

**IN THE ROYAL COURT OF JERSEY
SAMEDI DIVISION**

IN THE MATTER OF HISCOX INSURANCE COMPANY LIMITED

and

IN THE MATTER OF HISCOX S.A.

**AND IN THE MATTER OF AN APPLICATION PURSUANT TO ARTICLE 27 OF AND
SCHEDULE 2 TO THE INSURANCE BUSINESS (JERSEY) LAW 1996**

**GENERAL INSURANCE BUSINESS
TRANSFER SCHEME**

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PART A - DEFINITIONS AND INTERPRETATION

1. DEFINITIONS AND INTERPRETATION

1.1 In this Jersey Scheme (as defined below), the following words and expressions shall have the following meanings:

"Excluded Jersey Assets" means any and all assets of the Transferor other than the Transferred Jersey Assets and the Residual Jersey Assets, and such Excluded Jersey Assets shall include:

- (a) the rights of the Transferor to any defences, claims, counterclaims, defences to counterclaims and rights of set-off in respect of the Excluded Jersey Liabilities;
- (b) the rights of the Transferor under or relating to the Excluded Jersey Policies;
- (c) any tax reliefs or other assets in respect of Tax of the Transferor to the extent it relates to or is connected with the Transferred Jersey Business; and
- (d) any property of the Transferor that would be comprised in the Transferred Jersey Assets but where the Transferor and the Transferee agree in writing prior to the Jersey Transfer Date that it should not be transferred pursuant to this Jersey Scheme and/or the UK Scheme;

"Excluded Jersey Liabilities" means:

- (a) any liabilities of the Transferor under or arising from this Jersey Scheme;
- (b) save as expressly agreed in writing between the Parties prior to the Jersey Transfer Date, any Losses of the Transferor in respect of Taxation or any Taxation arising in relation to the Transferred Jersey Business which arises on or prior to the Jersey Transfer Date;
- (c) any Losses that would be comprised in the Transferred Jersey Liabilities but which the Parties agree in writing prior to the date on which the Royal Court grants a Jersey Order which sanctions this Jersey Scheme shall not be transferred to the Transferee;
- (d) any Losses arising as a result of, or in connection with, any fraud by the Transferor or any member of the Transferor's Group or any of their directors, officers, employees, contractors, agents or appointed representatives; and
- (e) any liabilities of the Transferor under or relating to the Excluded Jersey Policies;

"Excluded Jersey Policies" means Jersey Policies comprised in the Transferred Jersey Policies under which any liability remains unsatisfied or outstanding at the Jersey Transfer Date which are not capable of being transferred pursuant to the Insurance Business Law at the Jersey Transfer Date (excluding any such Jersey Policy which is capable of being transferred, and is transferred, to the Transferee under the UK Scheme on the Transfer Date);

"Insurance Business Law" means the Insurance Business (Jersey) Law 1996;

"Jersey Business" means the business of effecting or carrying out general insurance contracts as principal, in or from within Jersey, falling within any of the classes of insurance business set out in Part 1 of Schedule 1 to the Insurance Business Law;

"Jersey EEA Policies" means any Jersey Policy written by or on behalf of the Transferor in respect of which insurance is provided in respect of EEA Risks and no other risks but excluding (a) any Jersey EEA Written Policy; (b) any Jersey EEA Policyholder Policy; and (c) any Excluded Jersey Policy;

"Jersey EEA Policyholder Policy" means any Jersey Policy held by a Primary Policyholder located in an EEA State written by or on behalf of the Transferor excluding (a) any Jersey EEA Written Policy; and (b) any Excluded Jersey Policy;

"Jersey EEA Written Policy" means any Jersey Policy written by or on behalf of the Transferor through a Branch but excluding any Excluded Jersey Policy;

"Jersey Mixed EEA Policy" means any Jersey Mixed Policy, but only to the extent insurance is provided in respect of EEA Risks;

"Jersey Mixed Policies" means Mixed Policies that are Jersey Policies;

