

IN THE HIGH COURT OF JUSTICE

BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES

COMPANIES COURT (ChD)

Before Mr Justice Meade

On the 20th day of November 2024

**IN THE MATTER OF
F.M. INSURANCE COMPANY LIMITED**

AND

**IN THE MATTER OF
FM INSURANCE EUROPE S.A.**

AND

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

ORDER

UPON THE APPLICATION by Part 8 claim form issued on 30 July 2024 (the “**Claim Form**”

Transferee together, the “**Claimants**”), which Claim Form seeks the sanction of an insurance business transfer scheme as set out in the Schedule hereto (the “**Scheme**”) pursuant to Part VII of the Financial Services and Markets Act 2000 (“**FSMA**”) and other ancillary orders;

AND UPON HEARING Andrew Thornton, KC, Counsel for the Claimants;

AND UPON READING the Claim Form and the supporting evidence;

AND UPON READING the reports of the Independent Expert dated 29 July 2024 and 6 November 2024 and the reports of the Prudential Regulation Authority (the “**PRA**”) dated 1 August 2024 and 15 November 2024 and the Financial Conduct Authority (the “**FCA**”) dated 1 August 2024 and 14 November 2024;

AND UPON the Court being satisfied that the appropriate certificate has been obtained as referred to in section 111(2)(a) of FSMA and paragraphs 1 and 2 of Part I of Schedule 12 to FSMA;

AND UPON IT APPEARING that a copy of the application, the report and the statement referred to in regulation 3(4) of The Financial Services and Markets Act 2000 (Control of Business Transfers) (Requirements on Applicants) Regulations 2001 (SI 2001/3625) as amended (the “**Regulations**”) has been given free of charge to the PRA and the FCA in accordance with regulation 3(5) of the Regulations and that a period of more than 21 days has elapsed since the PRA and the FCA were given those documents;

AND UPON the Court considering that, in all the circumstances, it is appropriate to sanction the Scheme;

THIS COURT HEREBY SANCTIONS the Scheme in the form annexed at the Schedule hereto pursuant to section 111(1) of FSMA and adopts the defined terms used therein for the purposes of this Order;

AND IT IS ORDERED THAT all the terms of the Scheme shall as and from the dates and times therein provided take effect under section 112 of FSMA without further act or instrument as if each were separately set out in this Order. Without prejudice to the generality of the foregoing:

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1. Definitions and 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, as amended, together with the rules and regulations implemented pursuant thereto;

“**Asset**” or “**Assets**” means any assets, property, rights or powers of any kind or description, wherever located, whether tangible or intangible, present or future, actual or contingent, that are owned, leased or licensed including all rights, benefits and powers under any contract and all rights, claims and powers against any third party;

“**Data Protection Legislation**” means any law, enactment, regulation or order concerning the Processing of Personal Data, including the UK GDPR, the UK Data Protection Act 2018 and the Privacy and Electronic Communications (EC Directive) Regulations 2003, in each case to the extent applicable to the activities or obligations in respect of each of the Transferor or Transferee at the relevant date of determination;

“**Effective Date**” means the date and time on which the Scheme takes effect in accordance with Clause 14;

“**Encumbrance**” means any mortgage, charge, pledge, lien, option, restriction, assignment, right to acquire, right of pre-emption or any other form of right, interest, preference, security or encumbrance of any nature in favour of a third party or any agreement, arrangement or obligation to create any of them;

“**Excluded Assets**” means:

- (a) all of the issued share capital of FME held by the Transferor as at the Effective Date;
- (b) all of the issued share capital of FME Egypt held by the Transferor as at the Effective Date; and
- (c) certain debt securities, equity investments, other investment assets and cash held by the Transferor as at the Effective Date, as are identified and agreed between the Transferee and the Transferor prior to the Effective Date;

“**Excluded Employee**” means the engineering employee of the Transferor as at the date of this Scheme as identified by the Transferor to the Transferee;

“**Excluded Liabilities**” means any liabilities relating to Excluded Assets or the Excluded Employee;

“**FCA**” means the United Kingdom’s Financial Conduct Authority;

combination, restriction, erasure or destruction, or as otherwise defined under applicable Data Protection Legislation;

