

IN THE HIGH COURT OF JUSTICE

CR – 2018- 003476

BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES

COMPANIES COURT (ChD)

IN THE MATTER OF

THE SOLICITORS INDEMNITY MUTUAL INSURANCE ASSOCIATION LIMITED

AND

R&Q GAMMA COMPANY LIMITED

IN THE MATTER OF

PART VII OF THE FINANCIAL SERVICES AND MARKETS ACT 2000

INSURANCE BUSINESS TRANSFER SCHEME

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1. INTERPRETATION

1.1 In this insurance business transfer scheme, unless the context otherwise requires, the following words or phrases have the following meanings:

Act means the Financial Services and Markets Act 2000 together with the rules and regulations implemented pursuant thereto;

Articles means the Articles of Association of the Transferor as from time to time amended and in force;

Assigned Risks Pool means the arrangements provided for under Qualifying Insurer's Agreements made between the Law Society of England and Wales and the Transferor among others;

Calls has the meaning given in the Rules;

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

Effective Date means the date and time on which the Scheme takes effect in accordance with Clause 11;

FCA means the UK Financial Conduct Authority or any successor UK regulatory authority with the same functions in relation to insurance and/or reinsurance companies;

LPTA means the loss portfolio transfer reinsurance agreement entered into on 27 September 2016 between the Transferor as cedant and R&Q Insurance (Malta) Limited as the reinsurer as amended by agreement between the parties on 11 May 2018;

Order means an order of the Court pursuant to section 111 of the Act sanctioning the Scheme and any order (including any subsequent order) in relation to this Scheme made by the Court making provision under section 112 of the Act;

Policy and **Policyholder** each has the meaning set out in section 424(2) of the Act and Regulation 2 of the Financial Services and Markets Act 2000 (Meaning of "Policy" and "Policyholder") Order 2001 (S.I. 2001/2361);

PRA means the UK Prudential Regulation Authority or any successor UK regulatory authority with the same functions in relation to insurance and/or reinsurance companies;

Proceedings means any judicial, quasi-judicial, administrative or arbitration proceedings or any complaint or claim to any ombudsman or other proceedings for the resolution of a dispute or claim (whether pending, current or future);

Qualifying Insurer's Agreement means an agreement entered into by an Authorised Insurer (as defined in the Solicitors Act 1974) setting out the terms and conditions on which the

Authorised Insurer will provide professional indemnity insurance to solicitors and others in private practice in England and Wales;

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

Records means all documents, files and other records, whether in physical or electronic form, relating to the Transferred Policies which are in the possession of, or under the control of, the Transferor;

Related Policy means any Policy entered into by the Transferor as insurer or reinsurer to the extent that it gives rise to rights under a Retained Reinsurance;

Related Reinsurance means that part or all of any contracts of reinsurance providing cover in respect of a Policy entered into by the Transferor as insurer or reinsurer (other than the LPTA) to the extent that it provides cover in respect of a Retained Policy;

Retained Business means a Retained Policy, Retained Reinsurance, a Related Policy or Related Reinsurance;

Retained Policy means a Policy under which any liability (whether current or future, actual or contingent) remains unsatisfied or outstanding at the Effective Date and:

(a) in the case of policies of direct insurance only, in respect of which:

(i) for the purpose of Schedule 12 to the Act, an EEA State other than the United Kingdom is the State in which the contract was concluded; and

(ii) the PRA has not prior to the issue of the Order provided the certificate referred to in Schedule 12 to the Act with respect to the relevant EEA State which is the State in which the contract was concluded; or

(b) which the Court for any reason determines shall not be transferred by virtue of the Scheme or the Order; or

(c) which prior to the Court making the Order the Transferor and the Transferee agree should be excluded from the Scheme;

Retained Reinsurance means that part or all of any contracts of reinsurance (other than the LPTA) providing cover in respect of a Policy entered into by the Transferor as insurer or reinsurer which the Court for any reason determines shall not be transferred by virtue of the Scheme and which is not transferred by any vesting order under section 112 of the Act or otherwise;

Rules means the rules of the Transferor as from time to time amended and in force;

Scheme means the insurance business transfer scheme set out in this document with or subject to any modification, addition or condition approved or imposed by the Court;

