

Court File No:

**IN THE ROYAL COURT OF JERSEY  
(Samedi Division)**

**IN THE MATTER OF THE TRANSFER OF INSURANCE BUSINESS BY  
SUNDERLAND MARINE INSURANCE COMPANY LIMITED**

**to**

**THE NORTH OF ENGLAND PROTECTING AND INDEMNITY ASSOCIATION LIMITED  
(Pursuant to ARTICLE 27 of, and SCHEDULE 2 to, THE INSURANCE BUSINESS (JERSEY)  
LAW 1996)**

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**SCHEME OF TRANSFER**

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## CONTENTS

<b>Paragraph</b>	<b>Page</b>
1. Introduction .....	3
2. Transfer of business by incorporation of the UK scheme.....	4
3. Jersey Effective Date .....	4
4. Modifications or alterations .....	5
5. Successors and Assigns .....	6
6. Governing Law .....	6
SCHEDULE 1 Interpretation .....	7

## 1. INTRODUCTION

### 1.1 Interpretation

The definitions and other provisions relating to interpretation set out in Schedule 1 apply throughout this Jersey Scheme, including the schedule.

### 1.2 Parties to the Scheme

- (a) Sunderland Marine Insurance Company Limited (**Transferor**) is a company incorporated in England and Wales with registered number 00016432 and having its registered office at The Quayside, Newcastle-upon-Tyne, NE1 3DU. The Transferor has a Part 4A permission under FSMA to carry on General Business in the United Kingdom in classes 1, 5, 6, 7, 8, 9, 11, 12, 13, 15, 16 and 17 as set out in Part 1 of Schedule 1 to the RAO.
- (b) The Transferor holds a Category A permit as defined under Article 5(2) of the Law with permissions, *inter alia*, to carry out contracts of general insurance in Jersey under classes of general business 01, 05, 06, 07, 08, 09, 11, 12, 13, 15, 16 and 17 as defined in Part 2 of Schedule 1 to the Law.
- (c) The Transferor carries on general insurance business in the United Kingdom and in or from within Jersey (amongst other places).
- (d) The North of England Protecting and Indemnity Association Limited (**Transferee** and together with the Transferor, the **Applicants**) is a company incorporated in England and Wales with registered number 00505456 and having its registered office at The Quayside, Newcastle-upon-Tyne, NE1 3DU. The Transferee has a Part 4A permission under FSMA to carry on General Business in the United Kingdom in classes 1, 4, 5, 6, 7, 8, 9, 11, 12, 13, 15, 16 and 17 as set out in Part 1 of Schedule 1 to the RAO.
- (e) The Transferee holds a Category A permit as defined under Article 5(2) of the Law with permissions, *inter alia*, to carry out contracts of general insurance in Jersey under classes of general business 01, 04, 05, 06, 07, 08, 09, 11, 12, 13, 15, 16 and 17 as defined in Part 2 of Schedule 1 to the Law.
- (f) The Transferor is a wholly-owned subsidiary of the Transferee.

### 1.3 Jersey Transferring Business

- (a) The Transferor carries out general insurance business in Jersey, amongst other places.
- (b) The Transferring Jersey Business comprises the whole of the insurance business effected and/or carried out by the Transferor in or from within Jersey.
- (c) It is proposed that the Transferring Jersey Business be transferred to the Transferee in accordance with this Jersey Scheme and that an order be sought for the sanction of this Jersey Scheme.

#### 1.4 **Court Sanction**

Each of the Transferor and the Transferee have agreed to be represented by Counsel on the hearing of the application to sanction this Jersey Scheme and have undertaken to be bound by this Jersey Scheme and to do all such acts and things as may be necessary or expedient to be executed or done by them for the purposes of giving effect to this Jersey Scheme.

### 2. **TRANSFER OF BUSINESS BY INCORPORATION OF THE UK SCHEME**

2.1 The terms of the UK Scheme shall apply to the Transferring Jersey Assets, Transferring Jersey Business, Transferring Jersey Liabilities and Transferring Jersey Policies in the same manner as they apply to the Transferred Assets, Transferred Business, Transferred Liabilities and Transferred Policies and (save to the extent inconsistent with any of the provisions of this Jersey Scheme) the terms of the UK Scheme (subject to the excluded paragraphs of the UK Scheme set out at paragraph 2.2 of this Jersey Scheme) shall be incorporated in and to and shall form part of this Jersey Scheme as if reproduced herein, *mutatis mutandis*. For this purpose, the following definitions of the UK Scheme shall be read and construed as follows:

- (a) Business shall be read as Transferring Jersey Business;
- (b) Court shall be read as Royal Court;
- (c) Effective Date shall be read as the Jersey Effective Date;
- (d) Order shall be read as the Jersey Order;
- (e) Scheme shall be read as the Jersey Scheme;
- (f) Transferred Assets shall be read as Transferring Jersey Assets;
- (g) Transferred Liabilities shall be read as Transferring Jersey Liabilities; and
- (h) Transferred Policies shall be read as Transferring Jersey Policies.

