



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

MR JUSTICE NORRIS

THE 21ST DAY OF NOVEMBER 2018

**IN THE MATTER OF CERTAIN OF THE MEMBERS AT LLOYD'S FOR
ANY OR ALL OF THE 1993 TO 2018 (INCLUSIVE) YEARS OF ACCOUNT,
REPRESENTED BY THE SOCIETY OF LLOYD'S**

AND

IN THE MATTER OF LLOYD'S INSURANCE COMPANY SA

AND

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

ORDER

UPON THE APPLICATION by Part 8 claim form dated 12 November 2018 (the *Claim Form*) of the above-named:

(1) Certain of the Members at Lloyd's for any or all of the 1993 to 2018 (inclusive) years of account (the *Members*), represented for the purposes of this scheme by the Society of Lloyd's pursuant to section 323 of the Financial Services and Markets Act 2000 (*FSMA*) and the Financial Services and Markets Act 2000 (Control of Transfers of Business Done at Lloyd's) Order 2001, a company incorporated in England and Wales whose head office is situated at The Lloyd's Building, One Lime Street London EC3M 7HA, United Kingdom (*Lloyd's*); and

(2) Lloyd's Insurance Company SA, a company incorporated in Belgium whose registered office is situated at Place du Champs de Mars 5, 14th floor, 1050 Brussels, Belgium (the *Transferee*) (together the Transferee and Lloyd's being the *Claimants*),

for preliminary directions in respect of an application for the sanction of an insurance business transfer scheme (the *Scheme*) pursuant to Part VII of FSMA and other ancillary orders;

AND UPON HEARING Martin Moore QC and Mary Stokes, Counsel for the Claimants;

AND UPON HEARING Tom Weitzman QC and Julian Burling, Counsel for the Prudential Regulation Authority (the *PRA*);

AND UPON HEARING Charlotte Eborall, Counsel for the Financial Conduct Authority (the *FCA*);

AND UPON READING the Claim Form and the evidence and the schedule of defined terms attached as Schedule 1 hereto;

IT IS ORDERED that on the evidence presented to date:

I The proposed Scheme, in the draft form attached as Schedule 2 hereto, is fit for consideration by the Court on the application by the Claimants to the Court for: (i) directions in respect of the notification of policyholders and other interested parties; and (ii) sanction of the proposed Scheme, having regard, in particular, to:

(a) the proposed Scheme proceeding as a single combined transfer co-ordinated by Lloyd's on behalf of the Members;

(b) the definition of Transferring Policy as set out in the proposed Scheme, comprising a policy or part thereof which will immediately after the Transition End Date require an authorised EEA insurer to carry out such policy in order to ensure no legal or regulatory insurance authorisation requirements in the EEA are breached, and the fact that identification of some such policies will only be possible as a practical matter after the Transition End Date;

(c) the splitting of policies where the policy includes both EEA and non-EEA business (with the effect that the EEA part of the policy transfers to the Transferee (subject to such policy falling within the scope of the definition of a Transferring Policy) and the non-EEA part of the policy remains with the relevant Member);

(d) the proposed reinsurance arrangements, including:

(i) the amendments to be made to the Existing Outwards Reinsurance Agreements in respect of the Transferring Policies to which any Member is a party (as cedant) with the effect that those reinsurance agreements are treated as retrocession contracts which attach to reinsurance cover provided by the Member to the Transferee in respect of the Transferring Policies; and

(ii) any ancillary orders necessary to give effect to such amendments, including an order that neither the proposed Scheme nor anything done or omitted to be done in connection with the Existing Outwards Reinsurance Agreements shall entitle any person to exercise any right or remedy, to reduce, suspend, delay, alter or discharge its rights or obligations or otherwise vary, amend, invalidate, repudiate or terminate any outwards reinsurance (or retrocession) arrangement relating to the Transferring Policies.

2 The method proposed by the Claimants for establishing that the transfer of the Transferring Policies pursuant to an order of the Court would achieve a “substantial purpose” for the purpose of the test set out in *Sompo Japan Insurance Inc v Transfercom Ltd* [2007] EWHC 146 is not inappropriate.