Segregated Account means the cash account maintained by the Transferor pursuant to the LPTA;

Subsequent Transfer Date means:

- a) in the case of a Retained Policy or a Retained Reinsurance, the date on which the Transferor's rights (other than Transferor Continuing Rights) and liabilities under such Retained Policy and Retained Reinsurance are transferred to the Transferee whether by means of novation or as a result of any necessary consent or waiver being obtained or the making of a court order dispensing with such consent or waiver or otherwise; and
- b) in the case of a Related Policy or Related Reinsurance to the extent that rights and liabilities under such Policy or reinsurance are retained by the Transferor pursuant to Clause 4.4, the Subsequent Transfer Date for the relevant Retained Reinsurance or the relevant Retained Policy or, if earlier, and in the case of a Related Policy only, the date on which the relevant Retained Reinsurance is commuted;

Tax or **Taxation** means any form of taxation, levy, duty, charge, contribution, withholding or impost of whatever nature (including any related fine, penalty, surcharge or interest) imposed, collected or assessed by, or payable to, a Tax Authority and includes, for the avoidance of doubt, income tax and amounts equivalent to or in respect of income tax required to be deducted or withheld from or accounted for in respect of any payment;

Tax Authority means any government, state or municipality or any local, state, federal or other authority, body or official anywhere in the world exercising a fiscal, revenue, customs or excise function including, without limitation, HMRC;

Third Party Reinsurance means that part or all of any contracts of reinsurance providing cover in respect of the Transferred Policies other than the LPTA, any Retained Reinsurance and any Related Reinsurance;

Transferee means R&Q Gamma Company Limited, a company incorporated and registered in England and Wales with registered number 01335239 whose registered office is at 71 Fenchurch Street, London EC3M 4BS, United Kingdom;

Transferred Business means:

- (a) the Transferred Policies, with and subject to the Third Party Reinsurance and the rights, liabilities, obligations and powers of the Transferor under the Transferred Policies other than the Transferor Continuing Rights;

- (b) all rights, liabilities, obligations and powers of the Transferor in relation to the Assigned Risks Pool;
- (c) all rights of the Transferor to the amount standing to the credit of the Segregated Account;
- (d) the Records, including, without limitation, all rights, title and interest of the Transferor in the Records;

Transferred Personal Data means any personal data contained in the Records which is subject to the Data Protection Act 1998 and/or the General Data Protection Regulation (Regulation (EU) 2016/679) and which relates to the Transferred Business;

Transferred Policies means all Policies entered into by the Transferor as insurer or reinsurer, with the exception of any Retained Policies and any Related Policies;

Transferor means The Solicitors Indemnity Mutual Insurance Association Limited, a company incorporated and registered in England and Wales with registered number 01985809 whose registered office is at 90 Fenchurch Street, London, EC3M 4ST, United Kingdom;

Transferor Continuing Rights means all rights and powers of the Transferor under the Rules and the Articles in each case as amended from time to time including all such rights and powers in relation to Calls; and

VAT means the tax imposed by EU Council Directive 2006/112/EC and any national legislation implementing that directive, together with legislation supplemental thereto, or any similar sales or turnover tax, whether of the United Kingdom or elsewhere.

1.2 In this Scheme unless the context otherwise requires or expressly provides:

- 1.2.1 references to Clauses and Schedules are to Clauses and Schedules to this Scheme;
- 1.2.2 **assets** includes property, rights and powers of any description;
- 1.2.3 **liabilities** includes duties and obligations of every description (whether present or future, actual or contingent or otherwise);
- 1.2.4 **novation** includes transfer or assignment;
- 1.2.5 **property** includes money, goods, things in action, land and every description of property wherever situated and also obligations and every description of interest, whether present, future or vested or contingent, arising out of, or incidental to, property;

