuant to paragraph 14 of the Scheme; and
  - iii. generally.

***Service of the order***

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

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

**SCHEDULE 1**  
**Scheme**

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

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**INSURANCE BUSINESS TRANSFER SCHEME**

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## 1. DEFINITIONS AND INTERPRETATION

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

<b>Act</b>	the UK Financial Services and Markets Act 2000.
<b>Business Day</b>	means a day, other than a Saturday, Sunday or public holiday, on which banks in the City of London are open for business generally.
<b>Competent Authority</b>	any national, supra national, federal, state, municipal or local government (including any court, commission, agency, authority or other body or entity exercising powers on behalf of any of the same) or any quasi-governmental or private body or entity exercising any governmental or judicial or quasi-governmental authority or function or any body or entity exercising regulatory authority under any law including the European Union and the European Commission.
<b>Court</b>	the High Court of Justice in England.
<b>Data Protection Laws</b>	all applicable laws, directives, statutes, regulations and codes of practice (to the extent that any codes of practice have legal effect) relating to the processing and protection of personal data.
<b>DISP</b>	the Dispute Resolution: Complaints Sourcebook within the UK Financial Conduct Authority handbook.
<b>EEA State</b>	any state which is a contracting party to The Agreement on the European Economic Area 1992 at the Effective Time.

**Effective Time** the time and date on which the Scheme shall become operative in accordance with paragraph 13.

**Excluded Assets and Liabilities**

means:

- (a) all assets and liabilities of TTI to the extent they do not relate to the Transferred Business;
- (b) all assets and liabilities of TTI to the extent they relate to any business carried on by any of TTI's branches in Australia, Hong Kong and Singapore;
- (c) the management agreement between TTI and Through Transport Mutual Services (UK) Limited dated 22 May 2018 (pursuant to which Through Transport Mutual Services (UK) Limited provides management services to TTI) including the rights and obligations of TTI arising out of or in connection with it;
- (d) the fronting agreement between TTI and UKNV dated 15 October 2019 (pursuant to which UKNV fronts certain insurance contracts on behalf of TTI) including the rights and obligations of TTI arising out of or in connection with it;
- (e) the fronting fee letter agreement between TTI and UKNV dated 31 December 2020 (pursuant to which TTI agrees to pay a fronting fee to UKNV in connection with the fronting agreement referred to in paragraph (d) immediately above) including the rights and obligations of TTI arising out of or in connection with it;

- (f) the reinsurance agreement between TTI and UKNV dated 25 January 2021 (pursuant to which TTI reinsures UKNV's insurance liabilities arising pursuant to the fronting agreement referred to in paragraph (d) above) including the rights and obligations of TTI arising out of or in connection with it;
- (g) all Outwards Reinsurances;
- (h) all licences, permissions or authorisations granted to TTI by any Competent Authority and any assets and liabilities relating thereto;
- (i) all cash or non-cash assets held by or on behalf of TTI as, or in support of, the regulatory capital provisions imposed or required in respect of the Transferred Business;
- (j) all assets and liabilities of TTI in respect of Tax relating to the Transferred Business;
- (k) to the extent any such assets, liabilities or obligations exist at the Effective Time, or at any time thereafter, all assets, liabilities and obligations of TTI relating to any defined benefit pension scheme operated by TTI; and
- (l) all Mis-Selling Liabilities.

**Excluded Policies**

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

- (a) which are not capable of being transferred under section 111 of Part VII of the Act at the Effective

Time; or

- (b) which the Court determines for any reason not to transfer by virtue of the Order.

**FOS**

the UK Financial Ombudsman Service.

**Independent Expert**

Derek Newton of Milliman LLP of 11 Old Jewry, London EC2R 8DU, the expert appointed to report on the terms of this Scheme and approved by the Prudential Regulatory Authority pursuant to section 109 of the Act, or any successor appointed to report on the same and approved pursuant to section 109 of the Act.

