

Financial Services Authority

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Mr. Andres Trink
Chairman of the Management Board
Financial Supervision Authority
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14 February 2005

Our Ref: REGTD/transfers/SW/228861

Your Ref:

Dear Mr Trink

PROPOSED TRANSFER OF NON-LIFE INSURANCE BUSINESS
TRANSFEROR: UK BRANCH OF CATLIN INSURANCE COMPANY (UK)
LTD (CICUL)
TRANSFeree: CATLIN INSURANCE COMPANY (UK) LTD (NEWCO)

I am writing to you in accordance with Article 12 of the EC Third Non-Life Insurance Directive (92/49/EEC) ("3NLD") to notify you of the intention of CICUL to transfer part of its non-life insurance business to NewCo.

CICUL is an insurance company with its head office in Bermuda. Its UK branch is permitted to carry on non-life insurance business in the UK by this Authority under Part IV of the Financial Services and Markets Act 2000.

Under Article 12.4 of 3NLD, where a proposed transfer of business includes policies which cover risks which are situated in a member State other than the United Kingdom, we are required to notify the regulatory authority in that member State of the proposed transfer and obtain their consent to the scheme. Although the business to be transferred does not include any risks in your State, CICUL continues to write business and it is possible that before the transfer is effected, the policies to be transferred may include risks located in your State. CICUL have also stated that it may have insured risks in your State of which it is currently unaware. It is on that basis that you are being consulted.

Newco, an insurance company, with its head office in the UK is currently seeking authorisation under Article 6 of the First Non-Life Insurance Directive (73/239/EEC). Newco also proposed, once authorised, to give notification under Article 16 of the Second Non-Life Insurance Directive (88/357/EEC) to provide cross border services in your State.

I attach the information to be provided in accordance with paragraph 3.1.6 of the Protocol DT/F/182/97 of 30 October 1997.

Under the terms of UK legislation a scheme to transfer insurance business from one company to another must be approved by the UK court. The application to the court must be accompanied by a report on the terms of the scheme made by an independent

expert. The court hearing to consider approval of the transfer is expected to be in May 2005.

UK legislation requires CICUL to notify all its policyholders individually of the transfer and also of their rights to make representations at the court hearing. However, CICUL intends to apply for a waiver from the requirement to notify policyholders individually as the business was sourced through brokers. CICUL proposes to notify the brokers. I should be grateful if you would let me know if you have any objections to the waiver.

A notice stating that the application for the transfer has been made, and setting out the address from which copies of the report of the independent expert and a statement setting out the terms of the scheme and containing a summary of the expert's report may be obtained, is to be inserted in the UK Government Gazettes and two national newspapers in the UK. If the proposed transfer is approved by order of the court, the court must direct that a notice of the making of that order must be published in your State. Please let me know if you have any specific requirements in respect of such a notice.

Please acknowledge receipt of this letter forthwith. In due course, I would be grateful if you could notify me of your consent to the proposed scheme of transfer and let me have any other comments you might have at your earliest convenience please. If I do not hear from you within a period of three months, I will assume that you consent to the proposed transfer in accordance with Article 12.5 of 3NLD.

Could you please also confirm whether the law in your state allows the policyholder the right to cancel a policy in the event of a transfer of business from one insurer to another and if so, the conditions which may be applicable to any such right.

Yours sincerely



Samantha Warner
Associate
Regulatory Decisions Department

No. of 2005

**IN THE HIGH COURT OF JUSTICE
CHANCERY DIVISION
COMPANIES COURT**

IN THE MATTER of Catlin Insurance Company Ltd ("the Transferor")

-and-

IN THE MATTER of Catlin Insurance Company (UK) Ltd ("the Transferee")

-and-

IN THE MATTER of the Financial Services and Markets Act 2000

S C H E M E

**(pursuant to Part VII of the Financial Services and Markets Act 2000) for the transfer to
Catlin Insurance Company (UK) Ltd of the non-life business of
the United Kingdom branch of Catlin Insurance Company Ltd**