- 1.2.6 **rights** includes benefits, powers and claims of every description (whether present, future, actual or contingent) including without limitation rights to the repayment of taxation, duties or other imposts;
- 1.2.7 the singular includes the plural and vice versa and any reference to one gender includes the other;
- 1.2.8 headings are for convenience only and shall not affect the interpretation of this Scheme;
- 1.2.9 save as expressly provided otherwise, 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 after the date of this Scheme and to any instrument or order made from time to time after the date of this Scheme under such enactment, statutory provision or subordinate legislation;
- 1.2.10 any reference to a person shall include a reference to any individual, company, firm, partnership, joint venture, association, organisation, trust or agency, whether or not having a separate legal personality;
- 1.2.11 if a period of time is specified from a given day or date or from the day or date of an actual event, it shall be calculated exclusive of that day or date;
- 1.2.12 any reference to writing shall include any modes of reproducing words in a legible and non-transitory form;
- 1.2.13 the expression variation or varied shall include any variation, supplement, deletion, replacement or termination, however effected; and
- 1.2.14 any reference to **including** shall mean **including without limitation**.

2. INTRODUCTION

- 2.1 The Transferor is a UK authorised insurer with permission, *inter alia*, to carry out contracts of general insurance in the UK in classes 13 and 17 of Part I of Schedule 1 to the RAO.
- 2.2 The Transferee is a UK authorised insurer with permission, *inter alia*, to effect and carry out contracts of general insurance in the UK in classes 1 to 17 of Part I of Schedule 1 to the RAO.

3. TRANSFER OF THE TRANSFERRED BUSINESS

- 3.1 On and with effect from the Effective Date:
- 3.1.1 the Transferred Business and all the estate and interest of the Transferor in the Transferred Business shall by the Order and without any further act or instrument be

transferred to and vest in the Transferee in accordance with and subject to the terms of the Scheme;

- 3.1.2 in any document evidencing or constituting a Transferred Policy and save in respect of the Transferor Continuing Rights, references to the Transferor and/or to rights, powers, duties and/or obligations imposed upon the Transferor, its board of directors or other officers, employees or agents and/or to liabilities of the Policyholders to the Transferor shall, to the extent necessary to give full effect to the Scheme, be read, construed and treated as references to the Transferee and/or to rights, powers, duties and/or obligations imposed upon the Transferee, its board of directors or other officers, employees or agents and/or to liabilities of the Policyholders to the Transferee subject to and in accordance with the terms of the Scheme;
- 3.1.3 the liabilities and obligations under the Transferred Policies shall be transferred to and shall become liabilities of the Transferee and shall cease to be liabilities of the Transferor and the Transferee shall accept such liabilities (whether such Transferred Policy is governed by English law or the laws of another jurisdiction).
- 3.2 On and with effect from the Effective Date, the Third Party Reinsurance shall continue in force with the substitution of the Transferee in place of the Transferor as the reinsured party and on the terms which applied before the Effective Date and on the basis that the Transferee is reinsured thereby, or the beneficiary thereof, for all purposes as if all references therein (however worded and whether express or implied) to the Transferor were references to the Transferee.
- 3.3 On and with effect from the Effective Date and save in respect of the Transferor Continuing Rights the Transferor shall pay to the Transferee all sums which may thereafter be received by the Transferor under the Transferred Policies and the Third Party Reinsurance and (subject to Clause 5.3) the Retained Policies and the Retained Reinsurances.
- 3.4 The sums and benefits referred to in Clause 3.3 shall include all reinsurance recoveries attributable or referable to the Transferred Business.
- 3.5 On the Effective Date, the Transferor shall, to the extent in its possession or control, deliver or cause to be delivered to the Transferee the Records which are capable of being transferred by delivery.
- 3.6 Nothing in the Scheme shall operate to transfer any obligations or liabilities of the Transferor not included within the definition of Transferred Business including any liability of the Transferor to or in respect of Tax in relation to the Transferred Business with the exception for the avoidance of doubt of any VAT which may be or become chargeable on the transfer of the

Transferred Business pursuant the Scheme which shall be the responsibility of the Transferee.

- 3.7 For the avoidance of doubt, the Transferor Continuing Rights shall not transfer to the Transferee pursuant to this Scheme.

