

# THE HIGH COURT

2017 / No. 243 COS

IN THE MATTER OF ZURICH INSURANCE PLC

AND IN THE MATTER OF EAST WEST INSURANCE COMPANY LIMITED

AND IN THE MATTER OF THE ASSURANCE COMPANIES ACT 1909 (AS AMENDED), THE INSURANCE ACT 1989 (AS AMENDED), AND THE EUROPEAN UNION (INSURANCE AND REINSURANCE) REGULATIONS 2015

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## SCHEME

(pursuant to Section 13 of the Assurance Companies Act 1909 (as amended), Section 36 of the Insurance Act 1989 (as amended) and Regulation 41 of the European Union (Insurance and Reinsurance) Regulations 2015 for the transfer to East West Insurance Company Limited of part of the non-life insurance business of Zurich Insurance plc)

### 1. INTRODUCTION

- 1.1. Zurich Insurance plc (**ZIP**) was incorporated in Ireland as a private limited company on 19 July 1950 under company number 13460. Incorporated as Shield Insurance Company Limited (**SI**CL), its name was changed to Eagle Star Insurance Company (Ireland) Limited on 31 December 1991 and to Zurich Insurance Ireland Limited on 13 May 2005. ZIP was re-registered as a public limited company with the name Zurich Insurance plc on 2 January 2009. ZIP's registered office is at Zurich House, Ballsbridge Park, Dublin 4, D04 E5N4.
- 1.2. ZIP is a non-life insurance undertaking authorised by the Central Bank of Ireland under the 2015 Regulations.
- 1.3. ZIP carries on the Transferring Business through its United Kingdom branch which is registered with UK Companies House under branch registration number BR007985 and with a branch registered address at The Zurich Centre, 3000 Parkway, Whiteley, Fareham, Hampshire, PO15 7JZ.
- 1.4. East West Insurance Company Limited (**EWICL**) was incorporated in England and Wales as a private limited company on 1 July 1964 under registered number 811120. Originally incorporated as National & General Insurance Company (United Kingdom) Limited, its name was changed to EWICL on 16 July 1984. EWICL's registered office address is 20 Old Broad Street, London, EC2N 1DP.

- 1.5. EWICL is a non-life insurance undertaking authorised by the Prudential Regulation Authority (the **PRA**) in the United Kingdom.
- 1.6. ZIP and EWICL hereby agree that, subject to the sanction by the Court of the Scheme, ZIP will transfer the Transferring Business to EWICL in accordance with the terms of this Scheme.
- 1.7. ZIP and EWICL hereby agree to appear by Counsel on the hearing of the Petition to sanction this Scheme and have undertaken to be bound by the Scheme and to take all reasonable steps (including the execution of documents) which may be necessary or expedient to give effect to the Scheme.

## 2. **INTERPRETATION**

- 2.1. In this Scheme (including any schedules and appendices hereto) words and expressions shall, save where the context otherwise requires, have the meanings set out in Appendix I hereto.
- 2.2. In this Scheme, liabilities include liabilities, duties and obligations of every description (whether present or future, actual or contingent). Rights, benefits and powers include rights, benefits and powers of every description (whether present or future, actual or contingent).
- 2.3. Any reference to this Scheme shall include any schedules and appendices to it and, except as the context may otherwise require, references to paragraphs, Schedules or Appendices are to paragraphs, schedules or appendices to this Scheme.
- 2.4. The headings in the Scheme are for convenience only and shall not affect its interpretation.
- 2.5. The word "including" is to be construed as not importing any limitation.
- 2.6. Any references in this Scheme to legislation:
  - 2.6.1. shall be to Irish legislation, unless otherwise stated; and
  - 2.6.2. shall include a reference to any legislation subordinate to such legislation,and, save where the context otherwise requires, words and expressions used in the Acts and any regulations made under any of the foregoing shall have the same meanings in this Scheme.
- 2.7. 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 and to any instrument or order made from time to time under such enactment, statutory provision or subordinate legislation.
- 2.8. Any words denoting the singular shall include the plural and vice versa and words denoting any gender shall include all genders.
- 2.9. Any reference to a person shall be construed as a reference to any individual, firm, company, corporation, government, state or agency of a state or any association or partnership (whether or not

having separate legal personality) of two or more of the foregoing. Any reference to a person includes his successors, personal representatives and permitted assigns.