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1. INTERPRETATION

- 1.1 In this Scheme (including the Appendices hereto) the words and expressions set out in Appendix I shall, save where the context requires otherwise, bear the meanings specified against them.
- 1.2 Except as the context otherwise requires, words and expressions used in the Act or in any regulations or rules made under it shall have the same meanings in this Scheme.
- 1.3 Any reference in this Scheme to an enactment, statutory provision, regulations or rules shall be deemed to include a reference to that enactment or statutory provision or those regulations or rules as from time to time amended, consolidated, modified, replaced or re-enacted by any statute or statutory provision.
- 1.4 Any reference in this Scheme to the singular includes a reference to the plural and vice versa. Any reference to he, she or it includes the others. Any reference to a paragraph is to a paragraph of this Scheme.
- 1.5 In this Scheme:
- (a) words denoting persons shall include any body corporate, unincorporated associations of persons, government, state or agency of a state (whether or not having separate legal personality);
 - (b) the words "include", "includes" and "including" shall be construed as if they were followed by the words "without limitation";
 - (c) a reference to an agreement or document is to the same as amended from time to time; and
 - (d) references to a party to this Scheme includes references to the successors or assignors (immediate or otherwise) of that party.
- 1.6 Headings in this Scheme are inserted for convenience only and shall not affect its construction.

2. INTRODUCTION

- 2.1 The Transferor's branch in the United Kingdom is a person who is authorised for the purposes of the Act and has permission to effect or carry out contracts of insurance of the following classes in the United Kingdom: 1,2,3,4,5,6,7,8,9,10,11,12,13,14,15,16 and 17.
- 2.2 The Transferee is a person who is authorised for the purposes of the Act and has permission to effect or carry out contracts of insurance of the following classes in the United Kingdom: 1,2,3,4,5,6,7,8,9,10,11,12,13,14,15,16 and 17.
- 2.3 It is proposed that on and with effect from the Transfer Date, the Transferring Policies and the Transferring Liabilities shall be transferred to the Transferee by the Order in accordance with Part VII of the Act and be dealt with in accordance with this Scheme.
- 2.4 The Transferor and the Transferee have each agreed to appear by Counsel at the hearing of the application to sanction this Scheme, to be bound thereby and to execute all such

documents and to do all such acts and things as may be necessary or expedient to be executed or done by it for the purposes of giving effect to this Scheme.

3. TRANSFER OF TRANSFERRING POLICIES

- 3.1 On and with effect from the Transfer Date, each Transferring Policy and all the interest in it of the Transferor shall, by the Order and without any further act or instrument, be transferred to and vested in the Transferee and dealt with in accordance with this Scheme.
- 3.2 The Excluded Policies shall be reinsured, administered and dealt with in accordance with this Scheme.
- 3.3 The Transferee shall accept without investigation such title to each Transferring Policy as the Transferor shall have at the Transfer Date.
- 3.4 The Transferor and the Transferee shall each take all such steps and do all such things (including the execution and delivery of any document) as may be required to effect or perfect the transfer to and vesting in the Transferee of each Transferring Policy in accordance with the terms of this Scheme.

4. TRANSFER OF TRANSFERRING LIABILITIES

- 4.1 On and with effect from the Transfer Date, all Transferring Liabilities shall, by the Order and without any further act or instrument (but subject to the terms of the Order and save as otherwise provided by this Scheme), be transferred to and become a liability of the Transferee, with the effect that the Transferee shall succeed to and discharge each such liability to the exclusion of the Transferor.
- 4.2 The Transferor and the Transferee shall each take all such steps and do all such things (including the execution and delivery of any document) as may be required to effect or perfect the transfer to and vesting in the Transferee of each Transferring Liability in accordance with the terms of this Scheme.

5. RIGHTS AND OBLIGATIONS UNDER TRANSFERRING POLICIES

- 5.1 On and with effect from the Transfer Date, the Transferee shall succeed and become entitled to all the rights, discretions, authorities, benefits and powers of the Transferor whatsoever under or by virtue of each Transferring Policy. The Transferee shall be entitled to any and all defences, claims, counterclaims and rights of set-off under or in respect of each Transferring Policy which would have been available to the Transferor.
- 5.2 Subject to the provisions of this Scheme, every person who is a holder of a Transferring Policy shall, on and with effect from the Transfer Date, continue to be entitled, to the exclusion of any rights which he may have had against the Transferor under the Transferring Policy concerned, to the same rights against Transferee as were available to him against the Transferor under that Transferring Policy and (as regards any Transferring Policy under which premiums or other sums attributable or referable thereto continue to be payable) each such person shall, on and with effect from the Transfer Date, account to the Transferee for any further or additional premiums or other sums attributable or referable thereto as and when the same become due and payable.
- 5.3 Subject to the provisions of this Scheme, every person who has a right against the Transferor in respect of a Transferring Liability shall, on and with effect from the Transfer Date,