“**RAO**” means the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001

“Tax Liabilities” means all liabilities to or in respect of taxation, duties and other imports which are attributable to the Transferring Business incurred prior to the Effective Date;

“Transferee” means FM Insurance Europe S.A., registered as a foreign company under the name of FM Europe S.A. in England and Wales with foreign company number FC039419, with a registered office at One-On-One, 1 Route d’Esch, Luxembourg, L-1470, Luxembourg, acting through its UK branch, registered in the United Kingdom with registered branch number BR024525 and its registered office at Voyager Place, Shoppenhangers Road, Maidenhead, SL6 2PJ;

“Transferor” means F.M. Insurance Company Limited, a company incorporated and registered in England & Wales with registered number 00755780, whose registered office is at Voyager Place, Shoppenhangers Road, Maidenhead, Berkshire, England, SL6 2PJ;

“Transferring Assets” means, other than the Excluded Assets, any and all tangible and intangible assets of the Transferor, wheresoever situated, comprised in or attributable to the Transferring Business as at the Effective Date, including (without prejudice to the generality of the foregoing):

- a) the rights, benefits and powers of the Transferor under or by virtue of the Transferring Contracts;
- b) the reinsurance assets or cash deposits comprising the insurance provisions and reserves associated with the Transferring Policies;
- c) all rights of recovery (including the right to continue or bring a legal claim) against any party which arises as a result of the Transferor underwriting or paying a claim under any of the Transferring Policies except for the Residual Policies;
- d) the Transferring Records including, without limitation, all rights, title and interest to the extent of the Transferor in such records; and
- e) all rights and claims (present or future, actual or contingent) against any third party in relation to the Transferring Business or arising as a result of the Transferor having carried on the Transferring Business;

“Transferring Business” means, other than the Excluded Assets, the Excluded Employee and the Excluded Liabilities, the entire undertaking of the Transferor, including the whole of the general insurance business effected and/or carried out by the Transferor immediately prior to the Effective Date, including, without limitation, all rights, benefits and powers of the Transferor under or by virtue of the Transferring Contracts, the Transferring Assets and all liabilities and obligations of the Transferor, under and by virtue of the Transferring Liabilities;

“Transferring Contracts” means any contract to which the Transferor is a party, including each Transferring Policy and each Outwards Reinsurance Contract;

“Transferring Liabilities” means, other than the Excluded Liabilities, all debts, liabilities and obligations whatsoever of the Transferor in respect of the Transferring Business including (without limitation):

- a) all debts, liabilities and obligations whatsoever under or by virtue of the Transferring Contracts or otherwise attributable to the Transferring Business;
- b) all debts, liabilities and obligations arising as a result of the Transferor having carried on the Transferring Business;
- c) in respect of any claim for mis-selling by any current or former Policyholder who holds a Transferring Policy or has held a Transferring Policy prior to the Effective Date; and
- d) all Tax Liabilities which are attributable to such Transferring Business or the transfer thereof (pursuant to the scheme or otherwise) or arising as a consequence of the provisions of the Scheme whensoever incurred;

but excluding:

- i) any other liabilities relating to taxation; and
- ii) any other liabilities excluded under the terms of,
the Scheme;

“Transferring Policies” means all Policies (including all constituent parts of a Policy) to the extent written by or on behalf of, or for which responsibility has been assumed by, the Transferor as insurer, reinsurer or retrocessionaire prior to the Effective Date and comprised in the Transferring Business under which any liability remains unsatisfied or outstanding at the Effective Date;

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

“UK GDPR” means the General Data Protection Regulation 2016/679 as it forms part of retained EU law (as defined in the European Union (Withdrawal) Act 2018), as amended from time to time.

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 **“novation”** includes transfer or assignment;

- 1.2.3 “**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;
- 1.2.4 “**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 in respect of the period after the Effective Date;
- 1.2.5 references to the “**UK**” are references to the United Kingdom;
- 1.2.6 the singular includes the plural and vice versa and any reference to one gender includes the other;

2.1.2 The Transferee is registered as a foreign company in England and Wales under the name of FM Insurance Europe S.A. in England and Wales with foreign company number FC039419, with a registered office at One-On-One, 1 Route d'Esch,

the obligations and liabilities of the Transferor whatsoever subsisting on the Effective Date under or by virtue of the Transferring Contracts and all such rights, benefits and powers shall be vested in the Transferee.