2.10. Any reference to the "Parties" shall mean the parties to this Scheme.

## **OPERATIVE PROVISIONS**

### **3. Transfer of the Transferring Policies, the Transferring Assets and the Residual Assets**

3.1. In accordance with this Scheme and by virtue of the Order:

(a) on and with effect from the Scheme Date, the Transferring Policies and the Transferring Assets; and

(b) on and with effect from its Subsequent Transfer Date, each Residual Asset,

shall, without any further act or instrument (but subject to the terms of the Order), be transferred to and vested in EWICL and EWICL shall succeed to and become responsible for, and entitled to, all the rights, benefits and powers of ZIP whatsoever subsisting on the Scheme Date or Subsequent Transfer Date, as appropriate, under or by virtue of the Transferring Policies, the Transferring Assets and the Residual Assets and EWICL shall be entitled to any and all defences, claims, counterclaims and rights of set-off against or under the Transferring Policies, the Transferring Assets and the Residual Assets which would have been available to ZIP.

3.2. ZIP and EWICL shall, as and when necessary or appropriate, execute and deliver all documents and perform all such other acts and take any such steps as may reasonably be required to effect or perfect the transfer to, and vesting in, EWICL of the Transferring Policies, the Transferring Assets and the Residual Assets and EWICL shall indemnify ZIP against any reasonable costs properly incurred by ZIP in taking any such step.

3.3. In the event of any payment being made to, or property being received by, or right, benefit of power being conferred upon, ZIP after the Scheme Date in respect of the Transferring Policies or the Transferring Assets, which payment accrued after the Scheme Date, ZIP shall, as soon as is reasonably practicable after its receipt, pay over the amount of such payment to EWICL or, to the extent that it is reasonably able to do so, transfer such property, right, benefit or power to, or in accordance with the directions of, EWICL.

3.4. In the event of any payment being made to, or property being received by, or right, benefit of power being conferred upon, ZIP in respect of a Residual Asset after its Subsequent Transfer Date, which payment accrued after the Subsequent Transfer Date, ZIP shall, as soon as is reasonably practicable after its receipt, pay over the amount of such payment to EWICL or, to the extent that it is reasonably able to do so, transfer such property, right, benefit or power to, or in accordance with the directions of, EWICL.

- 3.5. Every holder of a Transferring Policy and every person who has a right under or in respect of a Transferring Policy, shall, with effect from the Scheme Date become entitled, in substitution for and to the exclusion of any right against ZIP thereunder (from which ZIP shall be entirely released), to the same rights against EWICL as were available against ZIP under such Transferring Policy.
- 3.6. Every holder of a Transferring Policy and every person who has a liability or obligation under a Transferring Policy, shall, with effect from the Scheme Date, in substitution for any liability or obligation owed thereunder to ZIP, be under the same liability or obligation to EWICL.
- 3.7. Except where the context otherwise requires, all references in any Transferring Policy or in any contract or other document or instrument to the extent evidencing title to, or the benefit or burden of, any Transferring Policy, Transferring Asset, Residual Asset, Transferring Liability or Residual Liability, to ZIP shall, from and after the Scheme Date (or, in respect of any Residual Asset or Residual Liability, its Subsequent Transfer Date), be read as references to EWICL.

#### 4. **Transfer of the Transferring Liabilities and the Residual Liabilities**

- 4.1. In accordance with this Scheme and by virtue of the Order:
- (a) on and with effect from the Scheme Date, the Transferring Liabilities; and
  - (b) on and with effect from its Subsequent Transfer Date, each Residual Liability,
- shall, without any further act or instrument (but subject to the terms of the Order), be transferred to and vested in EWICL, with the effect that ZIP shall be wholly released from, and EWICL shall succeed to, the Transferring Liabilities and the Residual Liabilities.
- 4.2. ZIP and EWICL shall, as and when necessary or appropriate, execute and deliver all documents and perform all such other acts and take any such steps as may reasonably be required to effect or perfect the transfer to, and vesting in, EWICL of the Transferring Liabilities and the Residual Liabilities and EWICL shall indemnify ZIP against any reasonable costs properly incurred by ZIP in taking any such step.
- 4.3. EWICL shall discharge on ZIP's behalf or, failing that, shall indemnify ZIP from and after the Scheme Date against:
- (a) the Transferring Liabilities;
  - (b) the Residual Liabilities;
  - (c) all debts, obligations and liabilities whatsoever of ZIP arising from, allocated or attributable to the Excluded Policies; and
  - (d) save as otherwise provided in this Scheme, any other liabilities (other than taxation) accruing on or after the Scheme Date in connection with the Transferring Business or arising as a direct result of the Transfer or any document executed to give effect to the Transfer.