**Losses**

means:

- (a) all direct losses (including, for the avoidance of doubt, direct loss of profits), liabilities (including any settlement payment irrespective of whether legal liability has been admitted or determined), damages, penalties, costs (including costs relating to disciplinary actions, fines and legal fees) and expenses, but excluding consequential or indirect loss (such as, for the avoidance of doubt, indirect loss of profits or loss of goodwill); and
- (b) all costs and expenses (including third party professional fees) properly incurred as a result of investigating, defending or settling a claim or in connection with any threatened, pending or actual proceeding.



<b>Mis-Selling Liabilities</b>	means any and all Losses relating to or arising out of or in connection with the sale, marketing, promotion or arrangement of (including the provision of any advice or information directly relating to) any Policy by or on behalf of TTI, such sale, marketing, promotion or arrangement having occurred on or prior to the Effective Date.
<b>Order</b>	an order made by the Court pursuant to section 111 of the Act sanctioning this Scheme and any order (including any subsequent order) in relation to this Scheme made by the Court pursuant to section 112 of the Act.
<b>Outwards Reinsurances</b>	all contracts of reinsurance, retrocession and/or indemnity to which TTI is a party or beneficiary and under which TTI is covered in respect of any risks insured or reinsured by TTI (including any risks insured or reinsured by TTI pursuant to the Transferred Policies).
<b>Policy</b>	shall have the meaning given to the term ‘policy’ in the UK Financial Services and Markets Act 2000 (Meaning of ‘Policy’ and ‘Policyholder’) Order 2001, regardless of how that contract of insurance may be evidenced, and includes: <ul style="list-style-type: none"> <li>(a) (i) certificates of insurance; (ii) the standard wordings to the extent incorporated by any certificate of insurance; (iii) relevant provisions of the articles of association of TTI and/or the bylaws of TTB to the extent incorporated by reference in any policy terms; (iv) applicable standard policy wordings of TTI including general provisions; (v) endorsement slips;</li> </ul>

- (vi) agreements to brokers slips; (vii) subscription line endorsements and (viii) notices of variation and (ix) notices of termination; and
- (b) shall in addition include any contract of reinsurance written by TTI (regardless of how that contract of reinsurance may be evidenced).

**Policyholder** shall have the meaning given to the term ‘policyholder’ in the UK Financial Services and Markets Act 2000 (Meaning of ‘Policy’ and ‘Policyholder’) Order 2001 and in addition shall be construed in a manner consistent with the definition of ‘Policy’ in this Scheme.

**Policy Year** a year from 00:00 hours Greenwich Mean Time on any 1 January to 24:00 hours Greenwich Mean Time on the next following 31 December and ‘Policy Years’ shall be construed accordingly.

**RAO** the UK Financial Services and Markets Act 2000 (Regulated Activities) Order 2001.

**Regulators** the UK Prudential Regulation Authority and the UK Financial Conduct Authority (or any successor authority or authorities with responsibility to supervise the prudential and/or conduct of business requirements which apply to the carrying on of general insurance and/or reinsurance business in the UK).

**Scheme** this Scheme in its original form or with or subject to any modification, addition, provision or condition which may be approved or imposed in accordance with paragraph 14.

**Tax**

means:

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

**Transferred Assets**

means:

- (a) all rights of TTI under or by virtue of the Transferred Policies; and
- (b) all rights of TTI against any third party in relation to the Transferred Business or arising as a result of TTI having carried on the Transferred Business,

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

**Transferred Business**

the insurance and reinsurance business carried on at any time by TTI up to and including the Effective Time to the extent it relates to the Transferred Policies (including all activities carried on by TTI in connection with or for the purposes of such business), but excluding such business to the extent it comprises (i) assets and/or liabilities relating to the Excluded

Policies or (ii) the Excluded Assets and Liabilities.