continue to be entitled, to the exclusion of any rights which he may have had against the Transferor in respect of the Transferring Liability concerned, to the same rights against the Transferee as were available to him against the Transferor in respect of that Transferring Liability.

6. EXCLUDED POLICIES

- 6.1 The Excluded Policies shall not be transferred to the Transferee and shall remain liabilities of the Transferor but shall at all times after the Transfer Date be reinsured in their entirety by the Transferee on terms as described in this paragraph 6.
- 6.2 On or prior to the Transfer Date, the Transferor shall enter into a reinsurance agreement with the Transferee pursuant to which, with effect from the Transfer Date, all the liabilities of the Transferor attributable to the Excluded Policies and all other amounts paid or payable by the Transferor in respect of the Excluded Policies (including amounts paid or payable in relation to the surrender or termination of any Excluded Policy) will be reinsured in their entirety by the Transferee.
- 6.3 [With effect from the Transfer Date, the Transferee shall be responsible for all aspects of the administration of the Excluded Policies.]

7. CONTINUITY OF PROCEEDINGS

- 7.1 On and with effect from the Transfer Date, any legal proceedings in any country which are pending by or against the Transferor by virtue of the Transferring Policies or Transferring Liabilities shall be continued, to the exclusion of the Transferor, by or against the Transferee and 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.

8. MANDATES AND OTHER INSTRUCTIONS

- 8.1 Any mandate or other instruction in force on the Transfer Date (including, without limitation, any instruction given to a bank by its customer in the form of a direct debit or standing order) and providing for the payment by a banker or other intermediary of premiums payable under or in respect of any Transferring Policy to the Transferor shall, by the Order and without any further act or instrument or notification of any person, on and from the Transfer Date, take effect as if it had provided for and authorised such payment to the Transferee.

9. INDEMNITIES IN FAVOUR OF TRANSFEROR

- 9.1 On and from the Transfer Date, the Transferee shall discharge on behalf of the Transferor, or failing that indemnify the Transferor against, all Transferring Liabilities.
- 9.2 Where the Transferor is entitled to receive an amount pursuant to the indemnities contained in paragraph 9.1, 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.

10. ADMINISTRATION

- 10.1 On and with effect from the Transfer Date, the Transferee shall take over from the Transferor the administration and negotiation of proposals for insurance or reinsurance which would have been Transferring Policies if the Transferor had determined to accept them (but whether

or not the Transferee does so determine) and the Transferee shall bear all expenses and liabilities in relation thereto but nothing contained herein shall oblige the Transferee to accept any proposal for insurance received by or on behalf of the Transferor before the Transfer Date but not accepted by the Transferor by that date.

11. TRANSFER DATE

- 11.1 Subject to the Order being made, the Scheme shall become effective in relation to each Transferring Policy and each Transferring Liability at 23:59h GMT on the day on which the Order is made.
- 11.2 Unless the Scheme shall have become effective on or before 23.59h GMT on 31st December, 2005 or such later date and/or time, if any, as the Transferor and the Transferee may approve and the Court may allow, this Scheme shall lapse.

12. MODIFICATIONS

The Transferee, together with the Transferor, may at any time agree on behalf of themselves and all other persons concerned to any modification of or addition to this Scheme or to any further condition or provision affecting the same that the Court may approve or impose.

13. GOVERNING LAW

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

14. COSTS AND EXPENSES

- 14.1 The costs and expenses of and incidental to the preparation and carrying into effect of this Scheme arising prior to the Transfer Date, shall be met by the Transferee.