4.4. Where ZIP is entitled to receive an amount pursuant to any indemnity provided for in this Scheme including, without limitation, the indemnities at paragraphs 3.2, 4.2, 4.3 and 6.2, it shall be entitled to receive such amount as, after payment of or provision for any liability to taxation in respect of the amount receivable, will result in the receipt of an amount equal to the liability indemnified against.

5. **Excluded Policies**

5.1. The Excluded Policies shall not be transferred to EWICL on the Scheme Date but shall remain vested in ZIP pending the transfer of the Excluded Policies to EWICL in accordance with the terms of this Scheme.

5.2. On and from the Scheme Date, the Excluded Policies shall continue to be reinsured in their entirety by ILS P&C Re pursuant to and in accordance with the LPTA.

5.3. In the event of any payment being made to, property being received by, or right, benefit or power being conferred upon ZIP after the Scheme Date in respect of an Excluded Policy, which payment accrued after the Scheme Date, ZIP shall, as soon as reasonably practicable thereafter, pay over the amount of such payment to EWICL or, to the extent to which it is reasonably able to do so, transfer such property, right, benefit or power to, or in accordance with the reasonable directions of, EWICL.

5.4. If, in relation to an Excluded Policy, on or after the Scheme Date:

(a) a Member State (as defined in the 2015 Regulations) where the contract was concluded, either under the right of establishment or the freedom to provide services, consents to its transfer pursuant to Regulation 41(3)(b) of the 2015 Regulations or is deemed to have so consented pursuant to Regulation 41(4) of the 2015 Regulations; or

(b) such further steps as are referred to in the definition of Excluded Policy shall have been taken in relation to the Excluded Policy

the Excluded Policy shall thereupon transfer to and become vested in EWICL and the Excluded Policy shall thereupon be treated as a Transferring Policy in all respects and the provisions of the Scheme applicable to Transferring Policies shall apply mutatis mutandis to such a policy.

6. **Declaration of Trust in relation to Residual Assets**

6.1. On and from the Scheme Date, ZIP shall, subject to having obtained any required consent or waiver, hold any Residual Assets as trustee and in trust for and on behalf of EWICL absolutely, and ZIP shall be subject to EWICL's directions in respect of any Residual Assets, until their respective Subsequent Transfer Dates and EWICL shall have authority to act as the attorney of ZIP in respect of any such Residual Assets for all purposes.

6.2. EWICL shall indemnify ZIP on demand against any losses, actions, costs, damages, expenses, fees, claims or demands of whatever kind incurred by ZIP in its capacity as trustee of any Residual Asset in accordance with paragraph 6.1.

6.3. In the event of any payment being made to, property being received by, or right, benefit or power being conferred upon ZIP after the Scheme Date (but before its Subsequent Transfer Date) in respect of a Residual Asset, which payment accrued after the Scheme Date (but before its Subsequent Transfer Date), ZIP shall, as soon as reasonably practicable thereafter, pay over the amount of such payment to EWICL or, to the extent to which it is reasonably able to do so, transfer such property, right, benefit or power to, or in accordance with the directions of, EWICL.

7. **Continuity of Proceedings**

If any Proceedings shall be pending by or against ZIP on the Scheme Date (or, in respect of any Residual Asset or Residual Liability, any Subsequent Transfer Date), in connection with the Transferring Policies, the Transferring Assets, the Residual Assets, the Transferring Liabilities or the Residual Liabilities, the same shall, in accordance with this Scheme and by and subject to the Order be continued by or against EWICL with effect from the Scheme Date or Subsequent Transfer Date, as the case may be. On and from the Scheme Date (or, in respect of any Residual Asset or Residual Liability, any Subsequent Transfer Date), EWICL shall be entitled to any and all defences, claims, counterclaims and rights of set-off that would have been available to ZIP in relation to any Proceedings.