"Jersey Order" means an order made by the Royal Court pursuant to Schedule 2 to the Insurance Business Law and/or Article 27 of the Insurance Business 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 Insurance Business Law;

"Jersey Policyholder" means a Policyholder of the Transferor who is the holder of a Jersey Policy;

"Jersey Scheme" means this scheme made pursuant to Article 27 of and Schedule 2 to the Insurance Business Law in its original form or with or subject to any modification, addition or condition which may be approved or imposed;

"Jersey Transfer Date" means the time and date upon which this Jersey Scheme becomes effective in accordance with paragraph 4 of this Jersey Scheme;

"Jersey Transferred Outwards Reinsurance Contracts" means Transferred Outwards Reinsurance Contracts under which the Transferor's liability under a Jersey Policy has been reinsured;

"MTTPI Law" means the Motor Traffic (Third-Party Insurance) (Jersey) Law 1948;

"Regulator" means the Jersey Financial Services Commission (and any successor to such authority);

"Residual Jersey Assets" means:

- (a) any property of the Transferor that would be comprised in the Transferred Jersey Business (including any right, benefit or power of the Transferor under any Transferred Jersey Policy) but in respect of which the Royal Court has declined to order the transfer to the Transferee pursuant to Article 27 of and Schedule 2 to the Insurance Business Law at the Jersey Transfer Date;
- (b) any other property of the Transferor that would be comprised in the Transferred Jersey Business (including any right, benefit or power under a Transferred Jersey Policy) but for any agreement between the Transferor and the Transferee prior to the Jersey Transfer Date that its transfer should be delayed or should not be transferred at all;

- (c) any property of the Transferor that would be comprised in the Transferred Jersey Business but for the fact that it is outside the jurisdiction of the Royal Court or in respect of which the transfer pursuant to an order of the Royal Court is not recognised by the laws of the jurisdiction in which the property is situated or in respect of which further steps are necessary to effect the transfer pursuant to the laws of the jurisdiction in which such property is situated (in each case excluding any such property which is capable of being transferred, and is transferred, to the Transferee under the UK Scheme on the Transfer Date);
- (d) any property of the Transferor that would be comprised in the Transferred Jersey Business but which cannot be transferred to or vested in the Transferee on the Jersey Transfer Date for any other reason (excluding any such property which is capable of being transferred, and is transferred, to the Transferee under the UK Scheme on the Transfer Date); or
- (e) any proceeds of sale or income or other accrual or return whatsoever, whether or not in any case in the form of cash, or any other property or rights earned or received from time to time after the Jersey Transfer Date but prior to any relevant Subsequent Jersey Transfer Date in respect of any such property referred to in paragraphs (a) to (d) of this definition;

"Residual Jersey Liability" means any liability of the Transferor:

- (a) that is attributable to or connected with a Residual Jersey Asset and arises at any time before the Subsequent Jersey Transfer Date applicable to that Residual Jersey Asset;
- (b) that would be comprised in the Transferred Jersey Business, but in respect of which the Royal Court has declined to order the transfer to the Transferee pursuant to Article 27 of and Schedule 2 to the Insurance Business Law on the Jersey Transfer Date;
- (c) that would be comprised in the Transferred Jersey Business but for the fact that it cannot be transferred to or vested in the Transferee for any other reason on the Jersey Transfer Date (excluding any such property which is capable of being transferred, and is transferred, to the Transferee under the UK Scheme on the Transfer Date); or
- (d) that would be comprised in the Transferred Jersey Business (including any right, benefit or power under a Transferred Jersey Policy) but for any agreement between the Transferor and the Transferee prior to the Jersey Transfer Date that its transfer should be delayed;

"Royal Court" means the Royal Court of Jersey;

"Subsequent Jersey Transfer Date" means, in relation to any Residual Jersey Asset or Residual Jersey Liability, the date (and each date) after the Jersey Transfer Date on which such Residual Jersey Asset or Residual Jersey Liability is transferred to the Transferee, namely:

- (a) in respect of any Residual Jersey Asset falling within paragraph (a), (c) or (d) of the definition of Residual Jersey Assets, and of any Residual Jersey Liability which is attributable to or connected with that Residual Jersey Asset or which falls within paragraph (b) or (c) of the definition of Residual Jersey Liability, the date on which any impediment to its transfer shall have been removed or overcome;

- (b) in respect of any Residual Jersey Asset falling within paragraph (b) of the definition of Residual Jersey Assets and of any Residual Jersey Liability falling within paragraph (d) of the definition of Residual Jersey Liability which is attributable to or connected with that Residual Jersey Asset, the date on which the relevant Transferor and Transferee agree the transfer should take effect; and
- (c) in respect of any Residual Jersey Asset falling within paragraph (e) of the definition of Residual Jersey Assets, the Business Day after the date on which such Residual Jersey Asset is received by the Transferee in accordance with paragraph 8.3 of the UK Scheme;

"Transferee" has the meaning given in paragraph 2.4;

"Transferor" has the meaning given in paragraph 2.1;

"Transferred Jersey Assets" means:

- (a) the rights, benefits and property of the Transferor under or by virtue of or otherwise arising in connection with the Transferred Jersey Policies;
- (b) the Records, including all rights, title and interest of the Transferor in the Records, in each to the extent they relate to the Transferred Jersey Business, Transferred Jersey Personal Data, Transferred Jersey Policies, Transferred Jersey Assets, Residual Jersey Assets, Transferred Jersey Liabilities and Residual Jersey Liabilities;
- (c) the rights, benefits and property of the Transferor under or by virtue of or otherwise arising in connection with the Outwards Reinsurance Contracts, but only to the extent relating to reinsurance in respect of the Transferor's liability under or in connection with (a) Jersey EEA Written Policies; (b) Jersey EEA Policyholder Policies; (c) Jersey EEA Policies; or (d) Jersey Mixed EEA Policies;
- (d) any other assets which the Parties agree, whether before or after the Jersey Transfer Date, are to be transferred under this Jersey Scheme; and
- (e) the rights of the Transferor to any defences, claims, counterclaims, defences to counterclaims, settlements and rights of set-off and any other rights that would have been available to the Transferor in respect of the Transferred Jersey Liabilities, Transferred Jersey Assets as set out in (a) to (c) above and Transferred Jersey Policies,

but excluding the Excluded Jersey Assets and, prior to the applicable Subsequent Jersey Transfer Date, the Residual Jersey Assets and any rights, benefits and property under or relating to the Excluded Jersey Policies;

"Transferred Jersey Business" means:

- (a) the Transferred Jersey Policies;
- (b) the Transferred Jersey Assets;
- (c) the Transferred Jersey Liabilities; and
- (d) following each Subsequent Jersey Transfer Date, the relevant Residual Jersey Asset or Residual Jersey Liability;

"Transferred Jersey Liabilities" means:

- (a) all liabilities and commitments of any kind and description of the Transferor attributable to or in connection with of the Transferred Jersey Policies;
- (b) all liabilities and commitments of any kind and description of the Transferor attributable to or in connection with the Transferred Outwards Reinsurance Contracts, but only to the extent relating to reinsurance in respect of the Transferor's liability under or in connection with (a) Jersey EEA Written Policies; (b) Jersey EEA Policyholder Policies; (c) Jersey EEA Policies; or (d) Jersey Mixed EEA Policies; and
- (c) all liabilities and commitments of any kind to pay amounts which become payable as a result of a change in Applicable Law after 1 January 2019 which would not result in a change to the contractual terms of the Transferred Jersey Policies,

but excluding the Excluded Jersey Liabilities and, prior to each Subsequent Jersey Transfer Date, the relevant Residual Jersey Liabilities;

"Transferred Jersey Personal Data" means Transferred Personal Data to the extent it is personal data comprised in the Transferred Jersey Business;

"Transferred Jersey Policies" means the Jersey Policies but excluding the Excluded Jersey Policies;

"UK Scheme" means the insurance business transfer scheme pursuant to Part VII of FSMA for, amongst other things, the transfer of certain general insurance business of the Transferor to the Transferee, a copy of which is contained in the Schedule, as it may be varied or amended from time to time in accordance with its terms; and

"United Kingdom" and **"UK"** each means the United Kingdom, as defined in Schedule 1 to the Interpretation Act 1978 of the United Kingdom.