2.2 Paragraphs 11 (*Effective Date*), 14 (*Modifications or Additions*) and 15 (*Third party rights and governing law*) of the UK Scheme shall not form part of and shall not be incorporated into this Jersey Scheme.

2.3 This Jersey Scheme is ancillary to the UK Scheme. Nothing in this Jersey Scheme shall operate so as to prevent or conflict with any transfer provided for by the UK Scheme.

### 3. **JERSEY EFFECTIVE DATE**

3.1 This Jersey Scheme shall become effective, and the Jersey Effective Date shall occur simultaneously with the UK Scheme becoming effective in accordance with its terms.

3.2 If the Transferor and the Transferee agree that this Jersey Scheme should become effective after 00:00 GMT on 30 June 2020, the Transferor and the Transferee must apply

to the Court for a further order, specifying any time and date after 00:00 GMT on 30 June 2020 which, subject to the consent of the Court, shall then become the Jersey Effective Date for the purposes of this Jersey Scheme and this Jersey Scheme shall then become operative on and from the time and date so specified, provided that:

- (a) the JFSC shall be notified in advance and as soon as reasonably practicable, and shall have the right to be heard at any hearing of the Court at which such application is considered;
- (b) such application shall be accompanied by a supplemental report from the Independent Expert to the effect that the proposed amendment will not materially adversely affect the security of benefits of holders of the Transferring Jersey Policies and such supplemental report shall be published on the websites of the Transferor and the Transferee within five days of such application; and
- (c) a notice of the making of such further order is published on the websites of the Transferor and the Transferee within five days of the making of such further order.

3.3 If this Jersey Scheme shall not have become effective on or before GMT 00:00 on 30 June 2020 or such later date, if any, as each of the Transferor and the Transferee may agree and the Court may approve), the provisions of this Jersey Scheme shall lapse.

3.4 This Jersey Scheme shall not become effective on the Jersey Effective Date unless on or prior thereto the Jersey Order shall have been made.

#### 4. **MODIFICATIONS OR ALTERATIONS**

4.1 The Transferor and the Transferee may, as required, consent for and on behalf of the parties hereto and all other persons concerned to any modification of or addition to this Jersey Scheme or to any further condition or provision affecting the same which, prior to its sanction of this Jersey Scheme, the Court may approve or impose.

4.2 Subject to clause 4.3, at any time after the sanction of this Jersey Scheme, the Transferee and, if in existence at the relevant time, the Transferor, shall be at liberty to apply to the Court for consent to amend this Jersey Scheme, provided that in any such case:

- (a) the JFSC shall be notified in advance and not less than 21 days from the date the JFSC acknowledges such notice of a proposed change must elapse prior to any hearing of the Court at which such application is considered and the JFSC shall have the right to be heard at such hearing; and
- (b) such application shall be accompanied by a certificate (supported by a report which has been prepared on the basis of the most recent available financial information) from an independent actuary to the effect that in his opinion the proposed amendment will not:
  - (i) adversely affect the persons who were holders of policies issued by the Transferee immediately prior to the Effective Date; or

- (ii) adversely affect the persons who were holders of the Transferring Jersey Policies.

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

- 4.3 The consent of the Court shall not be required in relation to minor and/or technical amendments to the terms of this Jersey Scheme (including amendments to correct manifest errors and/or to reflect changes required by law or regulation, including changes in generally accepted actuarial practice and/or minor or technical amendments) that are agreed by the Transferor and the Transferee, provided that the JFSC has been notified of the same and has either (i) indicated within that it does not object thereto; or (ii) a period of 21 days has passed commencing on the date of receipt of the notification by the JFSC without the JFSC indicating any objection thereto.

5. **SUCCESSORS AND ASSIGNS**

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

6. **GOVERNING LAW**

This Jersey Scheme shall be governed by and construed in accordance with Jersey law.