8. **Data Protection and Other Authority**

8.1. On and with effect from the Scheme Date, in accordance with this Scheme and by virtue of the Order, the Records, which may include personal data protected under the Data Protection Acts, may be used by EWICL for and disclosed by EWICL to, and used by, any agent or contractor of EWICL to the same extent that they were used by ZIP and its agents or contractors prior to the Transfer for all purposes including in particular, but without limitation, the administration of the Transferring Policies and all matters relevant or incidental thereto, and no consent from the individual holders of such Transferring Policies in respect of such disclosure, transfer or use shall be required.

8.2. To the extent that an authority has been given to ZIP in connection with a Transferring Policy by the holder thereof, whether pursuant to the Data Protection Acts or otherwise, such authority shall, on and after the Scheme Date be deemed to have been given to EWICL.

8.3. The Parties acknowledge that the Records have already been transferred to Armour Risk Management for the purposes of administering the UKBG Policies on behalf of ZIP.

9. **Costs and Expenses**

The costs and expenses in relation to and incidental to, the preparation and negotiation of this Scheme, its presentation to the Court and its implementation, shall be borne by the Parties in such proportions as they may agree.

10. **Scheme Date**

This Scheme shall take effect at 00:01am on the Scheme Date or such other time and date as may be specified in an Order sanctioning this Scheme under Section 13 of the 1909 Act, Section 36 of the 1989

Act and Regulation 41 of the 2015 Regulations, and unless this Scheme shall take effect on or before 9 May 2018 or such later date as the Court may allow upon the application of ZIP and EWICL, it shall lapse.

11. **Amendments, Modifications or Additions**

On or before the Scheme Date, subject to the sanction of the Court, any amendments, modifications and additions (including any further condition or provision that the Court may approve or impose) may be made to this Scheme on the prior agreement of each of ZIP and EWICL provided that the Central Bank shall have been notified of any proposal to make such an amendment, modification or addition and may appear and be heard before the Court.

12. **Governing Law**

This Scheme shall be governed by and construed in accordance with the laws of Ireland.

13. **Evidence of Transfer**

The production of a copy of the Order, with any modifications, amendments and/or additions made pursuant to paragraph 11 above, shall for all purposes, be evidence of the transfer to and vesting in EWICL of the Transferring Business.

## APPENDIX I

### DEFINITIONS

<b>1909 Act</b>	means the Assurance Companies Act 1909;
<b>1936 Act</b>	means the Insurance Act 1936;
<b>1989 Act</b>	means the Insurance Act 1989;
<b>2015 Regulations</b>	means the European Union (Insurance and Reinsurance) Regulations 2015;
<b>Acts</b>	means the Insurance Acts 1909-2011 and all regulations made under those Acts and all regulations relating to insurance made under the European Communities Act 1972;
<b>Armour Risk Management</b>	means Armour Risk Management Limited, a private limited company incorporated in the United Kingdom with company number 7111972.
<b>Central Bank</b>	means the Central Bank of Ireland;
<b>Court</b>	means the High Court of Ireland;
<b>Data Protection Acts</b>	means, as the case may be, the Data Protection Acts 1988 and 2003 and / or the Data Protection Act 1998 of the United Kingdom;
<b>Developer</b>	means a developer, housing association, contractor or self-builder who constructed or procured the construction of a residential property covered by a UKBG Policy;
<b>Excluded Assets</b>	means all assets of ZIP other than the Transferring Assets and the Residual Assets;
<b>Excluded Policy</b>	means any UKBG Policy which does not transfer to EWICL on the Scheme Date pursuant to the Order because:  (i) a Member State (as defined in the 2015 Regulations) where the contract was concluded, either under the right of establishment or the freedom to provide services, has not consented to its transfer pursuant to Regulation 41(3)(b) of the 2015 Regulations or is not deemed to have so consented pursuant to Regulation 41(4) of the 2015 Regulations; or  (ii) further steps additional to the Order are required to secure its transfer to EWICL under the law of any relevant jurisdiction that is not a Member State