3 Subject to and without limitation to any further orders the Court might make at the directions hearing, the Claimants’ proposed principles for the notification of policyholders and other interested parties (including the proposed applications for dispensations from the notification requirements of the FSMA (Control of Business Transfers) Requirements on Applicants) Regulations 2001 (*Transfer Regulations*) which will be sought at the directions hearing) are not inappropriate, having regard, in particular, to the Claimants’ proposals that:

(a) the sending of an individual notice pursuant to regulation 3(2)(b) of the Transfer Regulations to: (i) the holders of policies which are not transferring pursuant to the Scheme; and (ii) the holders of policies issued by the Transferee (from 1 January 2019) be in due course dispensed with;

(b) policyholders of Transferring Policies will be sent notice, including:

(i) policyholders of Transferring Policies with active claims;

(ii) policyholders of Transferring Policies within the period of cover; and

(iii) policyholders of Transferring Policies where the period of insurance has expired

except as follows:

A. policyholders of Transferring Policies where the period of insurance has expired will not be sent notification where the policy is outside the Look-Back Period, being the usual period to the nearest calendar year (as determined by Lloyd’s based on its claims development profile) that it takes for at least 90 per cent of claims of the relevant class of business to be notified following the year of inception of the policy;

B. no notification will be sent where the policyholder’s contact details are incomplete or non-existent and cannot be identified using reasonable efforts;

C. where a Transferring Policy is a group, white-label, product warranty, service programme or other similar group policy (*Group Policy*) only the group policyholder or recorded sponsor of the Group Policy will be sent direct

notification. Underlying beneficiaries of Group Policies will not be sent individual notifications. The group policyholder or recorded sponsor of the Group Policy will instead be asked to make a summarised notification available to underlying beneficiaries using their normal communication method (with a link to the Lloyd's Brexit website);

(c) the Claimants will not themselves send notices to the policyholders of Transferring Policies but Lloyd's will exercise its powers to direct Managing Agents to send individual such notices, either by sending them themselves or by requesting brokers or coverholders to send notices on their behalf, as set out further below:

(i) Managing Agents will be directed that all policyholders of Transferring Policies should be notified (subject to the exceptions set out in paragraph 3(b) of this Order);

(ii) Lloyd's will provide general guidance to Managing Agents on the principles for identifying Transferring Policies (but the identification of Transferring Policies will depend on what records are available to the Managing Agent or, if making the notification on behalf of the Managing Agent, the brokers or coverholders);

(iii) Lloyd's will provide pro-forma notifications to Managing Agents to ensure consistency of message and information being sent to policyholders of Transferring Policies;

(iv) direct notifications will be sent electronically other than where the recipient of the notification has specifically requested to receive communications in hard copy or an electronic address for the recipient cannot be identified using reasonable efforts; and

(v) reasonable assistance will be provided to Managing Agents in making the notifications, for example by providing a facility for the central co-ordination of requests by Managing Agents for brokers and coverholders to undertake the notification on behalf of the Managing Agent,

and the Claimants will in due course seek dispensation from the sending of individual notice pursuant to regulation 3(2)(b) of the Transfer Regulations to every policyholder of a Transferring Policy on the basis of the principles set out in paragraph 3 of this Order, in particular paragraph 3(b) and this paragraph 3(c);

(d) individual notice will not be sent to any co-insurer on the basis that such parties will receive notification by alternative means, such as through additional advertising, and Lloyd's market bulletins;

(e) individual notice will not be sent to any reinsurer which is a party to any Existing Outwards Reinsurance Agreement on the basis that such parties will receive notification by alternative means, such as through additional advertising, and Lloyd's market bulletins;

(f) Lloyd's will prepare a communication pack with a letter alerting the recipient to the Scheme, outlining the effect of the Scheme, giving information about the Scheme process and how to make representations to the Court, setting out important dates and explaining where further information and key documents can be obtained, including on the Lloyd's Brexit website;

(g) in addition to the direct notifications and the publication of the legal notice in the UK Gazette publications and the other formal advertisements in newspapers required by the Transfer Regulations, the Scheme will be publicised via the following means:

(i) widespread newspaper publication in national, EEA and international newspapers (including at least two newspapers in each EEA state) in a policyholder-friendly format;

(ii) market bulletins which are the formal way of advising the Lloyd's market of issues which are critical to Lloyd's Market Participants;

(iii) dedicated section of the Lloyd's website for Brexit activity, which will include all the relevant documents including the Scheme, a summary of the Scheme and the IE report, updates and an email enquiry facility; and

(iv) other means typically employed for a transfer of insurance business where there is a widespread European and international component.

4 Liberty to apply generally be granted and, in particular, to seek preliminary rulings on any matters which can be appropriately dealt with. Any such application to be on reasonable notice to the PRA and the FCA.





