

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

**IN THE MATTER OF FIRST TITLE INSURANCE PLC**

**and**

**IN THE MATTER OF FIRST EUROPEAN TITLE INSURANCE COMPANY  
LIMITED**

**and**

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

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**INSURANCE BUSINESS TRANSFER SCHEME**

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## 1. DEFINITIONS AND INTERPRETATION

1.1. In this Scheme Document, unless the context otherwise requires, the following words or phrases shall have the following meanings:

**Act** means the Financial Services and Markets Act 2000, as amended, together with the rules and regulations implemented pursuant thereto.

**Data Protection Legislation** means any data protection legislation from time to time in force in the UK including the Data Protection Act 1998 or 2018 or any successor legislation; and (for so long as and to the extent that the law of the European Union has legal effect in the UK) the General Data Protection Regulation ((EU) 2016/679) and any other directly applicable European Union regulation relating to privacy.

**DISP** means the Dispute Resolution part of the FCA Handbook.

**Effective Date:** the date and time on which this Scheme shall take effect in accordance with clause 11.

**FCA** means the United Kingdom's Financial Conduct Authority.

**FOS** means the Financial Ombudsman Service, as defined under Part XVI of the Act.

**High Court** means the High Court of Justice of England and Wales.

**Insurance Regulator** means, in the context of the Transferor, the PRA and/or the FCA, as applicable, (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 business in the UK). In the context of the Transferee, Insurance Regulator means the Malta Financial Services Authority.

**Non-Transferring Policies** means all contracts of insurance, other than the Transferring Policies, which have been underwritten by the Transferor (or any predecessor of the Transferor) at any time.

**Non-Transferring Policyholders** means any person who is a Policyholder under a Non-Transferring Policy.

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

**Parties** means the Transferor and the Transferee.

**PRA** means the United Kingdom's Prudential Regulation Authority.

**Policy** and **Policyholder** have the meanings set out in section 424(2) of the Act and Regulations 2 and 3 of the Financial Services and Markets Act 2000 (Meaning of "Policy" and "Policyholder") Order 2001 (S.I. 2001/2361).

**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 by, against or in relation to the Transferor in respect of, or in connection with, the Transferring Business, whenever such proceedings are commenced (i.e. whether before or after the Effective Date).

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

**Transferee** means First European Title Insurance Company Limited (company number C 88171) a company incorporated and registered under the laws of Malta whose registered office is at The Reed Centre, Blue Harbour, Ta' Xbiex Marina, Ta' Xbiex XBX 1027, Malta.

**Transferor** means First Title Insurance Plc (company number 1112603) a company incorporated and registered under the laws of England and Wales whose registered office is at ECA Court, 24-26 South Park, Sevenoaks, Kent TN13 1DU, United Kingdom.

**Transferring Business** means the Transferring Policies and all activities carried out in connection with and for the purposes of the Transferring Policies and the assets and liabilities attributable to the Transferring Policies, being:

- a) the rights, claims and liabilities arising under or by virtue of or in connection with the Transferring Policies, including (for the avoidance of doubt) any liabilities arising from the mis-selling of any Transferring Policy;
- b) all causes of action against third parties relating to the Transferring Policies whatsoever and howsoever arising;
- c) the Transferring Records including, without limitation, all rights, title and interest of the Transferor in the Transferring Records;

and for the avoidance of doubt, excluding any rights, benefits and powers under or relating to the Non-Transferring Policies (including the benefit of any reinsurance,

retrocession or indemnity of the Transferor in relation to liabilities arising under the Non-Transferring Policies).

**Transferring Policies** means the contracts of insurance underwritten by the Transferor (or any predecessor of the Transferor) in the period 1 January 1998 to the Effective Date under which the Transferor provides title risk insurance for property located in the EEA jurisdictions listed in Schedule 1 to this Scheme Document. The Transferring Policies will be transferred from the Transferor to the Transferee with effect from the Effective Date. For the avoidance of doubt, the contract of insurance bearing policy number 12146600016, under which the risk is located in France, is not a Transferring Policy.