	(as defined in the 2015 Regulations).
<b>Guarantees</b>	means all personal, cross-company, parental and / or bank guarantees provided or procured by a Developer or any other person pursuant to or in connection with the UKBG Scheme;
<b>ILS P&amp;C Re</b>	means ILS Property & Casualty Re Limited, a reinsurance company incorporated and licensed in Bermuda and whose registered office is at Crawford House, 50 Cedar Avenue, Hamilton HM 11, Bermuda;
<b>Ireland</b>	means Ireland excluding Northern Ireland;
<b>LPTA</b>	means the Loss Portfolio Transfer Agreement dated 9 November 2016 between ZIP, ILS P&C Re and Armour Risk Management;
<b>Order</b>	means any order(s) made, or to be made, as the case may be, by the Court sanctioning this Scheme pursuant to Section 13 of the 1909 Act and Regulation 41 of the 2015 Regulations and such further order(s) as the Parties shall seek and as the Court shall deem appropriate to grant pursuant to Section 36 of the 1989 Act;
<b>Proceedings</b>	means any judicial, quasi-judicial, disciplinary, administrative, arbitration or other proceedings including any complaint or claim to any ombudsman;
<b>Records</b>	means all documents, files and other records, whether in physical or electronic form, relating to the Transferring Policies, the Transferring Assets, the Residual Assets, the Transferring Liabilities and the Residual Liabilities which are in the possession of, or under the control of ZIP or its third party service providers and all rights, benefits, authorities and powers of ZIP under or by virtue of the Records;
<b>Residual Asset</b>	means: <ul style="list-style-type: none"> <li>(a) any Transferring Asset to be transferred from ZIP to EWICL pursuant to this Scheme: <ul style="list-style-type: none"> <li>(i) the transfer of which from ZIP to EWICL pursuant to this Scheme requires, at the Scheme Date, either: <ul style="list-style-type: none"> <li>(A) the consent of any person (other than the EWICL, ZIP or the Court); or</li> <li>(B) the waiver by any person of any right to acquire, or to be offered the right to, or to offer to, acquire or procure the acquisition by some other person of, all or any part of such property, being a right which directly or indirectly arises or is exercisable as a consequence of such transfer being proposed or</li> </ul> </li> </ul> </li> </ul>

	<p>taking effect; and</p> <p>(ii) which the Court does not have jurisdiction to transfer or determines for any other reason not to transfer it or the transfer of which is not recognised by the laws of any relevant jurisdiction in which such asset is situated or to which the asset is subject;</p> <p>(b) any Transferring Assets to be transferred pursuant to this Scheme which ZIP and EWICL agree in writing prior to the Scheme Date shall not be transferred on the Scheme Date;</p> <p>(c) any other interest of ZIP in any asset or any agreement relating to any asset which ZIP and EWICL shall agree in writing prior to the Scheme Date should be transferred pursuant to this Scheme in conjunction with any assets referred to in paragraphs (a) or (b) of this definition;</p> <p>(d) any proceeds of sale or income or other accrual or return whatsoever, whether or not in any case in the form of cash, earned or received from time to time after the Scheme Date in respect of any asset referred to in paragraphs (a) or (b) or (c) of this definition; and</p> <p>(e) any Transferring Asset which cannot be transferred to or vested in EWICL pursuant to this Scheme for any other reason;</p>
<b>Residual Liability</b>	<p>means any liability under or in connection with the Transferring Policies and in connection with the Transferring Assets:</p> <p>(a) the transfer of which liability to EWICL pursuant to this Scheme requires, as at the Scheme Date, the consent or waiver of any person (other than ZIP, EWICL or the Court) and which the Court either does not have jurisdiction to transfer or determines for any other reason not to transfer it or the transfer is not recognised by the laws of any relevant jurisdiction in which such asset is situated or to which the asset is subject;</p> <p>(b) which is attributable to or connected with a Residual Asset and arises at any time before any Subsequent Transfer Date applicable to that Residual Asset; or</p> <p>(c) which cannot be transferred to or vested in EWICL pursuant to this Scheme for any other reason;</p>
<b>Scheme</b>	<p>means this Scheme in its original form or with or subject to any modification, addition or condition which may be approved or imposed by the Court;</p>
<b>Scheme Date</b>	<p>means 00:01 on 31 March 2018 or such other date as ZIP and EWICL may agree and to which the Court consents, upon which the Order takes effect;</p>