1.2 In this Jersey Scheme, unless the subject or context requires otherwise:

1.2.1 words and expressions defined in the UK Scheme shall have the same meanings as are given to them in the UK Scheme; and

1.2.2 expressions used in the Jersey Scheme which have meanings under the Insurance Business Law shall bear those meanings.

1.3 Without prejudice to the generality of paragraph 3.1 of this Jersey Scheme, the principles of interpretation set out in paragraph 1.1 of the UK Scheme shall be incorporated by reference into and shall form part of this Jersey Scheme as if reproduced herein, *mutatis mutandis*.

2. INTRODUCTION

2.1 Hiscox Insurance Company Limited (the "**Transferor**"), a company incorporated in England and Wales, is authorised under FSMA to effect and carry out contracts of General Insurance Business in the UK under all classes of General Insurance Business set out in Part 1 to Schedule 1 of the RAO and is authorised to carry on certain classes of General Insurance Business on an establishment basis in 10 EEA States and on a services basis in 31 EEA States (including Gibraltar).

2.2 Following the United Kingdom's exit from the European Union (expected to take place on 29th March 2019) the Transferor's right to conduct business on a freedom of services and freedom of

establishment basis in the EU27 States may cease to exist, which may in turn expose the Transferor to the risk of challenge that, under the law of a given EU27 State, the Transferor lacks the regulatory permission required under the law of that EU27 State to perform its obligations to policyholders in that EU27 State.

- 2.3 The Transferor has a Category A permit granted under Article 7 of the Insurance Business Law in respect of general insurance business of a type falling within the following paragraphs of Part 2 of Schedule 1 to the Insurance Business Law: 1 (Accident), 02 (Sickness), 03 (Land Vehicles), 04 (Railway rolling stock), 05 (Aircraft), 06 (Ships), 07 (Goods in transit), 08 (Fire and natural forces), 09 (Damage to property), 10 (Motor vehicle liability), 11 (Aircraft liability), 12 (Liability for ships), 13 (General liability), 14 (Credit), 15 (Suretyship), 16 (Miscellaneous financial loss), 17 (Legal expenses) and 18 (Assistance). The Transferor is also an authorised insurer pursuant to the MTTPI Law.
- 2.4 Hiscox S.A. (the "**Transferee**"), a Luxembourg non-life insurance undertaking subject to the supervision of the CAA, has therefore been established. It is authorised under the Insurance Sector Act to carry out the Applicable Classes of insurance business in Luxembourg. The Transferee is in the process of notifying the CAA of its intention for authorisation to carry on the Applicable Classes of insurance business on an establishment basis in 8 EEA States and on a services basis in 31 EEA States (including Gibraltar).
- 2.5 The Transferee shall apply for a Category A permit granted under Article 7 of the Insurance Business Law prior to the date of sanction of this Jersey Scheme in respect of general insurance business of a type falling within the following paragraphs of Part 2 of Schedule 1 to the Insurance Business Law: 1 (Accident), 02 (Sickness), 03 (Land Vehicles), 05 (Aircraft), 06 (Ships), 07 (Goods in transit), 08 (Fire and natural forces), 09 (Damage to property), 13 (General liability), 16 (Miscellaneous financial loss), 17 (Legal expenses) and 18 (Assistance). Not all of the categories of general insurance business that the Transferor is currently licensed for under Article 7 of the Insurance Business Law are required by the Transferee in order for the Transferee to properly continue the Transferred Jersey Business.
- 2.6 The purpose of the UK Scheme is to effect the transfer to the Transferee, subject to the terms of the UK Scheme, of certain General Insurance Business carried on by the Transferor so that the Transferor can perform obligations to policyholders in the EU27 States or with risks in the EU27 States. The purpose of this Jersey Scheme is to effect the transfer to the Transferee, subject to the terms of this Jersey Scheme, of all of the Jersey Business carried on by the Transferor and the assets and liabilities relating to such business that would not otherwise transfer under the UK Scheme.
- 2.7 It is proposed that, in accordance with this Jersey Scheme, a Jersey Order shall be made to effect the transfer of the Transferred Jersey Business to the Transferee on the Jersey Transfer Date and with effect from the Jersey Transfer Date on the same terms as the terms of the UK Scheme governing the transfer of the Transferred Business to the Transferee and as if the Transferred Jersey Business were part of the Transferred Business.