4. TRANSFER OF RETAINED POLICIES AND RETAINED REINSURANCES

- 4.1 Save in respect of the Transferor Continuing Rights, the Transferor's rights and liabilities under Retained Policies and Retained Reinsurances shall transfer to, vest in and become rights and liabilities of the Transferee with effect from the applicable Subsequent Transfer Date. With effect from that date, the provisions of this Scheme shall apply to the relevant Retained Policies and Retained Reinsurances as if references to Transferred Policies and Third Party Reinsurances were references to such Retained Policies and Retained Reinsurances respectively and as if references to the Effective Date were to the relevant Subsequent Transfer Date.

- 4.2 The Transferor shall retain the right to be indemnified under any Related Reinsurance in respect of any liability arising out of a Retained Policy until the Subsequent Transfer Date in relation to that Related Reinsurance. With effect from that date, the Transferee shall have the right to be indemnified in respect of any such liability.

- 4.3 Insofar as it is necessary to ensure that indemnity under a Retained Reinsurance will still be available in respect of any liability arising under a Related Policy, the Transferor shall remain liable under such Related Policy until the Subsequent Transfer Date for the Retained Reinsurance. With effect from such Subsequent Transfer Date the Transferee shall assume liability under such Related Policy as if it were a Transferred Policy and this Scheme shall apply to such Related Policy as if it were a Transferred Policy and as if references to the Effective Date were to such Subsequent Transfer Date.

- 4.4 Save in respect of the Transferor Continuing Rights, the Transferor shall on, and with effect from, the Effective Date hold its rights under each Retained Policy and each Retained Reinsurance on trust for the Transferee absolutely until:

4.4.1 the applicable Subsequent Transfer Date; or

4.4.2 such other date as the Transferor and the Transferee shall otherwise agree

and until then the Transferee shall indemnify the Transferor in accordance with Clause 5.

- 4.5 In the event that a Retained Reinsurance is commuted, the Transferor shall account to the Transferee for the proceeds of such commutation.

- 4.6 Save in respect of the Transferor Continuing Rights, until the Subsequent Transfer Date or such other date as the Transferor and the Transferee shall agree pursuant to Clause 4.4.2 the

Transferee shall have authority to act as the attorney of the Transferor in respect of its rights under the Retained Business for all purposes, and shall have the power to give reasonable directions to the Transferor for any lawful purpose in connection with such rights; and such authority and power shall include authority and power in relation to the exercise, enforcement, variation, commutation, compromise, settlement or transfer of such rights.

5. **INDEMNITY**

5.1 From the Effective Date, the Transferee shall indemnify and keep fully and effectively indemnified and held harmless the Transferor on a continuing basis and on demand from any loss or expense incurred by, or demand or claim made against, the Transferor that is attributable to the Transferred Business whether arising before or after the Effective Date.

5.2 Subject to Clause 5.3, from the Effective Date the Transferee shall observe and perform the Transferor's obligations under the Retained Business and shall indemnify and keep fully and effectively indemnified and held harmless the Transferor on a continuing basis and on demand against and from any liability, loss or expense incurred by, or demand or claim made against, the Transferor that is attributable to the same.

5.3 The amount of any payment by the Transferee to the Transferor in respect of a liability under a Retained Policy or Related Policy pursuant to the indemnity contained in Clause 5.2 shall be the amount of the liability less any sum already received by the Transferor under a Retained Reinsurance or Related Reinsurance at the time of payment by the Transferee (and for the avoidance of doubt the provisions of Clause 3.3 shall from that time no longer apply to any sum so deducted). The Transferor shall reimburse the Transferee in respect of any payment made by the Transferee in discharge of a liability under a Retained Policy or Related Policy pursuant to Clause 5.2 out of, and to the extent of, any recovery subsequently made in respect of such liability under a Retained Reinsurance or Related Reinsurance. Pending reimbursement to the Transferee, the Transferor shall hold such recovery on trust for the Transferee.

6. **LEGAL PROCEEDINGS AND CONTINUITY**

6.1 From the Effective Date, any Proceedings in relation to the Transferred Business shall:

6.1.1 if commenced by, against or in relation to the Transferor before the Effective Date be continued by, against or in relation to the Transferee;

6.1.2 if commenced after the Effective Date, be commenced by or against the Transferee;

6.1.3 if commenced after the Effective Date against the Transferor be deemed to have been commenced and shall be continued against the Transferee;

without the need for further order, whether for substitution of parties or otherwise and the Transferor shall have no liability under such Proceedings.