## **SCHEDULE 1 Interpretation**

1. In this Jersey Scheme, unless inconsistent with the subject or context, the following expressions bear the meanings respectively set opposite them:

<b>Court</b>	means the Royal Court of Jersey.
<b>FSMA</b>	means the Financial Services and Markets Act 2000.
<b>Jersey Effective Date</b>	means the date upon which this Jersey Scheme becomes effective in accordance with its terms.
<b>Jersey Order</b>	means an order made by the Royal Court pursuant to Schedule 2 to the Law and/or Article 27 of the Law sanctioning this Jersey Scheme and any order (including any subsequent order) in relation to this Jersey Scheme made by the Royal Court pursuant to the Law.
<b>JFSC</b>	means the Jersey Financial Services Commission.
<b>Law</b>	means the Insurance Business (Jersey) Law 1996.
<b>Transferring Jersey Assets</b>	<p>means any and all property of the Transferor comprised in or attributable to the Transferring Jersey Business as at the Effective Date including (without prejudice to the generality of the foregoing):</p> <ul style="list-style-type: none"><li>(a) the rights, benefits and powers of the Transferor under or by virtue of the Transferring Jersey Policies; and</li><li>(b) all rights and claims (in contemplation, present or future, actual or contingent) against any third party in relation to the Transferring Jersey Business or arising as a result of the Transferor having carried on the Transferring Jersey Business.</li></ul>
<b>Transferring Jersey Business</b>	means the whole of the general insurance business effected and/or carried out by the Transferor in or from within Jersey immediately prior to the Jersey Effective Date including without limitation, all rights, benefits and powers of the Transferor under or by virtue of the Transferring Jersey Policies and the Transferring Jersey Assets and all liabilities and obligations of the Transferor under or by virtue of the Transferring Jersey Liabilities.

**Transferring Jersey Liabilities**

means any and all liabilities whatsoever of the Transferor comprised or attributable to the Transferring Jersey Business or otherwise arising in connection with or in relation to the carrying on of the Transferring Jersey Business as at the Jersey Effective Date including (without prejudice to the generality of the foregoing):

- (a) all liabilities arising from, under or in connection with the Transferring Jersey Policies;
- (b) all liabilities arising under or in connection with lapsed, surrendered, expired and reinstated policies written and/or assumed by or on behalf of the Transferor;
- (c) all liabilities in connection with quotations made by or on behalf of the Transferor which were not proceeded with and/or which did not become policies of insurance for any reason whatsoever (including due to an administrative or proceeding error); and
- (d) all liabilities for damages (including compensatory, consequential, exemplary, punitive, bad faith or similar or other damages) which relate to the marketing, sale, underwriting, issuance, delivery, cancellation or administration of any Transferring Jersey Policy including (without limitation); (1) any amount in respect of interest arising in connection thereto or in connection with any payment made in respect thereof; (2) any amount in respect of any additional liability or an increase in liability to taxation of a policyholder or former policyholder when compared to that person's liability to taxation if the event or series of events giving rise to the relevant damages had not occurred; and (3) any liability arising out of or relating to any alleged or actual act, error or omission by the Transferor or its agents, whether intentional or otherwise, with respect to any such Transferring Jersey Policy including:
  - (i) any alleged or actual reckless conduct

or bad faith in connection with the handling of any claim arising out of or under such Transferring Jersey Policy; or

- (ii) the marketing, sale, underwriting, issuance, delivery, cancellation or administration of such Transferred Jersey Policy.

**Transferring Jersey Policies**

means all policies (including all constituent parts of a policy) written by the Transferor prior to the Jersey Effective Date comprised in the Transferring Jersey Business together with all proposals for insurance received by or on behalf of the Transferee prior to the Jersey Effective Date but which are subsequently underwritten and which form part of the Transferring Jersey Business.

**UK Scheme**

means the insurance business transfer scheme pursuant to Part VII of the FSMA for, amongst other things, the transfer of the UK insurance business of the Transferor.

2. In this Jersey Scheme, unless the subject or context requires otherwise:
  - (a) words and expressions defined in the UK Scheme shall have the same meanings as are given to them in the UK Scheme; and
  - (b) expressions used in this Jersey Scheme which have meanings under the Insurance Business Law shall bear those meanings.
3. Without prejudice to the generality of paragraph 2.1 of this Jersey Scheme, the principles of interpretation set out in clause 1.2 of the UK Scheme shall be incorporated by reference into and shall form part of this Jersey Scheme as if reproduced herein, *mutatis mutandis*.