3. TRANSFER OF BUSINESS BY INCORPORATION OF THE UK SCHEME

- 3.1 The terms of the UK Scheme shall apply to the Transferred Jersey Business, the Transferred Jersey Assets and the Transferred Jersey Liabilities in the same manner as they apply to the Transferred Business, the Transferred Assets and the Transferred Liabilities, and (save to the extent inconsistent with any of the provisions of the Jersey Scheme) the terms of the UK Scheme (subject to the excluded paragraphs of the UK Scheme set out at paragraph 3.2 of this Jersey Scheme) shall be incorporated in to and shall form part of the 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:

- 3.1.1 Court shall be read as the Royal Court;
 - 3.1.2 EEA Policies shall be read as Jersey EEA Policies;
 - 3.1.3 EEA Policyholder Policy shall be read as Jersey EEA Policyholder Policy;
 - 3.1.4 EEA Written Policy shall be read as Jersey EEA Written Policy;
 - 3.1.5 Excluded Assets shall be read as Excluded Jersey Assets;
 - 3.1.6 Excluded Liabilities shall be read as Excluded Jersey Liabilities;
 - 3.1.7 Excluded Policies shall be read as Excluded Jersey Policies (but only for the purpose of the definitions of Mixed Policy and Transferred Outwards Reinsurance Contracts in and paragraphs 6 and 9.2 of the UK Scheme);
 - 3.1.8 Mixed EEA Policy shall be read as Jersey Mixed EEA Policy;
 - 3.1.9 Mixed Policies shall be read as Jersey Mixed Policies;
 - 3.1.10 Order shall be read as Jersey Order;
 - 3.1.11 Residual Assets shall be read as Residual Jersey Assets;
 - 3.1.12 Residual Liability shall be read as Residual Jersey Liability;
 - 3.1.13 Scheme shall be read as the Jersey Scheme;
 - 3.1.14 Subsequent Transfer Date shall be read as Subsequent Jersey Transfer Date;
 - 3.1.15 Transferred Assets shall be read as Transferred Jersey Assets;
 - 3.1.16 Transferred Business shall be read as Transferred Jersey Business;
 - 3.1.17 Transferred Liabilities shall be read as Transferred Jersey Liabilities;
 - 3.1.18 Transferred Outwards Reinsurance Contracts shall be read as Jersey Transferred Outwards Reinsurance Contracts;
 - 3.1.19 Transferred Personal Data shall be read as Transferred Jersey Personal Data;
 - 3.1.20 Transferred Policies shall be read as Transferred Jersey Policies; and
 - 3.1.21 Transfer Date shall be read as Jersey Transfer Date.
- 3.2 The following paragraphs of the UK Scheme shall not form part of and shall not be incorporated into this Jersey Scheme:
- 3.2.1 3.2 (which relates to the transfer of Jersey Policies pursuant to this Jersey Scheme);

- 3.2.2 6.1(b) and 6.1(d) (each of which relates to Excluded Policies which are Excluded Policies because they are Policies which are required to be transferred pursuant to this Jersey Scheme);
 - 3.2.3 12 (*Transfer Date*);
 - 3.2.4 13 (*Modifications or Additions*);
 - 3.2.5 14 (*Third-Party Rights*); and
 - 3.2.6 15 (*Governing Law*).
- 3.3 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.