**Transferred Liabilities**

means:

- (a) all liabilities under the Transferred Policies; and
- (b) all other liabilities of TTI to the extent they relate to the Transferred Business,

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

**Transferred Policies**

every Policy written by or on behalf of TTI or which is otherwise a Policy of TTI (including any Policy written by another entity and subsequently transferred or novated to or otherwise assumed by TTI), in each case before 1 January 2021:

- (a) which covers property situated in the EEA, where the insurance relates either to buildings or to buildings and their contents (in so far as the contents are covered by the same Policy); or
- (b) in all other cases, where the Policyholder's or Policyholders': (i) habitual residence is situated in the EEA, in the case of a natural person; or (ii) place of establishment is situated in the EEA, in the case of a legal person,

but excluding in every case (x) the Excluded Policies and (y) any Policy comprised in the Excluded Assets and Liabilities.

<b>TTB</b>	Through Transport Mutual Insurance Association Limited, a company incorporated in Bermuda with number 1750.
<b>TTI</b>	TT Club Mutual Insurance Limited, a company incorporated in England and Wales with number 2657093.
<b>UK</b>	the United Kingdom of Great Britain and Northern Ireland.
<b>UKNV</b>	UK P&I Club NV, a company incorporated in the Netherlands under number 73217484.

1.2 In this Scheme, unless the context otherwise requires:

- 1.2.1 **‘asset’** includes property, assets, data, records, shares, securities, security interests and rights, in each case of every description, wherever located, whether tangible or intangible and whether present or future, actual or contingent and includes any of the foregoing held on trust, and any interest whatsoever or howsoever held in any of the foregoing;
- 1.2.2 **‘liabilities’** includes duties and obligations of every description (whether present or future, actual or contingent) including liabilities and obligations under guarantees and letters of undertaking;
- 1.2.3 **‘rights’** includes rights (including contractual rights and benefits, rights of subrogation, rights to be indemnified, rights under guarantees and any right to receive any security, counter-security or the benefit of any lien, assignment or trust), benefits (including the benefit of any security, counter-security, lien, assignment, trust, set-off or escrow), rights and benefits under any licence and/or permission, advantages, powers and claims of every description, in every case whether present or future, actual or contingent;

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

## **2. INTRODUCTION**

- 2.1 TTI is a mutual insurance company incorporated under the laws of England and Wales which has permission under Part 4A of the Act to effect and carry out contracts of general insurance under paragraphs 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16 and 17 of part I of schedule 1 to the RAO.
- 2.2 UKNV is an insurance company incorporated under the laws of the Netherlands which has permission under Section 2:27 of the Dutch Financial Supervision Act (*Wet op het financieel toezicht*) to effect and carry out contracts of general insurance under classes 6, 7, 8, 9, 10b, 11,

12 and 13 of such Law. Such permissions are sufficient to enable UKNV to carry on the Transferred Business.

- 2.3 It is proposed that the Transferred Business shall, in accordance with this Scheme, be transferred to UKNV (and that an Order be made accordingly for the sanction of this Scheme under section 111 of the Act).

### **3. TRANSFER OF BUSINESS**

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

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

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

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

### **5. TRANSFER OF LIABILITIES**

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

## **6. TRANSFERRED POLICIES**

- 6.1 Without prejudice to the generality of paragraphs 3, 4 and 5, on and with effect from the Effective Time, UKNV shall by the Order, and without any further act or instrument, be entitled to all rights of TTI under the Transferred Policies (including the right to levy supplementary premiums) and be subject to all of TTI's obligations under the Transferred Policies whatsoever subsisting at the Effective Time, and in any document evidencing or constituting a Transferred Policy references to TTI and/or to rights and/or liabilities of TTI, its board of directors or other officers, employees, agents or managers and/or to liabilities of holders of Transferred Policies to TTI shall, to the extent necessary to give full effect to this Scheme, be read, manipulated, construed and treated as references to UKNV and/or to rights and/or liabilities of UKNV, its board of directors or other officers, employees, agents or managers and/or to liabilities of the holders of Transferred Policies to UKNV, in each case subject to and in accordance with the terms of this Scheme.
- 6.2 Without prejudice to the generality of paragraphs 3, 4 and 5 and without prejudice to paragraph 6.1, on and with effect from the Effective Time, any references to TTI in any contract between TTI and any third party relating to the Transferred Policies or otherwise comprised in the Transferred Business, shall, to the extent necessary to give full effect to this Scheme, be read, manipulated, construed and treated as references to UKNV and such contract shall operate as if UKNV was the original party to the contract in place of TTI.