Schedule 1 - Definitions

Brexit means the UK's exit from the EU;

Brokers means (i) Lloyd's brokers; and (ii) non-Lloyd's brokers, who are not registered in the register of Lloyd's brokers, but where a Managing Agent has certified that the broker meets certain minimum standards;

Closed Year Syndicate means any syndicate constituted for a Relevant Year of Account which has been reinsured to close either directly or indirectly into a Syndicate;

Coverholder means a third party company or partnership authorised by a Managing Agent to enter into a contract or contracts of (re)insurance to be underwritten by the members of a Lloyd's Syndicate managed by the Managing Agent;

EEA means the European Economic Area as constituted by the Agreement on the European Economic Area (94/1/ECSC, EC), as amended from time to time, excluding the United Kingdom;

EEA Policy means a Policy or part thereof effected or carried out by or on behalf of any of the Members as insurer, co-insurer, reinsurer or retrocessionaire (including any expired, surrendered, lapsed, matured or reinstated policies and all slips, binding quotations, supplements, endorsements, notices, assignments, novations and riders thereto and all ancillary agreements in connection therewith) and originally allocated to a Relevant Year of Account which will immediately after the Transition End Date require an authorised EEA insurer to carry out such Policy (or part thereof), in order to ensure no legal or regulatory insurance authorisation requirements in the EEA are breached;

Effective Date means the time and date on which this Scheme shall become effective in accordance with paragraph 12.2 of the Scheme;

EU means European Union;

Excluded Policy means:

- (a) a Policy that is a Long-Term Insurance Contract;
- (b) a Policy that is not a Transferring Policy; and/or
- (c) a Policy under which any liability remains unsatisfied or outstanding at the Effective Date:
 - i. which is not capable of being transferred pursuant to section 111 of FSMA;
 - ii. which the Court for any reason determines not to transfer by virtue of the Order; or
 - iii. which is a Jersey Policy, to the extent that and for so long only as the Jersey Scheme has not yet received the requisite court approval and become effective in accordance with its terms;

Existing Outwards Reinsurance Agreements means, in respect of any Syndicate or Closed Year Syndicate, any contract of reinsurance to which the Syndicate or Closed

Year Syndicate is a party on behalf of its Members as the reinsured, together with any collateral, letter of credit facilities or other security arrangements which have been arranged by the relevant reinsurer for the benefit of the Syndicate, which attaches to any part or all of any of the Transferring Policies and under which any obligations remain to be performed in whole or in part at the Effective Date and including, for the avoidance of doubt, any such contract of reinsurance which has been amended to take effect as a Retrocession Agreement pursuant to this Scheme;

FCA means the United Kingdom's Financial Conduct Authority and its successors from time to time;

IE means the independent expert;

Jersey Policy means that part of a Transferring Policy which was effected or carried out as part of insurance business carried on in, or from within, Jersey and in respect of which any liability remains unsatisfied or outstanding at the Effective Date and which the Royal Court of Jersey has jurisdiction to transfer pursuant to the Insurance Business (Jersey) Law 1996;

Jersey Scheme means the scheme for the transfer of the Jersey Policies under the Insurance Business (Jersey) Law 1996;

Lloyd's brokers means brokers registered by Lloyd's in the register of Lloyd's brokers after such brokers have met certain minimum standards;

Lloyd's Brussels Reinsurance Contract means the reinsurance structure to be put in place between the Transferee (as cedent) and the Members (as reinsurers);

Lloyd's Market Participants means all of Coverholders, Brokers, Members, Managing Agents and members' agents;

Lloyd's Syndicate is a group formed by one or more Lloyd's members through which to underwrite;

Long-Term Insurance Contract has the meaning given in article 3(1) of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001;

Look-Back Period is the usual period (to the nearest calendar year) that it takes for at least 90 per cent of claims within each class of business to be notified following the calendar year of inception;

Managing Agent is the agent through which, in accordance with section 8(2) of the Lloyd's Act 1982, members must underwrite contracts of insurance;

Policy and **Policyholder** have the meaning ascribed to "policy" and "policyholder" by the Financial Services and Markets Act 2000 (Meaning of Policy and Policyholder) Order 2001, including for the avoidance of doubt, treaties, slips and other contracts of insurance, reinsurance and retrocession;

PRA means the United Kingdom's Prudential Regulation Authority and its successors from time to time;

Relevant Year of Account means any or all of the 1993 to 2018 (inclusive) years of account;

Retrocession Agreement means the acceptance by the relevant reinsurer by way of retrocession of 100 per cent of its proportion of each inward policy entered into by, or on behalf of, the members of the relevant Syndicate (as reinsurer) in respect of the Transferring Policies pursuant to the Lloyd's Brussels Reinsurance Contract;

Syndicate means each of the syndicates of members listed in Schedule 1 of the Scheme;

Transferring Policies means the EEA Policies, together or individually as the context may indicate, excluding any Excluded Policy;

Transition End Date means the end of any transitional period agreed between the UK and EU during which there will be legal and regulatory continuity between the UK and the EU on the basis of the existing rules from 29 March 2019;

UK means United Kingdom.