- 4.2 Every person who immediately prior to the Effective Date is a holder of or party to a Transferring Contract shall, from and after the Effective Date, in substitution for any liability or obligation owed thereunder to the Transferor, be under the same liability or obligation to the Transferee and shall become entitled, to the exclusion of any rights which he may have had against the Transferor under any of the Transferring Contracts, to the same rights against the Transferee as were available to him against the Transferor under such Transferring Contract.
- 4.3 All premiums and other amounts attributable or referable to the Transferring Contracts shall on and after the Effective Date be payable to the Transferee and shall be receivable and received by the Transferee and every person who is a holder of or party to any of the Transferring Contracts shall be liable to the Transferee for any outstanding, further or additional premiums or other sums attributable or referable to the Transferring Contracts as and when the same become due and payable.
- 4.4 The Transferee shall be entitled to any and all defences, claims, counterclaims and rights of set-off under or in respect of the Transferring Contracts which would have been available to the Transferor.
- 4.5 All references in any Transferring Contract to the Transferor, the board of directors of the Transferor, or any other officers, employees or agents of the Transferor shall from and after the Effective Date be read as references to the Transferee, the board of directors of the Transferee, or any other officers, employees or agents of the Transferee or, where appropriate, agents of the Transferee to which the administration carried on by the Transferee has been delegated. In particular, but without limitation, all rights and/or duties exercisable or expressed to be exercisable or responsibilities to be performed by the Transferor, the board of directors of the Transferor, or any other officers, employees or agents of the Transferor in relation to any of the Transferring Contracts shall, from and after the Effective Date be exercisable or required to be performed by the Transferee, the board of directors of the Transferee or any other officers, employees or agents of the Transferee.

5. Transferring Assets and Residual Assets

- 5.1 On and with effect from the Effective Date, the Transferring Assets and all the interest and title of the Transferor in them shall, by the Order and without any further act or instrument, be transferred to and be vested in the Transferee subject to all Encumbrances (if any) affecting such Transferring Assets in accordance with this Scheme.
- 5.2 At each Subsequent Transfer Date, each Residual Asset to which such Subsequent Transfer Date applies and all title and interest of the Transferor in such Residual Asset shall by the Order,

7.2.1 the applicable Subsequent Transfer Date; or

7.2.2 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 **8.1**.

7.3 Until the first to occur of the events referred to in Clauses **7.2.1** and **7.2.2**, the Transferee shall have authority to act as the attorney of the Transferor in respect of its rights under the Residual Policies 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, without limitation, authority and power in relation to the exercise, enforcement, variation, commutation, compromise, settlement or transfer of such rights.

8. Indemnity

8.1 From the Effective Date the Transferee shall:

8.1.1 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; and

8.1.2 discharge on the Transferor's behalf or, failing that, indemnify the Transferor against all liabilities arising under the Residual Policies, Residual Assets and Residual Liabilities until any such liability is transferred to or becomes a liability of the Transferee.

8.2 From the Effective Date the Transferee shall observe and perform the Transferor's obligations under the Residual Policies and Residual Assets and in respect of the Residual Liabilities and shall indemnify and keep indemnified the Transferor against and in respect of any liability, loss or expense incurred by or demand made against the Transferor that is attributable to the same.

9. Legal Proceedings and Continuity

9.1 Any Proceedings shall be commenced and/or continued by, against or in relation to the Transferee from the Effective Date. 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.

9.2 Until the relevant Subsequent Transfer Date, the Transferee shall have the right to direct the conduct of any legal Proceedings which at the Effective Date are pending by or against the Transferor in relation to the Residual Policies.

9.3 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

11.1.4 without prejudice to Clause **11.1.3**, in any consent given by a data subject in respect of such Personal Data as is mentioned in this Clause **11**, any reference to the Transferor shall be deemed to include a reference to the Transferee.

12. Further Assurance

15.2 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