<b>Security Deposits</b>	means all funds deposited by or on behalf of a Developer by way of security deposit or other similar arrangement pursuant to or in connection with the UKBG Scheme;
<b>Subsequent Transfer Date</b>	<p>means, in relation to any Residual Asset or Residual Liability, the date after the Scheme Date on which such Residual Asset or Residual Liability is to be transferred to EWICL namely:</p> <ul style="list-style-type: none"> <li>(a) in respect of any Residual Asset falling within paragraph (a) of the definition thereof, and of any Residual Liability falling within paragraph (a) of the definition thereof, the date on which any requisite consent, waiver or order to enable the same to be transferred to EWICL upon the terms of this Scheme is obtained, no longer required or dispensed with by Order of the Court;</li> <li>(b) in respect of any Residual Asset falling within paragraphs (b) or (c) of the definition thereof and of any Residual Liability which falls within paragraph (b) of the definition thereof, the date on which the parties agree that the transfer of the relevant Residual Asset shall take effect;</li> <li>(c) in the case of any Residual Asset falling within paragraph (d) of the definition thereof, the date on which such Residual Asset is received or earned by ZIP; and</li> <li>(d) in respect of any Residual Asset falling within the paragraph (e) of the definition thereof, or of any Residual Liability falling within paragraph (c) of the definition thereof, the date upon which the impediments to the transfer pursuant to the terms of this Scheme has been removed;</li> </ul>
<b>Transfer</b>	means the transfer of the Transferring Business pursuant to this Scheme;
<b>Transferring Assets</b>	<p>means all of the following assets as at the Scheme Date:</p> <ul style="list-style-type: none"> <li>(i) the rights, benefits and powers (whether actual or contingent) of ZIP whatsoever under or by virtue of the Transferring Policies;</li> <li>(ii) the rights, benefits and powers (whether actual or contingent) of ZIP whatsoever under or by virtue of the Transferring Contracts; and</li> <li>(iii) the Records including, without limitation, all rights, title and interest of ZIP in the Records</li> </ul> <p>but excluding the Residual Assets and the Excluded Assets.</p>
<b>Transferring Business</b>	means that part of the non-life insurance business carried on by ZIP as at the Scheme Date specifically comprised of the Transferring Policies, the Transferring Assets, the Residual Assets, the Transferring Liabilities and the Residual Liabilities but excluding the Excluded Assets;

<b>Transferring Contracts</b>	<p>means</p> <ul style="list-style-type: none"> <li>(i) all contracts between ZIP and the Developers pursuant to or in connection with the UKBG Scheme;</li> <li>(ii) the Guarantees; and</li> <li>(iii) all contracts evidencing the Security Deposits;</li> </ul>
<b>Transferring Liabilities</b>	<p>means all debts, obligations and liabilities whatsoever of ZIP at the Scheme Date arising from, allocated or attributable to the Transferring Policies, the Transferring Assets and the Records but excluding the Residual Liabilities;</p>
<b>Transferring Policies</b>	<p>means the UKBG Policies but excluding the Excluded Policies;</p>
<b>UKBG Policies</b>	<p>means those policies of insurance underwritten by ZIP under the UKBG Scheme including those policies more particularly recorded in ZIP's policy records as having been issued or underwritten under the UKBG Scheme and any renewals of such policies and any endorsements, extensions or amendments thereto;</p>
<b>UKBG Scheme</b>	<p>a building guarantee scheme promoted by the Zurich Group in the United Kingdom pursuant to which the UKBG Policies were issued to homeowners in the United Kingdom covering inter alia damage caused by structural and other defects attributable to the manner in which their homes were constructed by or for a Developer;</p>
<b>Zurich Group</b>	<p>means the group of companies, the ultimate parent company of which is Zurich Insurance Group Ltd, a company incorporated in Switzerland on 26 April 2000 and whose shares are listed on the SIX Swiss Exchange.</p>