6.2 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 such Proceedings. For the avoidance of doubt, the Transferee, in its absolute discretion, may discontinue any such Proceedings brought by the Transferor.

6.3 Without prejudice to clause 6.1 from the Effective Date the Transferee shall have the right to direct the conduct of any Proceedings in relation to the Transferred Business which are pending at or commenced after the Effective Date in any jurisdiction outside the United Kingdom until such time as the Transferee is joined to such Proceedings in substitution for the Transferor.

6.4 The Transferee shall not assert in any dispute, controversy, claim or Proceeding in any jurisdiction arising out of or in connection with a Transferred Policy that the Scheme is ineffective or invalid under the law of that jurisdiction to transfer rights and obligations under the Transferred Policies to the Transferee.

6.5 Save in respect of the Transferor Continuing Rights any final judgment, order or award in respect of a claim under a Transferred Policy or Third Party Reinsurance that is not subject to further appeal obtained:

6.5.1 by or against the Transferor and which is not fully satisfied before the Effective Date shall, on and from that date, be enforceable by or against the Transferee;

6.5.2 by or against the Transferor on or after the Effective Date shall be enforceable by or against the Transferee,

without the need for further order, whether for substitution of parties or otherwise.

6.6 Save in respect of the Transferor Continuing Rights, until the relevant Subsequent Transfer Date, the Transferee shall have the right to direct the conduct of any Proceedings by or against the Transferor in relation to the Retained Business which are pending at or commenced on or after the Effective Date.

7. **PREMIUMS, MANDATES ETC.**

7.1 Save in respect of the Transferor Continuing Rights, any direct debit mandate, standing order or other instruction or authority in force on the Effective Date including any instruction given to a bank by its customer in the form of a direct debit or standing order and providing for payment by a bank or other intermediary of premiums or other sums payable to the Transferor under or in respect of any Transferred Policy or other contract that forms part of the Transferred Business, shall thereafter take effect as if it had provided for and authorised such payment to the Transferee.

7.2 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 Transferred Policy shall continue in force as an effective mandate, instruction or authority to or of the Transferee.

8. **PERSONAL DATA**

8.1 On and with effect from the Effective Date, the Transferee shall:

8.1.1 succeed to all rights, liabilities and obligations of the Transferor in respect of Transferred Personal Data;

8.1.2 in respect of the Transferred Business, become the data controller of any Transferred Personal Data in place of the Transferor;

8.1.3 in respect of any Transferred Personal Data be under the same duty by virtue of any law as the Transferor 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 the Transferor and which required the Transferor not to use the personal data for marketing purposes; and

8.1.4 without prejudice to clause 8.1.3 in any consent given by a data subject in respect of such data as is mentioned in this Clause 8, any reference to the Transferor shall be deemed to include a reference to the Transferee.

9. **FURTHER ASSURANCE**

The Transferor and the Transferee shall each take such steps and execute such documents as may reasonably be required to effect or perfect the transfer to the Transferee of the Transferred Business.

10. **THIRD PARTIES**

Other than for the purpose of enforcing rights against the Transferee, no term of this Scheme shall be enforceable by any person other than the parties.

11. **THE EFFECTIVE DATE**

Subject to the Court having made an Order under Section 111 of the Act sanctioning this Scheme, the Scheme shall take effect at 23:59 (London time) on 30 September 2018.

12. **MODIFICATION**

12.1 The Transferee may, with the consent of the Transferor, agree on behalf of all persons concerned to any modification of or addition to the Scheme or to any further condition or provision affecting the same that the Court may approve or impose, whether before or after

the Effective Date, provided that any modification to the substance of the Scheme (being a change to the terms of the Scheme which is not immaterial) may only be made with the consent of the PRA having consulted the FCA. For the avoidance of doubt, the consent of the Transferor shall not be required following any dissolution of the Transferor.

12.2 The Transferee shall provide the PRA and the FCA with sufficient notice of any application to modify the Scheme. The PRA and the FCA shall be entitled to be heard at any such application.

13. **GOVERNING LAW**

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

30 May 2018

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