## **7. PERSONAL DATA**

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

- 7.1.1 succeed to all rights, liabilities and obligations of TTI in respect of any personal data which relates to the Transferred Business, Transferred Policies, Transferred Assets or Transferred Liabilities to the extent transferred by this Scheme;
- 7.1.2 become the data controller of any personal data which relates to the Transferred Business, Transferred Policies, Transferred Assets or Transferred Liabilities, to the extent required by the Data Protection Laws and shall be deemed to have been the controller of all such data at all material times when personal data is processed; and



7.1.3 in respect of any personal data which relates to the Transferred Business, Transferred Policies, Transferred Assets or Transferred Liabilities be under the same duty as TTI was under to respect the confidentiality and privacy of any person in relation to that personal data and shall be bound by any specific notice or consent given, or request made by, the data subject which was binding on TTI and which required TTI not to use the personal data for marketing purposes,

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

## **8. CONTINUITY OF PROCEEDINGS**

8.1 At and with effect from the Effective Time, any judicial, quasi-judicial or arbitration proceedings or any complaint or claim to any ombudsman or similar or other proceedings for the resolution of a dispute or claim (whether current or future (including those not yet in contemplation)) by or against TTI from the Effective Time in connection with the Transferred Policies, the Transferred Assets, the Transferred Liabilities or otherwise in relation to the Transferred Business shall be continued by or against UKNV and UKNV shall be entitled to all defences, claims, counterclaims and rights of set-off that would have been available to TTI in relation to such proceedings and TTI shall have no liability under those proceedings and, for the avoidance of doubt, UKNV, in its absolute discretion, may determine to discontinue after the Effective Time any such proceedings brought by TTI.

8.2 At and with effect from the Effective Time, any judicial, quasi-judicial, or arbitration proceedings or any complaint or claim to any ombudsman or similar person or entity or other proceedings for the resolution of a dispute or claim (whether current or future (including those not yet in contemplation)) in relation to TTI and concerning the Transferred Policies, Transferred Assets, Transferred Liabilities or otherwise in relation to the Transferred Business shall be commenced against UKNV. Any such proceedings after the Effective Time commenced against TTI shall be deemed to have been commenced and shall be continued against UKNV without the need for further order, whether for substitution of parties or otherwise. In any event, UKNV shall be entitled to all defences, claims, counterclaims and

rights of set off that would have been available to TTI in relation to such proceedings, complaint or claim.

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

8.4 Without prejudice to the foregoing provisions of this paragraph 8 and subject always to any laws, regulations or regulatory requirements applicable to UKNV from time to time, if any proceedings with the FOS are continuing at the Effective Time or commence after the Effective Time and which relate to the acts or omissions of TTI prior to the Effective Time, UKNV shall comply with:

8.4.1 each provision of DISP which relates to the complaint handling procedures of the FOS (including, but not limited to, DISP 3.7.12R) in the event that the relevant complaint is within the jurisdiction of the FOS under the provisions of DISP; and

8.4.2 any judgment, settlement, order or award (or relevant part thereof) handed down by the FOS in respect of a complaint within the jurisdiction of the FOS under the provisions of DISP.

## **9. EXCLUDED POLICIES**

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

9.2 If:

9.2.1 TTI or UKNV procures the novation of any Excluded Policy to UKNV;

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

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

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

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

## **10. PREMIUMS AND OTHER PAYMENTS**

10.1 All premiums (whether mutual or fixed) attributable or referable to the Transferred Policies shall on and after the Effective Time be payable to UKNV and shall be receivable and received by UKNV.

10.2 Any mandate or other instruction in force at the Effective Time (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 of the Transferred Policies to TTI on their behalf shall thereafter take effect as if it had provided for and authorised such payment to UKNV.