[Date]

SCHEME DOCUMENT

APPENDIX I

Definitions

In this Scheme:

Act means the Financial Services and Markets Act 2000;

Branch Business means the entire portfolio of non-life insurance and reinsurance contracts, directly or indirectly underwritten by the Transferor through its branch in the United Kingdom but excluding the Excluded Policies;

Business Day means a day (other than a Saturday or Sunday) on which banks are generally open for business in London;

GMT means Greenwich Mean Time;

Court means the High Court of Justice in England;

Excluded Policies means any policy which would otherwise be a Transferring Policy on the Transfer Date and which is:

- (1) written by the Transferor as part of the Branch Business but in respect of which:
 - (a) the risk is situated in an EEA State other than the United Kingdom; and
 - (b) the FSA has not prior to the making of the Order provided the certificate referred to in paragraph 5 of Part I Schedule 12 to the Act; or
- (2) written by the Transferor as part of the Branch Business but the transfer of such policy would contravene the legal or regulatory requirements to which the Transferor is subject in any state which is not an EEA State,

and for these purposes "EEA State" shall have the meaning given by, and "**the risk is situated in an EEA State**" shall be construed in accordance with, Part I of Schedule 12 to the Act;

FSA means the Financial Services Authority of the United Kingdom;

Order means an order of the Court sanctioning this Scheme pursuant to Section 111(1) of the Act and any order of the Court making provision under Section 112 of the Act;

Scheme means this Scheme in its original form or with, or subject to, any modification, addition or condition which may be approved pursuant to paragraph 12 of this Scheme or imposed by the Court;

Transfer Date means the date and time as determined in accordance with paragraph 12.1 of this Scheme upon which the Transferring Policies and Transferring Liabilities as fall to be transferred from the Transferor to the Transferee hereunder shall be transferred;

Transferee means Catlin Insurance Company (UK) Ltd, whose registered office is at 3 Minster Court, London EC3R 7DD;

Transferor means Catlin Insurance Company Ltd, whose registered office is at Cumberland House, 6th Floor, 1 Victoria Street, Hamilton, Bermuda HM11 and the address of whose branch in the United Kingdom is 3 Minster Court, London EC3R 7DD;

Transferring Liabilities means all liabilities whatsoever (whether present or future, certain or contingent) of the Transferor as at the Transfer Date under or relating to:

- (a) the Transferring Policies; or
- (b) any other contract of insurance or reinsurance forming part of the Branch Business under or relating to which any such liability remains unsatisfied or outstanding as at the Transfer Date,

(including, without limitation, any cost, expense (including the fees and expenses of professional advisers), liability, damage or loss of any kind), each liability comprised in the Transferring Liabilities being a **Transferring Liability**; and

Transferring Policies means every contract of insurance or reinsurance written by the Transferor through its branch in the United Kingdom which is in force as at the Transfer Date or under which any liability (whether current or future, certain or contingent) remains unsatisfied or outstanding at the Transfer Date and includes:

- (a) all proposals for insurance or reinsurance received or issued by or on behalf of the Transferor before the Transfer Date which have not at the Transfer Date been accepted but which the Transferee or the prospective policyholder (as applicable) subsequently accepts and which, but for the provisions of this Scheme, the Transferor would have been able to accept or, as applicable, the Transferor would have been bound by the acceptance thereof; and
- (b) all obligations of the Transferor in respect of any third party rights to reinstatement of any contract of insurance written by the Transferor through its branch in the United Kingdom in respect of any risks,

and all rights, powers, obligations and liabilities of the Transferor under or by virtue thereof (but excludes for the avoidance of doubt Excluded Policies), each such contract, proposal or obligation being a "**Policy**".

SCHEME DOCUMENT**APPENDIX II****Transferring Policies**

In this Scheme, for the avoidance of doubt, "Transferring Policies" includes the following policies:

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IN THE HIGH COURT OF JUSTICE
CHANCERY DIVISION
COMPANIES COURT

IN THE MATTER of Catlin Insurance Company
Ltd

and

IN THE MATTER of Catlin Insurance Company
(UK) Ltd

and

IN THE MATTER of the Financial Services and
Markets Act 2000

S C H E M E

(pursuant to Part VII of the Financial Services
and Markets Act 2000) for the transfer to Catlin
Insurance Company (UK) Ltd of the non-life
insurance business of the United Kingdom
branch of Catlin Insurance Company Ltd.

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EC4A 1JU
Ref: AMS/