**Transferring Policyholders** means any person who is a Policyholder under a Transferring Policy.

**Transferring Records** means all documents, files and other records (held in whatever medium) referable to the Business in the possession or control of the Transferor up to the Effective Date.

- 1.2. In this Scheme Document, unless the context otherwise requires or expressly provides:
  - 1.2.1. the singular includes the plural and vice versa and any reference to one gender includes the other;
  - 1.2.2. headings are for convenience only and shall not affect the interpretation of this Scheme Document;
  - 1.2.3. save as expressly provided otherwise, any reference in this Scheme Document 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 Document and to any instrument or order made from time to time after the date of this Scheme Document under such enactment, statutory provision or subordinate legislation;
  - 1.2.4. 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.

## **2. THE PARTIES**

- 2.1. The Transferor 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 18 of Part 1 of Schedule 1 of the RAO.
- 2.2. The Transferee is a Maltese authorised insurer with permission, *inter alia*, to carry on general insurance business in Malta in class 16 of Part I of Schedule 1 of the European Union (Insurance and Reinsurance) Regulations 2015 (which transposed the Solvency II Directive (EC 2009/138/EC) into Maltese law, and which equates to class 16 of Part I of Schedule 1 of the RAO). All Transferring Policies and the Transferring Business fall within this class 16.
- 2.3. The Transferor wishes to undertake a transfer of insurance business to the Transferee under Part VII of the Act in order to ensure that the needs of Transferring Policyholders may adequately be serviced following the UK's anticipated departure from the EU.

## **3. TRANSFER OF THE TRANSFERRING BUSINESS**

- 3.1. On and with effect from the Effective Date the Transferring Business and all the estate and interest of the Transferor in the Transferring 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 this Scheme.
- 3.2. On and with effect from the Effective Date, in any document evidencing or constituting a Transferring Policy, 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 Transferring Policyholders to the Transferor shall, to the extent necessary to give full effect to this 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 of the Transferee and/or to liabilities of the Transferring Policyholders to the Transferee subject to and in accordance with the terms of this Scheme.

- 3.3. On and with effect from the Effective Date, the Transferor shall pay to the Transferee all sums, and account to the Transferee for all benefits, which may be received by the Transferor in respect of the Transferring Business.
- 3.4. The sums and benefits referred to in Clause 3.3 shall include (without limitation) all premiums and reinsurance recoveries attributable or referable to the Transferring Business (if any).
- 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 Transferring Records which are capable of being transferred by delivery.

#### **4. INDEMNITY**

- 4.1. From the Effective Date the Transferee shall indemnify and keep indemnified the Transferor against any loss or expense incurred by or demand made against the Transferor that is attributable to the Transferring Business or the Transferring Policies whether arising before or after the Effective Date.

#### **5. LEGAL PROCEEDINGS AND CONTINUITY**

- 5.1. Any Proceedings shall be commenced and/or continued by, against or in relation to the Transferee from the Effective Date. For the avoidance of doubt, from the Effective Date, any Proceedings that could have been commenced against the Transferor in connection with the Transferring Business shall be commenced against the Transferee. 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 and the Transferor shall have no liability under those Proceedings and, for the avoidance of doubt, the Transferee, in its absolute discretion, may discontinue any such Proceedings brought by the Transferor.
- 5.2. Any Proceedings after the Effective Date in respect of the Transferring Business commenced in error against the Transferor shall 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.
- 5.3. Any judgment, order or award obtained by or against the Transferor which relates to any part of the Transferring Business and which is not fully

satisfied before the Effective Date shall, on and from that date, become enforceable by or against the Transferee without the need for further order.

- 5.4. The Transferee will comply with the FCA rules (set out in DISP) that apply to the handling of complaints brought to the FOS and any award or direction made or given by the FOS relating to acts or omissions prior to the Effective Date. In particular, Transferring Policyholders shall have a direct right of action against the Transferee as if the Transferee was bound by DISP 3.7.12R in relation to any act or omission of the Transferor prior to the Effective Date.