## **11. DECLARATION OF TRUST BY TTI**

11.1 If:

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

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

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

TTI shall, on and from the Effective Time and until the relevant asset is transferred to UKNV, hold any asset referred to in paragraphs 11.1.1 or 11.1.2 as trustee for UKNV absolutely.

11.2 TTI shall in any event be subject to UKNV's directions in respect of any asset referred to in paragraphs 11.1.1 or 11.1.2 until the relevant asset is transferred to or otherwise vested in UKNV or is disposed of (whereupon TTI shall account to UKNV for the proceeds of disposal thereof), and UKNV shall have authority to act as the agent and/or attorney of TTI in respect of such asset for all such purposes.

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

11.4 Without prejudice to the foregoing provisions of this paragraph 11 or the provisions of paragraph 12, if:

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

11.4.2 any asset or liability of TTI proposed to be transferred pursuant to this Scheme is not for whatever reason immediately transferred to UKNV at the Effective Time, TTI

shall take all necessary steps as UKNV may require for securing the transfer to UKNV of that asset or liability.

## **12. INDEMNITIES IN FAVOUR OF TTI**

### **12.1 If:**

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

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

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

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

12.2 TTI shall in any event be subject to UKNV's directions in respect of any liability referred to in paragraphs 12.1.1 and 12.1.2 until the relevant liability is transferred to or becomes a liability of UKNV, and UKNV shall have authority to act as the agent and/or attorney of TTI in respect of such liability for all such purposes.

## **13. EFFECTIVE TIME**

Subject to the Court having made an Order under section 111 of the Act sanctioning this Scheme, this Scheme shall become operative at 24:00 hours Greenwich Mean Time on 31 December 2021, or such other time and date as may be specified in the Order sanctioning this Scheme.

## 14. MODIFICATIONS OR ADDITIONS

14.1 Save as provided in paragraph 14.3 and subject to paragraph 14.2, TTI and UKNV may consent to any modification of or addition to this Scheme or to any further condition or provision affecting the same which the Court may approve or impose before the Effective Time.

14.2 Save as provided in paragraph 14.3, TTI and UKNV may consent to any modification of or addition to this Scheme or to any further condition or provision affecting the same provided that the Regulators have been notified of the same at least 28 days in advance of any hearing of the Court at which such application is considered, such period to commence on the earlier of:

14.2.1 the date (or the latest date) on which each of the Regulators gives notice of receipt of the notification of the amendment to TTI or UKNV (as the case may be); and

14.2.2 the date which falls three Business Days following delivery of the notification of the amendment to the Regulators by TTI or UKNV (as the case may be),

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

14.3 For the purposes of paragraphs 14.1 and 14.2, the consent of the Court shall not be required in relation to minor and/or technical amendments to the terms of this Scheme (including amendments to correct manifest errors), provided that the Regulators have been notified of the same at least 28 days in advance of the amendment being made, such period to commence on the earlier of:

14.3.1 the date (or the latest date) on which each of the Regulators gives notice of receipt of the notification of the amendment to TTI or UKNV (as the case may be); and

14.3.2 the date which falls three Business Days following delivery of the notification of the amendment to the Regulators by TTI or UKNV (as the case may be),

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

**15. THIRD PARTY RIGHTS AND JURISDICTION**

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

**16. SUCCESSORS AND ASSIGNS**

This Scheme will bind and enure to the benefit of the successors and assigns of each of UKNV and TTI.

**17. COSTS AND EXPENSES**

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

**18. GOVERNING LAW AND JURISDICTION**

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

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

**19. AGENT FOR SERVICE**

UKNV irrevocably appoints Thomas Miller P&I Ltd of 90 Fenchurch Street, London EC3M 4ST as its process agent to receive on its behalf service of process in any proceedings in England. Such service shall be deemed completed on delivery to such process agent (whether

or not it is forwarded to and received by UKNV). If for any reason such process agent ceases to be able to act as a process agent or no longer has an address in England, UKNV irrevocably agrees to appoint a substitute process agent acceptable to TTI and to deliver to TTI a copy of the new process agent's acceptance of that appointment within 10 Business Days.