4. **JERSEY TRANSFER DATE**

- 4.1 This Jersey Scheme shall become effective, and the Jersey Transfer Date shall occur simultaneously with, the UK Scheme becoming effective in accordance with its terms.
- 4.2 Unless this Jersey Scheme shall become effective in its entirety on or before 31 December 2019, it shall lapse.

5. **MODIFICATIONS OR ADDITIONS**

- 5.1 Subject to paragraph 5.6 of this Jersey Scheme, the Transferor and the Transferee may consent for and on behalf of all other persons concerned (other than the Regulator) 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 Royal Court may approve or impose.
- 5.2 Subject to paragraphs 5.4 and 5.6 of this Jersey Scheme, the Transferee and the Transferor shall be at liberty to apply jointly to the Royal Court for consent to amend its terms, provided that in any such case:
 - 5.2.1 the Regulator shall be given at least six weeks' notice of, and have the right to be heard at, any hearing of the Royal Court at which such application is considered; and
 - 5.2.2 such application shall be accompanied by a certificate from an independent expert, approved for the purpose by the Regulator to the effect that in his opinion (having considered all of the possible impacts of the proposed amendments), the proposed amendments to the Jersey Scheme will not have a material adverse effect on the Jersey Policyholders of the Transferee, including by reference to:
 - (a) the effect of the proposed amendments to the Jersey Scheme on the security of those Jersey Policyholders' contractual rights, including the likelihood and potential effects of the insolvency of the Transferee;
 - (b) the likely effects of the proposed amendments to the Jersey Scheme on matters such as investment management, new business strategy, administration, governance, expense levels and valuation bases in so far as they may affect (x) the security of those Jersey Policyholders' contractual rights; (y) level of service provided to those Jersey Policyholders; or (z) the reasonable benefit expectations of those Jersey Policyholders; and

- (c) the cost and tax effects of the proposed amendments to the Jersey Scheme, including in so far as they may affect the security of those Jersey Policyholders' contractual rights or their reasonable benefit expectations.

5.3 If such consent is granted, the Transferee and the Transferor may amend the terms of this Jersey Scheme in accordance with such consent.

5.4 The consent of the Royal Court or the Regulator shall not be required in relation to the amendment or termination of the Excluded Policies Reinsurance Arrangement.

5.5 Notwithstanding paragraph 5.2, any amendment to this Jersey Scheme will not require Royal Court approval where such amendment is:

5.5.1 a minor and/or technical amendment to terms (including amendments to correct manifest errors) that may be agreed by the Transferee and the Transferor;

5.5.2 required to reflect any change in Applicable Law which has or will have any implications for the Transferor or Transferee in relation to the terms or operation of this Jersey Scheme;

5.5.3 necessary to reflect any changes in the actuarial practices relating to, or techniques for the management of, the Transferred Jersey Policies; or

5.5.4 required to protect the rights and reasonable expectations of the Jersey Policyholders of the Transferred Jersey Policies,

provided that the Regulator has been given at least 28 days' notice (from the date that the Regulator acknowledged the notice) of the amendment and have indicated that they do not object thereto (unless the Regulator has confirmed non objection prior to that date).

5.6 Any action taken or to be taken, and any thing done or to be done, by or on behalf of the Transferee, the Transferor or any other person in connection with or in relation to the Schedule to this Jersey Scheme which would (but for this paragraph 5.6 of this Jersey Scheme) require the consent, approval or confirmation of no objection of or by the Royal Court, the Regulator or any other person, or require any notification to be made or any certification to be given by or to any person, shall not require such consent, approval or confirmation to be given, and shall not require the making of such notification or the giving of such certification, if such action is taken or such thing is done in accordance with the terms of the UK Scheme.

6. **GOVERNING LAW**

This Jersey Scheme and any disputes or claims arising out of or in connection with its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with Jersey law.

SCHEDULE: THE UK SCHEME