## **6. NON-TRANSFERRING POLICIES**

- 6.1. The Non-Transferring Policies shall not be transferred to the Transferee. Any liability arising under the Non-Transferring Policies shall remain a liability of the Transferor.

## **7. PREMIUMS, MANDATES etc.**

- 7.1. Any premiums attributable or referable to the Transferring Policies shall from the Effective Date be payable to the Transferee.
- 7.2. 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 Transferring Policy or other contract that forms part of the Transferring Business shall thereafter take effect as if it had provided for and authorised such payment to the Transferee.
- 7.3. 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 or any other contract which forms part of the Transferring Business 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 any personal data which relates to the Transferring Policies and which is subject to Data Protection Legislation and/or;
- 8.1.2. become the data controller of any personal data which relates to the Transferring Policies 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;
- 8.1.3. in respect of any personal data which relates to the Transferring Policies 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 a Transferor not to use the personal data for marketing purposes; and
- 8.1.4. without prejudice to paragraph 8.1.3, in any consent given by a data subject in respect of such data as is mentioned in this Clause 9, any reference to the Transferor shall be deemed to include a reference to the Transferee.

## **9. FURTHER ASSURANCE**

- 9.1. 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 Transferring Business.

## **10. THIRD PARTIES**

- 10.1. 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**

- 11.1. Subject to the High Court having made an Order under Section 111 of the Act sanctioning the Transfer, the Transfer shall take effect at 23.59 (London time) on:

- 11.1.1. 28 April 2020 unless the directors of the Transferor and the Transferee have resolved before that date that it shall not take effect on such date;
  - 11.1.2. if the said directors do so resolve, such other date (not being later than 28 April 2020) as the said directors shall determine; and
  - 11.1.3. the Transferor will notify the FCA and PRA in the event there is an application to delay the Effective Date.
- 11.2. If the Transfer envisaged under this Scheme does not take effect on or before 28 April 2020, or such later date as the Court may allow upon the application of the Transferor and the Transferee, it shall lapse.

## 12. MODIFICATION

- 12.1. Subject to Clause 12.2, the Transferee may, with the prior written consent of the Transferor, agree on behalf of all persons concerned to any amendment of or addition to this Scheme or to any further condition or provision affecting the same (a **Modification**) that the High Court may approve or impose, whether before or after the Effective Date, provided that:
- 12.1.1. any Modification which is material to the Scheme may only be made with the consent of the Insurance Regulator, who shall be given a period of 28 days in which to consider and (if appropriate) give written consent to any such Modification;
  - 12.1.2. where the Insurance Regulator has given its written consent to a Modification, the Transferee and Transferor may amend the Scheme in accordance with such consent;
  - 12.1.3. the Insurance Regulator shall have the right to be heard at any hearing of the High Court at which any Modification to this Scheme is considered; and
  - 12.1.4. any application to the High Court for a Modification shall be accompanied by a certificate from an independent actuary to the effect that in his/her opinion the proposed Modification will not adversely affect the security or adversely affect the reasonable expectations of the Transferring Policyholders or the Non-Transferring Policyholders or anybody insured under contracts of insurance which have been issued

by the Transferee, in each case as they stood before the implementation of the proposed Modification.

- 12.2. The approval of the High 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) that may be agreed by the Transferee and the Transferor in writing, provided that the relevant department of the Insurance Regulator has been notified of the same at least 28 days in advance of the amendment being made and has not objected (unless the Insurance Regulator has confirmed non-objection prior to that date).

### **13. COSTS**

- 13.1. The costs of this Scheme shall be borne by the Transferor and Transferee.

### **14. GOVERNING LAW**

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

## **SCHEDULE 1: THE EEA STATES**

1. Republic of Ireland
2. Poland
3. Romania
4. Slovakia
5. Czech Republic
6. Hungary
7. Bulgaria
8. Croatia
9. Spain
10. France
11. Germany
12. Denmark
13. Italy
14. Slovenia
15. Netherlands